

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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

Plaintiffs

and

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

Defendants

and

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,  
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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

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**MOTION RECORD**  
(Joint Committee Motion to Allocate 2019 Excess Capital)

May 13, 2022

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***Proceeding under the Class Proceedings Act, 1992***

**NOTICE OF MOTION  
(Joint Committee Motion to Allocate 2019 Excess Capital)**

The Joint Committee will make a motion before Justice Perell on a date to be set in Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An order varying the order of this Court dated February 18, 2021 (the “**2019 Financial Sufficiency Phase One Order**”) by allocating \$2,559,000 of additional assets of the 1986-1990 Hepatitis C Settlement Trust Fund (the “**Trust Fund**”) to meet ongoing liabilities, such that paragraph 3 states:

**THIS COURT ORDERS** that the Trustee holds between \$195,037,000 and \$201,019,000 of actuarially unallocated money and assets as at December 31, 2019 (the “**2019 Excess Capital**”).

2. An order varying the 2019 Financial Sufficiency Phase One Order to reflect the reduction of 2019 Excess Capital in the HCV Special Distribution Benefit Account as a result of the recognition of additional liabilities, such that paragraph 4 states:

**THIS COURT ORDERS** that as at December 31, 2019, the financial status of the three notional accounts of the Trust Fund is as follows:

HCV Regular Benefit Account	Excess Capital of between \$191,757,000 and \$197,910,000
HCV Special Distribution Benefit Account	Excess Capital of between \$25,159,000 and \$26,090,000
HCV Late Claims Benefit Account	Insufficient Capital of between \$21,879,000 and \$22,981,000

3. An order varying the 2019 Financial Sufficiency Phase One Order to reflect the reduction of 2019 Excess Capital in the HCV Special Distribution Benefit Account as a result of the recognition of these additional liabilities, such that paragraph 5 states:

**THIS COURT ORDERS** that \$22,981,000 be reallocated from the HCV Special

Distribution Benefit Account to the HCV Late Claims Benefit Account effective January 1, 2020, so that the HCV Late Claims Benefit Account will be financially sufficient to meet the projected maximum liabilities of the HCV Late Claims Benefit Plan and the HCV Special Distribution Benefit Account will have excess capital of between \$2,178,000 and \$3,109,000, as at January 1, 2020.

4. An order pursuant to the Allocation Provision (defined below) of the 1986-1990 Hepatitis C Settlement Agreement (the “**Settlement Agreement**”) that \$193,421,000 of the 2019 Excess Capital be allocated to create discrete benefits payable as retroactive and prospective special distributions for claimants approved under the Transfused HCV Plan, the Hemophiliac HCV Plan (collectively, the “**Regular Benefit Plans**”) and the HCV Late Claims Benefit Plan (together with the Regular Benefit Plans, the “**Plans**”) as follows:

- (a) \$54,684,000 for class members, family members, late claim class members and late claim family members entitled to fixed payments for non-pecuniary general damages and death benefits under sections 4.01, 4.08, 5.01 and 5.02 of the Plans in an amount equal to 6.8% of the combined value of their award under the applicable section and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020;
- (b) \$71,812,000 for family members and late claim family members entitled to a loss of guidance, care and companionship award under section 6.02 of the Plans in an amount equal to 50% of the combined value of their award under the section and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020;
- (c) \$6,653,000 for class members and late claim class members entitled to the 2013 Special Distribution Benefit for lost or diminished pension benefits in an amount equal to an additional 4% of their annual loss of income payment under section 4.02 of the Plans capped at \$200,000 per annum before 2014 and \$200,000 per annum indexed from and after 2014; and
- (d) \$60,272,000 for class members, dependants, late claims class members and late claim dependants entitled to loss of services in the home under sections 4.03 or 6.01(2),(3) of the Plans for the years 2014 and following in an amount equal to \$2

per hour (1999 dollars), indexed to January 1, 2020, for each compensable hour lost as provided under these sections and any applicable 2013 Special Distribution Benefit;

(subparagraphs (a) to (d) collectively, the “**2019 Special Distribution Benefits**”).

5. A declaration that the 2019 Special Distribution Benefits, with the exception of the benefit at subparagraph 4(c), shall be indexed from 2020 dollars to the 1<sup>st</sup> day of January of the year in which they are paid using the Canadian Pension Index in the manner consistent with the provision at section 7.02 of the Plans.

6. An order allocating \$1,520,000 of the 2019 Excess Capital for payment of the costs associated with administering the 2019 Special Distribution Benefits.

7. An order that \$192,763,000 of the 2019 Excess Capital plus the amount of any investment income earned on that sum from and after January 1, 2020 to date of transfer (calculated by applying the annual rate of return for the invested assets of the Trust Fund net of investment expenses) be transferred to the HCV Special Distribution Benefit Account of the Trust Fund as follows:

- (a) \$191,661,000 plus the amount of investment income earned on that sum from and after January 1, 2020 to date of transfer from the HCV Regular Benefit Account;  
and
- (b) \$1,102,000 plus the amount of investment income earned on that sum from and after January 1, 2020 to date of transfer from the HCV Late Claims Benefit Account.

8. An order that the 2019 Special Distribution Benefits created under paragraph 4, any indexing provided under paragraph 5, and the costs allocated for the administration provided under paragraph 6 be paid from and accounted for under the HCV Special Distribution Benefit Account.

9. A declaration that the remaining 2019 Excess Capital not allocated to create and pay out the 2019 Special Distribution Benefits as provided for by paragraphs 4 and 5 and/or the related administrative costs as provided for by paragraph 6 be retained in the HCV Regular Benefit

Account of the Trust Fund, subject to future motions made pursuant to the Allocation Provision of the Settlement Agreement.

10. An order that to the extent a class member, family member, dependant, late claims class member, late claims family member or late claims dependant qualifies for a 2019 Special Distribution Benefit payment, the Administrator shall make the payment to him/her or such other legal representative as may be provided for by the Plans, the court approved protocols and/or the standard operating procedures in place for the administration of the Plans without the necessity of a further claim or request from the person so entitled.

11. A declaration that nothing in the orders requested shall in any way amend the Settlement Agreement nor modify or affect the financial obligations and the monthly payments of any of the Provincial and Territorial Governments.

12. A declaration that the terms of this Order shall not be effective unless and until corresponding orders/judgment with no material differences are obtained from the Supreme Court of British Columbia and the Superior Court of Québec.

13. Such further and other relief as counsel may request and this Honourable Court may direct.

#### **THE GROUNDS FOR THE MOTION ARE:**

##### ***Variation of the 2019 Financial Sufficiency Phase One Orders***

1. Following completion of the work on phase one of the triennial financial sufficiency review triggered December 31, 2019, the Courts issued orders declaring that, after taking into account the required capital, the Trust Fund was financially sufficient and held actuarially unallocated assets exceeding liabilities as at December 31, 2019 by an amount between \$197,596,000 and \$203,578,000 (the “**2019 Financial Sufficiency Phase One Orders**”).

2. Subsequent to the making of the 2019 Financial Sufficiency Phase One Orders, it was confirmed that there were \$2,559,000 in additional liabilities to some approved class members and family members for certain benefits that had mistakenly not been issued by the preceding

Administrator, making the amount by which the Trust assets exceeded the liabilities as calculated by the actuaries for the parties overstated.

3. Once the liabilities of the Trust are restated to reflect this additional liability in the financial position of the Trust Fund as at December 31, 2019, the total 2019 Excess Capital is reduced to be between **\$195,037,000** and **\$201,019,000** and the corresponding balance of the HCV Special Distribution Benefit Account is reduced to be between \$2,178,000 and \$3,109,000 as at January 1, 2020.

### ***Request for Allocation of the 2019 Excess Capital***

4. A provision in respect of actuarially unallocated assets agreed to by the parties and incorporated into the Settlement Agreement at the time of the settlement approvals (the “**Allocation Provision**”), permits the supervising courts in Ontario, British Columbia and Québec (the “**Courts**”) to exercise their unfettered discretion to allocate any actuarially unallocated assets (“**Excess Capital**”), *inter alia*, for the benefit of approved class members and/or family members<sup>1</sup> in such manner as the Courts determine is reasonable in all of the circumstances, provided there is no discrimination based upon where the class member received blood or resides.

5. The Allocation Provision provides the possibility for approved class members to obtain benefits from Excess Capital above and beyond the scheduled benefits contained in the Regular Benefit Plans and the possibility for the FPT Governments to access Excess Capital before the termination of the administration.

6. While the Allocation Provision provides the opportunity to bridge compensatory gaps or obtain additional compensation up to the limits available at law, it cannot be used to alter the bargain or amend the Settlement Agreement.

7. Following the identification of the 2013 Excess Capital, the Courts used the Allocation Provision to create discrete benefits for approved class members and family members (the “**2013 Special Distribution Benefits**”) to address compensatory shortfalls in the Settlement Agreement.

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<sup>1</sup> For simplicity and brevity, the terms approved class members, family members and dependants have been used throughout, however they should be taken to include approved late claim class members, late claim family members and late claim dependants, as applicable.



Because there was a limit on the amount of 2013 Excess Capital available for allocation, a number of compensatory shortfalls in the Settlement Agreement remain.

8. The Joint Committee requests the Courts to exercise their unfettered discretion to allocate **\$194,941,000** of 2019 Excess Capital, inclusive of costs of administration, pursuant to the Allocation Provision for the benefit of approved class members and family members to further address compensatory shortfalls in respect of the following four heads of damages addressed, in part, by the creation of the 2013 Special Distribution Benefits:

- (a) fixed payments for non-pecuniary general damages and/or death benefits;
- (b) family member payments for loss of guidance, care and companionship;
- (c) lost or diminished pension benefits; and
- (d) compensation for loss of services of the class member in the home.

9. These four heads of damages addressed in the Joint Committee's applications, which form the core of any damages award, seek to further address the compensatory concerns previously communicated to the Joint Committee and the Courts, which class members continue to identify as falling short of compensating for the losses and damages suffered.

10. While the allocation of 2013 Excess Capital addressing these same compensatory shortfalls is not determinative of whether the Joint Committee's recommendations should be accepted, it does eliminate several of the questions previously at issue in that the Courts have already determined that allocations in respect of these particular heads of damages:

- (a) are permissible allocations pursuant to the Allocation Provision of the Settlement Agreement;
- (b) do not require the amendment of the Settlement Agreement;
- (c) do not increase the burden on the defendants under the Settlement Agreement; and
- (d) are non-discriminatory based upon where the class member received blood or resides.

11. Provisions in the Settlement Agreement and Plans, such as the deduction of collateral

benefits in the calculation of income loss reducing the actual income/support loss recoverable, compensation under tort or statute law not made available under contract law of the Settlement Agreement, and awards being inclusive of prejudgment interest, will continue to suppress the compensation available to approved class members and family members. These ongoing compromises in respect of how damages may be calculated and awarded under the Plans should alleviate any concern that class members or family members will be overcompensated if the recommended allocations are granted.

***Recommendation 1 – Allocate \$54,684,000 of the 2019 Excess Capital to increase the discrete benefit for approved class members and family members entitled to fixed payments for non-pecuniary general damages and death benefits by an amount equal to 6.8% of the combined value of their fixed payment under the Plans and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020, and payable retroactively and prospectively as a special distribution.***

12. Approved class members alive on January 1, 1999, are entitled to fixed payments for non-pecuniary general damages based upon their disease level at the time of their approval and in the future based upon further progression of their disease. Estates, family members and dependants of approved class members who died before January 1, 1999 are entitled to death benefits if the death was caused by HCV.

13. These non-pecuniary general damage and death benefit awards under the Settlement Agreement were an area of compromise for many approved class members and family members. The fixed payments for these heads of damage under the settlement were set lower than damage awards at law would permit to ensure that the fixed settlement amount would be sufficient to distribute across all of the heads of damages sought to be addressed and to meet the claims of the unknown number of class members who would come forward and be approved.

14. Non-pecuniary general damages seek to compensate for intangible losses, like pain and suffering and loss of enjoyment and loss of expectation of life. Many approved class members spoke about the nature and effects of their infection and its chronic and progressive harm, including the impacts on physical and mental wellbeing, daily living and family dynamics at the earlier town hall consultation sessions, many more wrote concerning them, and some testified to them at the 2013 allocation hearings. The uniform view expressed was that the awards did not adequately compensate for the life-altering, chronic, progressive and life-threatening nature of hepatitis C.

15. The administrative database records that the deaths of at least 487 approved class members before January 1, 1999 and 745 approved class members since January 1, 1999 were caused by hepatitis C.

16. The Medical Modelling Working Group indicates that, notwithstanding the higher efficacy of direct-acting anti-viral agents, the following proportion of the surviving class members already have or are predicted to go on to develop the following disease states by 2070:

<b>Disease Level</b>	<b>Cumulative</b>	<b>Transfused</b>	<b>Hemophiliac</b>
<b>Disease level 5</b> Cirrhosis	19.7%	16.2%	30.7%
<b>Disease level 6</b> Decompensated cirrhosis	9.3%	7.4%	15.5%
<b>Disease level 6</b> Hepatocellular cancer	3.8%	2.9%	6.6%
<b>Disease level 6</b> Liver-related mortality	13.9%	11.7%	21%

17. At the time the Settlement Agreement was approved, the benefit payable for non-pecuniary general damages based on cumulative disease levels was \$225,000 in 1999 dollars as compared to the \$260,684 limit on non-pecuniary general damages set by the Supreme Court of Canada in the trilogy of cases decided in 1978, after adjustment for inflation to 1999 dollars. Following the creation of 2013 Special Distribution Benefit, the combined benefit payable based on cumulative disease levels was \$328,537 in 2014 dollars as compared to the 2014 adjusted trilogy limit of \$350,712.

18. The recommended 6.8% allocation would, while abiding the trilogy limit, address the remaining difference making the combined benefit payable based on cumulative disease levels \$387,797 in 2020 dollars as compared to the 2020 adjusted trilogy limit of \$389,744.

19. The discrete benefit that would be payable in respect of disease level fixed payments if this recommended allocation is approved is as follows:

<b>Disease Level</b>	<b>6.8% Allocation</b> of fixed payment + any applicable 2013 Special Distribution Benefit (2020 dollars)	<b>Cumulative Total</b>
<b>Disease level 1</b>	\$1,097	\$1,097
<b>Disease level 2</b>	\$2,195	\$3,292
<b>Disease level 3</b>	\$3,292	\$6,584
<b>Disease level 5</b>	\$7,133	\$13,717
<b>Disease level 6</b>	\$10,974	\$24,691

20. The discrete benefit that would be payable in respect of the other fixed payments if this recommended allocation is approved is as follows:

<b>Fixed Payment Type</b>	<b>6.8% Allocation</b> of fixed payment + any applicable 2013 Special Distribution Benefit (2020 dollars)
\$50,000 non-pecuniary general damages option for approved co-infected hemophiliac class members who may be unable to establish that their disease level is caused by HCV because of their co-infection	\$5,487
\$50,000 death benefit option for approved class members whose death prior to January 1, 1999 was caused by HCV	\$5,487
\$120,000 death benefit option for approved class members whose death prior to January 1, 1999 was caused by HCV, including the entitlements of their family members and dependants	\$13,169
\$72,000 death benefit option for approved co-infected hemophiliac class members whose death prior to January 1, 1999 is not proven to be caused by HCV, including the entitlements of their family members and dependants	\$7,901

21. Approximately 4,926 approved class members eligible for disease level fixed payments under the Plans and, approximately 487 estates, 1,816 family members and 30 co-infected

hemophiliac class members eligible for the other fixed payment options under the Plans would benefit retroactively from the recommended allocation. Approved class members whose disease continues to progress and other in-progress and/or future claims that are subsequently approved would also benefit prospectively if the recommended allocation is granted.

***Recommendation 2 – Allocate \$71,812,000 of the 2019 Excess Capital to create a discrete benefit for approved family members entitled to loss of guidance, care and companionship awards in an amount equal to 50% of the combined value of their award under the Plans and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020, and payable retroactively and prospectively as a special distribution.***

22. Approved family members of an approved class member whose death was caused by his or her infection with HCV are entitled under the Plans to be paid loss of guidance, care and companionship awards, provided they do not choose one of the joint fixed payment options described above.

23. The loss of guidance, care and companionship awards were an area of compromise for the majority of family members. These benefit levels were set below the amounts often awarded under this head of damages across the country in order to ensure the fixed amount that was available for settlement was sufficient to cover all class members and family members who come forward and are approved, as well as all of the areas of compensation sought to be addressed by the settlement.

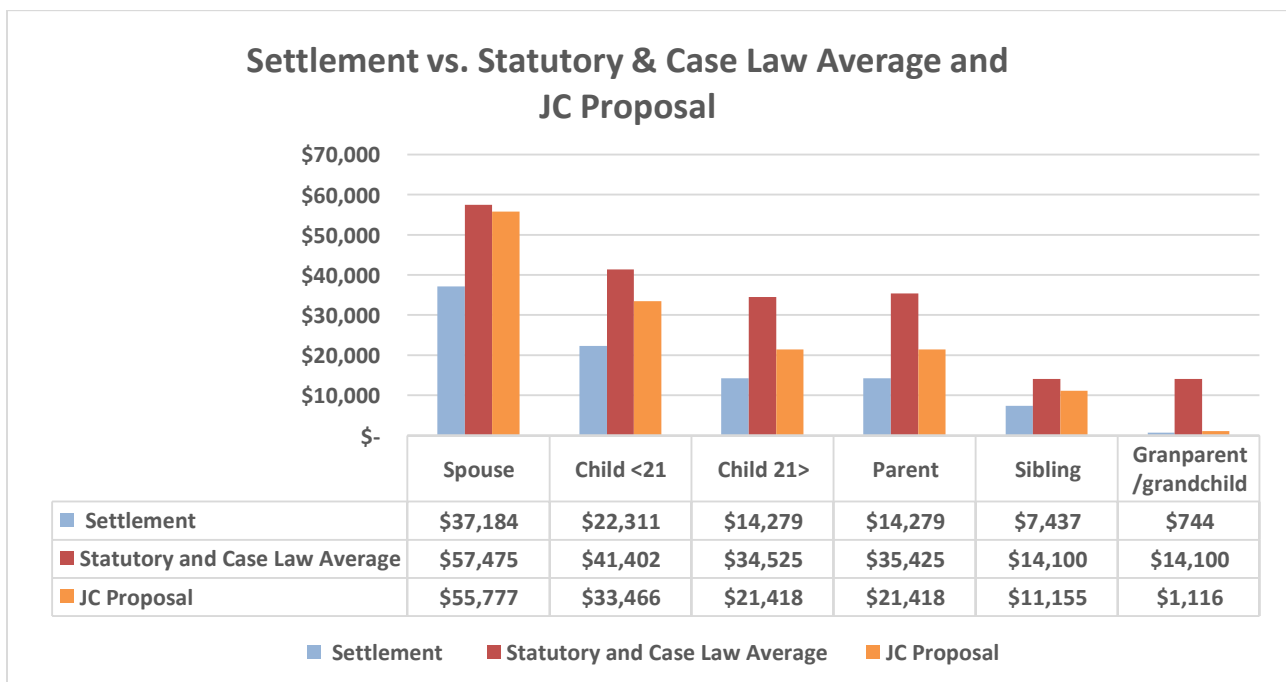
24. While Canadian law has long recognized that no amount of money can replace the value of a lost life, these types of damages are awarded to give recognition and compensation for the seriousness of the family's loss. Many family members spoke about the quantum of these awards at the earlier town hall consultation sessions and many more wrote concerning them prior to the 2013 allocation hearings. The uniform view expressed, regardless of the level of familial relationship to the deceased, was that the awards were inadequate.

25. The Courts previously held that addressing this compensatory shortfall was a permissible use of the Allocation Provision and ordered the creation of a discrete benefit of \$4,600, indexed, for parents and children age 21 years or older as one of the 2013 Special Distribution Benefits. The allocation requested at that time was limited to only parents and adult children because of the limit on the amount of 2013 Excess Capital available and the number of other compensatory shortfalls that were sought to be addressed. This allocation of 2013 Excess Capital addressed a

disparity in the benefits payable among the various groups of family members entitled to an award under the settlement, but it did not address the broader compensatory shortfall of undervalued loss of guidance, care and companionship benefits under the settlement generally. The available 2019 Excess Capital provides the opportunity to do so.

26. Some provinces and territories have legislation that fixes the quantum for awards for loss of guidance, care and companionship, bereavement or grief while the quantum is set by the courts on a case-by-case basis in the others. While neither legislation nor common law provides uniformity across the country, generally the loss of guidance, care and companionship awards under both the statutory schemes and the case law significantly exceed those under the Plans and any applicable 2013 Special Distribution Benefit, although a true direct comparison is difficult due to differing rules in each jurisdiction.

27. The following graph summarizes the amount currently payable under the settlement for loss of guidance, care and companionship in 2020 dollars versus the combined average under statute and case law compared to the Joint Committee's proposal:



28. The discrete benefit that would be payable in respect of loss of guidance, care and companionship if this recommended allocation is approved is as follows:

<b>Family Member</b>	<b>50% allocation</b> of loss of guidance, care and companionship awards + any applicable 2013 Special Distribution Benefit for Child > 21 and Parent (2020 dollars)
<b>Spouse</b>	\$18,593
<b>Child &lt; 21</b>	\$11,155
<b>Child 21 &gt;</b>	\$7,139
<b>Parent</b>	\$7,139
<b>Sibling</b>	\$3,718
<b>Grandparent/grandchild</b>	\$372

29. Approximately 7,874 approved family members eligible for loss of guidance, care and companionship would be entitled to benefit retroactively from the recommended allocation, if granted. Additional family members would benefit prospectively as loss of guidance, care and companionship claims are approved following the death of approved class members caused by their HCV infection, and as current in-progress and future class members and their family members subsequently qualify.

***Recommendation 3 - Allocate \$6,653,000 of 2019 Excess Capital to increase the discrete benefit created to compensate for lost or diminished pension benefits by an additional 4% of the annual loss of income payment capped at \$200,000 per annum before 2014 and \$200,000 per annum indexed thereafter, payable retroactively and prospectively as a special distribution.***

30. The Plans provide that persons who reach disease level 4 bridging fibrosis or the more severe medical conditions at higher disease levels are entitled to recover their loss of income caused by their HCV infection to age 65, provided that they are not claiming loss of services in the home for the same time period. The settlement does not however contain any provision to compensate for loss of employment benefits, including loss or diminishment of pension.

31. Loss of income awards were an area of significant compromise for virtually all of the approved class members who suffer an income loss. In particular, the deductions from income required in the calculations of the loss and the failure to compensate lost pension and employment benefits departed from ordinary damages principles. These compromises were made to help ensure

the fixed settlement amount would be sufficient to fund benefits to all class members who came forward and were approved.

32. Because of the fixed amount of 2013 Excess Capital available and the competing interests of other benefits sought to be addressed, the Joint Committee recommended a discrete benefit for lost or diminished pension benefits in the 2013 allocation applications in an amount smaller than the amount that was recommended by the actuaries. The Courts held that creating a lost or diminished pension benefit was a permissible use of the Allocation Provision and ordered the creation of a discrete benefit in an amount equal to 10% of an approved class member's annual loss of income capped at \$200,000 as one of the 2013 Special Distribution Benefits.

33. Because the replacement value of this loss was not addressed in full by the allocation of 2013 Excess Capital, the Joint Committee asked Eckler to again consider the reasonable allocation for lost or diminished pension benefits. Eckler notes that although the employer's contribution rate to the Canadian Pension Plan has risen to 5.45% since the last allocation hearing and is set to increase yet again in 2025, it is their opinion 14% of income continues to be a reasonable and appropriate proxy for lost or diminished pension benefits.

34. The claims data from the most recent three-year review period shows that 75% of those with current income loss claims would be entitled to up to an additional \$2,000 per annum, 15% would be entitled to an additional amount between \$2,000 and \$4,000 per annum, and 10% would be entitled to an additional amount between \$4,000 and \$8,000 per annum if the recommended increase for loss or diminishment of pension benefits is granted.

35. Approximately 338 approved class members entitled to loss of income payments under the Plans would be eligible to benefit retroactively and, to the extent their loss is ongoing, prospectively from this recommended increase to the lost or diminished pension benefit. There are currently approximately 1,234 living approved class members at disease levels 2 and 3 and 163 at disease level 4 who are not currently receiving loss of income payments who may benefit from this recommended allocation prospectively if their disease condition and employment situation warrant, along with in-progress and future claimants who are subsequently approved.



***Recommendation 4 – Allocate \$60,272,000 of the 2019 Excess Capital to create a discrete benefit for approved class members and dependants who are entitled to loss of services in the home in an amount equal to \$2 per hour, indexed to January 1, 2020, for the compensable hours of lost services from and after 2014 recoverable under the Plans and any applicable 2013 Special Distribution Benefit, payable retroactively and prospectively as a special distribution.***

36. Approved class members at disease level 4 or higher may seek compensation for the services that they can no longer provide in the home if disabled from doing so because of their HCV. Approved dependants who were living with the infected class member at the time of the class member's death may also claim lost services if the death was caused by the infection with HCV. Loss of services claims are payable to approved class members for their lifetime so long as they remain disabled, and thereafter to their dependants until the earlier of the statistical lifetime of the deceased calculated without regard to their HCV infection or until the death of their last dependant.

37. Many written and oral communications to the Joint Committee from infected persons and their dependants received before the 2013 allocation hearings indicated that the limit of 20 hours per week and the rate of \$12 per hour were inadequate to permit them to replace the services that they had lost. Many also described how vital the loss of services payments are to their family's survival. The claims data showed at the time approximately 95% of approved class members provided significantly in excess of 20 hours per week of services in the home pre-disability.

38. Because of the limits on the 2013 Excess Capital available and the competing interests of the other benefits it was seeking to address, the Joint Committee recommended only a 2 hour per week benefit to supplement loss of services in the home. The available 2019 Excess Capital provides the opportunity to further address this shortfall.

39. The Courts held that this was a permissible allocation under the Allocation Provision, accepted the recommendation, and ordered the creation of a discrete benefit of 2 hours per week payable retroactively and prospectively to those approved class members and dependants approved for the maximum number of hours recoverable for loss of services in the home.

40. Given the significant disparity between the losses that approved class members and dependants report experiencing and the amounts that they are receiving to compensate for these lost services and given that this disparity was only addressed in part by the 2013 Special

Distribution Benefit created, the Joint Committee asked Eckler to once again investigate the current cost of replacing these services.

41. Eckler's investigation into the cost to replace these services revealed regional differences in rates as detailed in the Eckler 2019 Allocation Report. Nevertheless, it is Eckler's opinion that the current rate is insufficient to cover replacement services in many jurisdictions and that providing an additional \$2 per hour benefit for compensable hours of lost services results in a reasonable rate of compensation, which broadly reflects the actual replacement cost of services in the home. Eckler specifically notes that sales tax on invoices for these services that range from 5-15% across the country have not been included in the rates reported.

42. Brown Economic Consulting Inc. ("**Brown**"), an economic consulting firm in Alberta, publishes annually a survey of Canadian "Housekeeping Replacement Rates" by jurisdiction and a "Housekeeping Damages Calculator" to assist with estimating pecuniary loss. The rates that Brown has published are somewhat higher than the median range set out in Eckler's 2019 Allocation Report for all jurisdictions and above the high range in Eckler's report in some jurisdictions. Brown also specifically notes that the rates included in its published table do not include provincial sales tax or GST payable on these services.

43. The claims data from the most recent three-year review period shows that 96% of loss of service claimants receive the maximum 20 hour loss of services benefit and the 2013 Special Distribution Benefit of 2 hours per week. As such, most loss of service claimants would be entitled to approximately an additional \$3,400 a year (2020 dollars) if this recommended allocation is granted. Because of the limits on the 2019 Excess Capital available and the competing interests of the other benefits sought to be addressed at this time, this recommended allocation is only sought to be made retroactive to losses suffered in the year 2014 and following.

44. Approximately 728 approved class members entitled to loss of services under the Plans as of December 31, 2019 have been paid these benefits since 2014 and would be eligible to benefit retroactively and prospectively from this recommended allocation. There are currently approximately 1,234 living approved class members at disease levels 2 and 3 and 163 at disease level 4 who are not currently receiving loss of services payments who may benefit from this allocation prospectively if they become disabled from performing these services, as well as about

140 loss of income claimants and loss of support claimants eligible once the class member reaches age 65, and an as yet unquantified number of dependants of the 3,282 living class members who may benefit from this award following the class member's death provided it is caused by HCV. Additionally, in-progress and future claimants who are subsequently approved for this benefit would benefit prospectively from this award.

***Logistics and Costs of Implementing the Recommended Allocations***

45. The decision to recommend allocations that address many of the same compensatory shortfalls as were addressed in part by the 2013 Special Distribution Benefits allows, for the most part, employment of the same methodologies and systems that have already been successfully implemented in the administration.

46. From the approved class member's perspective, for the most part, no action would be required on their part to initiate their entitlement. The Administrator would identify, calculate and distribute these discrete benefits based upon the data that is already contained in the claims database for the majority of approved class members and family members. It is recognized that, with the passage of time since some approved class members and family members received benefits, there will be costs for locator services and logistics related to personal representatives and estates required in some cases.

47. From the Administrator's perspective, protocols and standard operating procedures already created in the course of implementing the 2013 Special Distribution Benefits would, for the most part apply to these recommended allocations, resulting in operating efficiencies and cost effectiveness. Any adjustments that would be required are thought to be relatively minor.

48. The structural accommodations previously made to the CLASS database to accommodate the 2013 Special Distribution Benefits would also accommodate the allocations under consideration. Minimal costs will be incurred for a small amount of dedicated programming time required to create additional coding to ensure the integrity of the payment records in the database.

49. Based on the current fee per service structure approved by the Courts for the ongoing administration of the retroactive 2013 Special Distribution Benefits in place since 2017, the Administrator has estimated the administration costs to implement, calculate and distribute the

appropriate retroactive payments for the recommended allocations. Eckler has estimated the present value of the administration fee for prospective payments based on the fixed fee of \$5,000 per annum that was approved by the Courts for the prospective component of the 2013 Special Distribution Benefits in place since 2017.

50. In addition to these direct costs of the administration there are various service providers, including the Joint Committee, Eckler, the Auditors, and the Trustee, who will also perform work implementing, overseeing, recording and auditing the 2019 Special Distribution Benefits if granted, the costs of which should be allocated from 2019 Excess Capital and not borne by the PT Governments.

51. The total cost of implementation and administration of the recommended allocations is estimated to be only 0.08% of the value of the recommended allocations, inclusive of taxes. The estimated costs are detailed as follows:

<b>Item</b>	<b>Costs</b>	<b>Sales Tax Rate</b>	<b>Costs with Tax</b>
Retroactive Payment Cost	784,000	13%	890,000
Programming Change Cost	14,000	13%	20,000
Missed 2013 Special Distribution Benefits	50,000	13%	60,000
Future Payment Cost	127,000	13%	140,000
Estate Administration Cost	75,000	13%	80,000
Other Service Cost	300,000	10.6%	330,000
<b>Total</b>	<b>\$1,350,000</b>		<b>\$1,520,000</b>

***Other Materials Relied Upon***

52. The 1986-1990 Hepatitis C Settlement Agreement, the Transfused HCV Plan, the Hemophiliac HCV Plan, and the Funding Agreement.

53. The HCV Late Claims Benefit Plan.

54. Decisions/Judgments regarding the settlement approval:
- (a) *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572;
  - (b) *Honhon v. The Attorney General of Canada*, [1999] Q.J. No. 4370 (S.C.); and
  - (c) *Endean v. Canadian Red Cross Society*, [1999] B.C.J. No. 2180 (S.C.).
55. Approval Orders:
- (a) Order of the Superior Court of Ontario, made October 22, 1999;
  - (b) Judgment of the Québec Superior Court, made November 19, 1999 approving the modifications set forth in “Annexe F”; and
  - (c) Order of the Supreme Court of British Columbia, made October 28, 1999.
56. 2013 Financial Sufficiency Phase One Orders:
- (a) Order of the Superior Court of Ontario, dated July 10, 2015;
  - (b) Judgment of the Québec Superior Court, dated July 16, 2015; and
  - (c) Order of the Supreme Court of British Columbia, dated July 23, 2015.
57. Decisions/Judgments regarding 2013 Special Distribution Benefits allocation:
- (a) *Parsons v. Canadian Red Cross Society*, 2016 ONSC 4809;
  - (b) *Honhon c. Procureur général du Canada*, 2018 QCCS 331; and
  - (c) *Endean v. Canadian Red Cross Society*, made August 16, 2016.
58. 2013 Special Distribution Benefits Allocation Orders:
- (a) Order of the Superior Court of Ontario, dated August 15, 2016;
  - (b) Judgments of the Québec Superior Court, dated August 15, 2016 and February 15, 2017; and
  - (c) Order of the Supreme Court of British Columbia, dated August 16, 2016.
59. HCV Late Claims Benefit Plan Orders:
- (a) Order of the Superior Court of Ontario, dated November 28, 2017;
  - (b) Judgment of the Québec Superior Court, dated November 29, 2017; and

- (c) Order of the Supreme Court of British Columbia, dated December 19, 2017.
60. 2013 Special Distribution Benefits Implementation Orders:
- (a) Order of the Superior Court of Ontario, dated December 12, 2017;
  - (b) Judgment of the Québec Superior Court, dated November 29, 2017; and
  - (c) Order of the Supreme Court of British Columbia, dated December 19, 2017.
61. 2016 Financial Sufficiency Phase One Orders:
- (a) Order of the Superior Court of Ontario, dated May 30, 2018;
  - (b) Judgment of the Québec Superior Court, dated May 18, 2018; and
  - (c) Order of the Supreme Court of British Columbia, dated May 8, 2018.
62. 2019 Financial Sufficiency Phase One Orders:
- (a) Order of the Superior Court of Ontario, dated February 18, 2021;
  - (b) Judgment of the Québec Superior Court, dated January 25, 2021; and
  - (c) Order of the Supreme Court of British Columbia, dated March 15, 2021.
63. Rule 59.06(2)(a) of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, which permits an order to be varied on the ground of facts discovered after it was made.
64. *The Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended.
65. *The Fatal Accidents Act*, RSA 2000, c. F-8, s. 8(2), and *Survival of Actions Act*, RSA 2000, c. S-27.
66. *The Fatal Accidents Act*, CCSM c. F50, s. 3.1(2).
67. *The Fatal Accidents Act*, RSS 1978, c. F-11, s. 4.1, and *The Survival of Actions Act*, SS 1990-91, c. S-66.1.
68. *Fatal Accidents Act*, RSY 2002, c. 86, s. 3.01(2), and *Survival of Actions Act*, RSY 2002, c. 212.
69. *Family Compensation Act*, RSBC 1996, c. 126.

70. *Fatal Accidents Act*, RSNB 2012, c. 104, and *Survival of Actions Act*, RSNB 2011, c. 227.
71. *Fatal Accidents Act*, RSNL 1990, c. F6, and *Survival of Actions Act*, RSNL 1990, c. S-32.
72. *Fatal Accidents Act*, RSNWT 1988, c.F-3.
73. *Fatal Injuries Act*, RSNS 1989, c. 163, and *Survival of Actions Act*, RSNS 1989, c. 453.
74. *Fatal Accidents Act*, RSNWT (Nu) 1988, c.F-3.
75. *Family Law Act*, RSO 1990, c. F.3.
76. *Fatal Accidents Act*, RSPEI 1988, c. F-5, and *Survival of Actions Act*, RSPEI 1988, c. S-11.
77. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing  
of the motion:

***Newly Delivered Materials***

1. 2019 Special Distribution Benefit Allocation:
  - (a) Affidavit of Heather Rumble Peterson, made May 12, 2022; and
  - (b) Affidavit of Euan Reid, made May 13, 2022.

***Previously Delivered Materials***

2. 2019 Financial Sufficiency Phase One:
  - (a) Report of the Joint Committee on Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019;
  - (b) Affidavit of Richard Border, made November 25, 2020;

- (c) Affidavit of Dr. Murray Krahn, made November 18, 2020;
  - (d) Affidavit of Dr. Vince Bain, made November 25, 2020; and
  - (e) Affidavit of Peter Gorham, made December 10, 2020.
3. 2016 Financial Sufficiency Phase One:
- (a) Report of the Joint Committee on Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016;
  - (b) Affidavit of Richard Border, made February 28, 2018;
  - (c) Affidavit of Dr. Murray Krahn, made February 28, 2018; and
  - (d) Affidavit of Dr. Vince Bain, made February 26, 2018.
4. 2013 Special Distribution Benefits Allocation:
- (a) Affidavit #13 of Heather Rumble Peterson, made October 16, 2015;
  - (b) Affidavit #5 of Richard Border, made October 14, 2015;
  - (c) Affidavit #1 of Chya Mogerman, made October 16, 2015;
  - (d) Affidavit of Alan Melamud, made October 15, 2015;
  - (e) Affidavit of Shelley Woodrich, made October 15, 2015;
  - (f) Affidavit of Arnaud Sauvé-Dagenais, made October 15, 2015;
  - (g) Affidavit #6 of Richard Border, made March 31, 2016;
  - (h) Affidavit #15 of Heather Rumble Peterson, made April 1, 2016;
  - (i) Affidavit #2 of Dr. Vince Bain, made March 31, 2016;
  - (j) Affidavit #5 of Dr. Murray Krahn, made April 1, 2016;
  - (k) Affidavit #13 of Lise Carmichael, made April 1, 2016;
  - (l) Affidavit #2 of Shelley Woodrich, made April 1, 2016;
  - (m) Affidavit #2 of Arnaud Sauvé-Dagenais, made April 1, 2016; and



- (n) Affidavit #1 of Julie-Lynn Davis, made April 1, 2016.
5. 2013 Financial Sufficiency Phase One:
- (a) Report of the Joint Committee on Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013;
- (b) Affidavit of Dr. Murray Krahn, made March 16, 2015;
- (c) Affidavit of Richard Border, made March 11, 2015; and
- (d) Affidavit of Dr. Vince Bain, made March 11, 2015.
6. Such further and other evidence as counsel may advise and this Honourable Court may permit.

May 13 2022

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Fund Counsel for Ontario

**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*

This is the 39<sup>th</sup> Affidavit  
of Heather Rumble Peterson in the BC Action  
and was made on May 12, 2022  
No. C965349  
Vancouver Registry

**In the Supreme Court of British Columbia**

Between:

**Anita Endean, as representative plaintiff**

Plaintiff

and:

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

Defendants

and:

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

Third Parties

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

**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

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**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

AFFIDAVIT OF HEATHER RUMBLE PETERSON  
(Sworn May 12, 2022)

1. I am a partner in the firm Strosberg Sasso Sutts LLP. I was a member of the counsel team that litigated *Parsons et al. v. The Canadian Red Cross Society et al.* in Ontario and I have worked on the implementation and ongoing supervision of the 1986-1990 Hepatitis C Settlement Agreement (the “**Settlement Agreement**”) over the last 20+ years on behalf of Harvey Strosberg, a member of the Joint Committee. Throughout, I have been actively involved in the work undertaken on each triennial financial sufficiency review. I was provided access to the Administrator’s database for the phase one 2019 financial sufficiency review and have worked closely with the medical modelers, actuaries and Administrator on settlement and data-related issues. I also performed a significant number of database queries in preparation for the Joint Committee’s 2019 phase one financial sufficiency report to the Courts and in preparation for these applications. Additionally, in preparation for these applications, I have had ongoing communications with the actuaries for the Joint Committee and with the Administrator. As such, I have personal knowledge of the facts deposed except where stated to be on information and belief and, where so stated, I verily believe them to be true.

2. The actuarially unallocated asset provision agreed to by the parties and incorporated into the Settlement Agreement at the time of the settlement approvals (the “**Allocation Provision**”), permits the supervising courts in Ontario, British Columbia and Québec (the “**Courts**”) to exercise their unfettered discretion to allocate any actuarially unallocated assets (“**Excess Capital**”) for the benefit of approved class members and/or family members in such manner as the Courts determine is reasonable in all of the circumstances, provided there is no discrimination based upon where the class member received blood or resides.

3. Following the identification of the 2013 Excess Capital, the Courts used the Allocation Provision to create discrete benefits for approved class members and family members, including equivalent benefits for class members and family members who had missed the claims application deadline. Because there was a limit on the amount of 2013 Excess Capital available for allocation, a number of compensatory shortfalls in the Settlement Agreement remain.

4. I swear this affidavit in support of the Joint Committee's applications to have the Courts exercise their unfettered discretion to allocate the 2019 Excess Capital for the benefit of approved class members and family members<sup>1</sup> to address four compensatory shortfalls in the Settlement Agreement, which were addressed in part by the Courts' earlier allocation of the 2013 Excess Capital.

## **BACKGROUND**

### **The Allocation Provision of the Settlement Agreement**

5. The factual matrix giving rise to the Settlement Agreement and the Allocation Provision is set out in my prior affidavits, filed in support of the Joint Committee's applications to allocate the 2013 Excess Capital, so I will not repeat it here.

6. For ease of reference, the Allocation Provision of the Settlement Agreement is set out in the following orders/judgments of the Courts:

- (a) consent order granted by Winkler, J. in Ontario dated October 22, 1999;

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<sup>1</sup> For brevity and simplicity, the terms approved class members, family members and dependants have been used throughout, however they should be taken to include approved late claim class members, late claim family members and late claim dependants, as applicable.

- (b) consent orders granted by Smith, J. in British Columbia dated October 28, 1999; and
- (c) judgment of Morneau, J. in Québec dated November 19, 1999 approving the modifications set forth in “Annexe F”;  
(collectively, the “**Approval Orders**”).

Annexed and marked as **Exhibit “A”** is the Approval Order that issued in Ontario with Schedule 1, the Settlement Agreement, only. Given the length of the order/judgments, I have annexed and marked as **Exhibit “B”** the order issued in British Columbia without attachments and as **Exhibit “C”** the judgment issued in Québec with Annexe F only.

7. The Allocation Provision (paragraph 9 of the Ontario Approval Order, paragraph 5 of the BC Approval Order, and Annexe F of the Québec Approval Order) provides that the Courts may, in their unfettered discretion, determine that all or any portion of Excess Capital held by the Trustee be:

- (a) allocated for the benefit of approved class members or family members or in any manner that may be reasonably expected to benefit them;
- (b) paid to all or some of the Federal, Provincial and Territorial Governments (the “**FPT Governments**”); or
- (c) retained in the Trust Fund.

### **The 2013 Financial Sufficiency Review**

8. Following the filing of the application records for the phase one financial sufficiency review triggered December 31, 2013, the Courts declared that the Trust was financially sufficient. For the first time, the Courts also declared that the Trustee held 2013



Excess Capital as at December 31, 2013. Annexed and marked as **Exhibit “D”** is the 2013 financial sufficiency phase one order that issued in Ontario. A substantially similar order/judgment was issued in British Columbia and Québec. They are annexed and marked as **Exhibits “E”** and **“F”**, respectively.

9. The Joint Committee and the Federal Government each brought applications to have the Courts apply the Allocation Provision to allocate the 2013 Excess Capital.

10. The Courts exercised their unfettered discretion pursuant to the Allocation Provision and allocated \$163,532,000 of the 2013 Excess Capital for the benefit of approved class members and family members for the creation of seven discrete benefits payable by way of special distribution. The Courts rejected two other allocations requested by the Joint Committee and dismissed the Federal Government’s applications to have the 2013 Excess Capital allocated to Canada. Annexed and marked as **Exhibits “G”**, **“H”** and **“I”** are the orders/judgment that issued in Ontario, British Columbia and Québec, respectively (the **“2013 Special Distribution Benefits Allocation Orders”**).

11. As a step toward implementation of the 2013 Special Distribution Benefits Allocation Orders, the Courts issued orders approving the discrete benefit plan for approved class members and family members who missed the earlier deadline (the **“HCV Late Claims Benefit Plan”**). Like the Transfused HCV Plan and the Hemophiliac HCV Plan appended to the Settlement Agreement (the **“Regular Benefit Plans”**, together with the HCV Late Claims Benefit Plan, the **“Plans”**), the HCV Late Claims Benefit Plan contains a restriction or cap on the maximum income loss recoverable absent a court order/judgment further raising the cap to a higher amount or removing the cap altogether. The HCV Late Claims Benefit Plan contained an additional restriction to address the risk of insufficient funds – a holdback of 25% on the amount

of each benefit payable pending a finding of financial sufficiency. Given the length of the orders/judgment, I have annexed and marked as **Exhibit “J”** the HCV Late Claims Benefit order that issued in Ontario, with Schedule A, the HCV Late Claims Benefit Plan, only, and as **Exhibits “K”** and **“L”** the order/judgment that issued in British Columbia and Québec, respectively, without attachments.

12. On subsequent applications brought by the Joint Committee, the Courts allocated an additional \$8,500,000 of the 2013 Excess Capital for the creation of two further discrete benefits available on the election of discrete groups of approved class members (together with the seven discrete benefits mentioned in paragraph 10 above, the **“2013 Special Distribution Benefits”**). At the same time, the Courts also directed the establishment of three notional Accounts within the Trust Fund to facilitate the implementation of the 2013 Special Distribution Benefits. Annexed and marked as **Exhibits “M”**, **“N”** and **“O”** are the 2013 Special Distribution Benefits implementation orders/judgment that issued in Ontario, British Columbia, and Québec, respectively.

13. The Provincial and Territorial Governments (the **“PT Governments”**) do not contribute to nor do they have any liability or responsibility for the 2013 Special Distribution Benefits, which are funded and paid entirely from the assets in the Trust Fund. Under the Settlement Agreement, the PT Governments are obliged to pay a 3/11ths share of the liabilities as they arise to a maximum of 3/11ths of \$1.118 billion plus Treasury bill rate interest (the **“PT Notional Fund”**).

### **The 2016 Financial Sufficiency Review**

14. Following the subsequent triennial financial sufficiency review triggered on December 31, 2016, the Courts declared that overall the Trust had sufficient assets to meet its long-term liabilities, although the HCV Late Claims Benefit Account was found to be insufficient. The Courts held that the Trust had actuarially unallocated assets of between \$173,600,000 and \$187,500,000 million as at December 31, 2016. Annexed and marked as **Exhibits “P”, “Q” and “R”** are copies of the 2016 financial sufficiency phase one orders/judgment that issued in Ontario, British Columbia and Québec, respectively.

15. The Joint Committee did not seek an allocation of the actuarially unallocated assets on that occasion, permitting the newly implemented HCV Late Claims Benefit Plan to operate for a time so as to gain a better sense of the take-up rate and any additional funding that might be required. The Federal Government did not seek an allocation of actuarially unallocated assets on that occasion either.

### **The 2019 Financial Sufficiency Review**

16. The current triennial financial sufficiency review was triggered as at December 31, 2019. Following completion of their phase one financial sufficiency work, Eckler Ltd. (“**Eckler**”), the actuaries retained by the Joint Committee, and the actuaries retained by the Federal Government, Morneau Shepell (“**Morneau**”), both expressed the opinion in their reports filed that overall the Trust was financially sufficient to meet its expected liabilities as at December 31, 2019. They also both expressed the opinion that, after taking into account sufficient monies to protect the approved class members from major adverse experience or

catastrophe, the Trustee held Excess Capital. Eckler opined that there is \$197,596,000 Excess Capital, while Morneau opined there is \$203,578,000 Excess Capital.

17. The actuaries offered these opinions despite concluding that:
- (a) the PT Notional Fund is insufficient to pay 3/11ths of the total liabilities and will be exhausted by the year 2030; and
  - (b) the HCV Late Claims Benefit Account is financially insufficient as at December 31, 2019 by between \$21,879,000 (Eckler) and \$22,981,000 (Morneau).

18. Neither the insufficiency nor the shortfall identified by the actuaries is an impediment to these applications to allocate the 2019 Excess Capital. The actuarial reports make clear that both the insufficiency and the shortfall are accounted for before the 2019 Excess Capital is realized.

### **The 2019 Financial Sufficiency Phase One Orders**

19. By orders/judgment granted between January and March 2021 (collectively, the **“2019 Financial Sufficiency Phase One Orders”**), among other things, the Courts:
- (a) declared the Trust Fund to be financially sufficient overall as at December 31, 2019;
  - (b) declared that the HCV Regular Benefit Account and the HCV Special Distribution Benefit Account had excess assets while the HCV Late Claims Benefit Account had insufficient assets as at December 31, 2019;
  - (c) ordered the transfer of \$22,981,000 of excess assets from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account as at January 1, 2020 to eliminate the insufficiency; and,

- (d) declared that as at December 31, 2019 the Trustee held actuarially unallocated assets of between **\$197,596,000** and **\$203,578,000**.

Annexed and marked as **Exhibits “S”, “T” and “U”**, are the 2019 Financial Sufficiency Phase One Orders that issued in Ontario, British Columbia and Québec, respectively.

20. Having addressed the insufficiency of the HCV Late Claims Benefit Account in the 2019 Financial Sufficiency Phase One Orders, the Courts also ordered the removal of the 25% restriction or holdback on benefit payments under the HCV Late Claims Benefit Plan and directed the immediate payout of amounts that were held back and the payment of full benefits going forward.

#### **The Liabilities of the Trust Require Restatement Due to Facts Subsequently Discovered**

21. Following the issuance of the 2019 Financial Sufficiency Phase One Orders, an additional sufficiency liability of **\$2,559,000** was confirmed by the Administrator of the settlement. In particular, the Administrator confirmed that retroactive 2013 Special Distribution Benefits owing to some approved class members and/or family members that it had been asked to investigate following the 2019 phase one sufficiency work had mistakenly not been issued by the preceding Administrator.

22. The Joint Committee requests that the liabilities of the Trust as at December 31, 2019 be restated in order to reflect this additional liability in the financial position of the Trust Fund to ensure that the Trust Fund’s liabilities are accurately recorded and the risks approved class members are exposed to are appropriately managed.

23. When the liabilities are restated to take into account this increase, the 2019 Excess Capital held by the Trustee is reduced to between **\$195,037,000** and **\$201,019,000** as at December 31, 2019 and the excess assets of the HCV Special Distribution Benefit Account are reduced to between \$2,178,000 and \$3,109,000 as at January 1, 2020. The Joint Committee requests that the 2019 Financial Sufficiency Phase One Orders be varied accordingly.

### **Claims Experience**

24. The administration database utilized by the Administrator which was provided to me and to the medical modelers and the actuaries for the 2019 phase one work is the primary source for the claims data. The Administrator also provides the Joint Committee with monthly and annual administrative reports which include statistics on the claims, class members and claims payments. Annexed and marked as **Exhibit “V”** is the Summary of Payments table from the December 2021 administrative report for the Regular Benefit Plans and as **Exhibit “W”** the Summary of Payments table from the December 2021 administrative report for the HCV Late Claims Benefit Plan. Annexed and marked as **Exhibit “X”** is the Claims Received Summary from the revised 2021 annual administrative report for the Regular Benefit Plans and as **Exhibit “Y”** the Claims Received Summary from the 2021 annual administrative report for the HCV Late Claims Benefit Plan.

25. The administration database used for the 2019 phase one work records approximately **5,369** class members approved under the Regular Benefit Plans (including 3,282 alive, 487 who had died before January 1, 1999 and 1,600 who have died since 1999) as at December 31, 2019. The corresponding database for the HCV Late Claims Benefit Plan records **16** approved class members as at that date. Since December 31, 2019, the 2021 annual administrative reports (Exhibits “X” and “Y”) show an additional **3** class members have been

approved under the Regular Benefit Plans and an additional **25** class members have been approved under the HCV Late Claims Benefit Plan up to December 31, 2021.

26. The administration database used for the 2019 phase one work also records approximately **9,383** approved family members under the Regular Benefit Plans as at December 31, 2019, while the corresponding database for the HCV Late Claims Benefit Plan records **108** family members approved as at that date. Since December 31, 2019, the 2021 annual administrative reports (Exhibits “X” and “Y”) show an additional **142** family members have been approved under the Regular Benefit Plans and an additional **58** family members have been approved under the HCV Late Claims Benefit Plan up to December 31, 2021.

27. As of December 31, 2019, the administration database records **\$1,117,527,111** in benefit payments have been processed for approved class members and their family members (\$1,022,196,868 from the HCV Regular Benefit Account, \$93,505,782 from the HCV Special Distribution Benefit Account and \$1,824,461 from the HCV Late Claims Benefit Account). The monthly administrative reports for December 2021 (Exhibits “V” and “W”) show an additional **\$78,888,225** in benefit payments have been processed for approved class members and their family members (\$57,912,990 from the HCV Regular Benefit Account, \$8,576,398 from the HCV Special Distribution Benefit Account and \$12,398,837 from the HCV Late Claims Benefit Account) through to December 31, 2021.

28. Overall, this equates to **\$1,196,415,337** in benefit payments (\$1,080,109,858 from the HCV Regular Benefit Account, \$102,082,181 from the HCV Special Distribution Benefit Account and \$14,223,298 from the HCV Late Claims Benefit Account) processed for approximately **5,413** approved class members and **9,691** family members under the Plans and as

2013 Special Distribution Benefits from inception of the claims administration to December 31, 2021.

### **REQUEST FOR ALLOCATION OF THE 2019 EXCESS CAPITAL**

29. The Allocation Provision added to the Settlement Agreement by agreement of the parties provides the possibility for approved class members to gain benefits from Excess Capital above and beyond the scheduled benefits contained in the Plans and the possibility for the FPT Governments to access Excess Capital before the termination of the administration.

30. By these applications, the Joint Committee requests the Courts to exercise their unfettered discretion to allocate **\$194,941,000** of 2019 Excess Capital, inclusive of costs of administration, pursuant to the Allocation Provision for the benefit of approved class members and family members to further address compensatory shortfalls in the Settlement Agreement in respect of the following four heads of damages, which were addressed, in part, by the creation of the 2013 Special Distribution Benefits:

- (a) fixed payments for non-pecuniary general damages and/or death benefits;
- (b) family member payments for loss of guidance, care and companionship;
- (c) lost or diminished pension benefits; and
- (d) compensation for loss of services of the class member in the home.

31. While the allocation of 2013 Excess Capital addressing these same compensatory shortfalls is not determinative of whether the Joint Committee's recommendations should be accepted, it does eliminate several of the questions previously at issue in that the Courts have already determined that allocations in respect of these particular heads of damages:



- (a) are permissible allocations pursuant to the Allocation Provision of the Settlement Agreement;
- (b) do not require the amendment of the Settlement Agreement;
- (c) do not increase the burden on the defendants under the Settlement Agreement;
- and
- (d) are non-discriminatory based upon where the class member received blood or resides.

32. The Courts' decisions at that time also addressed impermissible allocations under the Allocation Provision holding that it cannot be used to alter the bargain or amend the Settlement Agreement. The allocations recommended for allocation of the 2019 Excess Capital do not cross that line.

### **The Joint Committee's Guiding Principles**

33. In its deliberations on what recommendations to make concerning the allocation of the 2019 Excess Capital, the Joint Committee continued to be guided by the principles it had adopted for its applications for allocation of the 2013 Excess Capital, that is to:

- (a) address compensation thought to be most compromised in comparison to damages law;
- (b) prioritize class member/family member input to the extent it is consistent with the principles of damages law;
- (c) address issues that class members have brought to the attention of the Administrator to the extent they are consistent with the principles of damages law;

- (d) benefit the class as broadly as possible to the extent this is not inconsistent with the factors outlined above;
- (e) consider the administrative burden of implementation on class members; and
- (e) consider the costs of administering the benefit.

34. In addition, the Joint Committee was guided by the directive in the 2013 Special Distribution Benefits Allocation Orders that stated late claims class members not be treated differently.

35. These principles, with the exception of the burdens and costs, are addressed in the next sections and the recommendation sections that immediately follow. The rationale for the recommended allocations is also set out in the recommendation sections. The burdens, logistics and administrative costs of implementation of the recommended allocations are subsequently addressed separately in paragraphs 112 to 123.

### **Input From Class Members and the Administrator**

36. When Excess Capital was first identified in the 2013 financial sufficiency review, the Joint Committee prioritized hearing directly from as many members of the class as possible. It consulted extensively with class members by means of several in-person sessions, three of which were also webcast over the internet. The Joint Committee also reviewed hundreds of written submissions from class members filed as part of the evidentiary record on the Joint Committee's 2013 allocation applications and, also, in support of these applications. It also had the benefit of hearing from those class members who testified at the 2013 allocation hearings.

37. Further consultation sessions were not held with class members in preparation for the current applications. On this occasion, the Joint Committee consulted with members of the

HCV administration team at Epiq Class Action Services Canada Inc. (“**Epiq**”), the Administrator of the Settlement Agreement, to learn of recent class member communications regarding the availability, suitability or sufficiency of the benefits generally and/or any benefit(s) specifically.

38. Initially, I consulted with Joe Bottrell, who was the HCV administration project manager for Epiq until his recent death. Subsequently, I engaged in further discussions with Jason Lobo, the HCV assistant project manager, and Jennifer Langlotz and Jennifer McSheffrey, the lead nurses for the HCV administration at Epiq, who have day-to-day direct contact with class members and claimants.

39. The Administrator hears from claimants, class members and family members concerning the benefits that they may be entitled to from time to time during the course of claims administration. The HCV administration team informed me that generally no new concerns regarding the nature of the benefits that are available have been communicated to them with any regularity, however some of the same concerns with the quantum of some of the benefits as have been communicated in the past continue to be raised by claimants and class members, from time to time.

40. The nurses specifically informed me that the following discrete benefits provided under the 2013 Special Distribution Benefits Allocation Orders were well received by class members and family members and seem to address these needs based on the input that they have received:

- (a) the increased cost of care allowance for disease level 6 approved class members to date has proved sufficient to meet those claims that have exceeded the original limit;

- (b) the out-of-pocket allowance for family members' attendance on HCV medical visits has been both well received and well utilized;
- (c) the election for extended loss of services payments to permanently disabled dependants has been exercised by those claimants who are eligible; and
- (d) the election for disease level payments and other benefits for living co-infected hemophiliacs who originally took the \$50,000 alternative benefit under section 4.08 of the Hemophiliac HCV Plan was exercised by many of the class members it was meant to benefit. Efforts to locate a few remaining class members that may yet be eligible are ongoing.

41. The nurses also informed me that claimants, approved class members and newly approved class members regularly communicate that their personal injury, income loss and/or loss of services awards are inadequate and that this significantly impacts their personal and family well-being and, in some cases, results in hardship. Similarly, the nurses informed me that newly approved family members frequently communicate to them that the loss of guidance, care and companionship awards they received are inadequate for the loss they have suffered.

42. The four heads of damages addressed in the Joint Committee's applications, which form the core of any damages award, seek to further address the concerns previously communicated to the Joint Committee and the Courts, which class members continue to identify as falling short of compensating for the losses and damages suffered.

43. The Joint Committee anticipates giving approved class members notice of these applications (and any application by the Federal Government) and the opportunity to comment

on the recommendations through written submissions for consideration and presentation to the Courts in advance of the hearings.

### **Estimates are Based on Input from Eckler and the Administrator**

44. Eckler has played a significant role in investigating the assumptions underlying the recommended allocations, analyzing claims data, providing their actuarial analysis, calculating the liabilities and estimating the allocations of 2019 Excess Capital and required capital needed to implement the recommendations. The Eckler 2019 Allocation Report is appended to the affidavit of Euan Reid, filed in support of these applications. Mr. Reid is one of the principals at Eckler.

45. Mr. Bottrell and IT personnel at Epiq who work on the CLASS database were involved in providing updated information from the claims database concerning the class members, the benefit payments and in estimating the administration costing associated with implementation of the recommended allocation benefits.

### **Explanation of Temporal Dollar Value of Benefit Amounts and Benefit Indexation and Accounting**

46. For simplicity and clarity, when I refer to benefits amounts in the recommendation sections that follow I am referring to the benefits in **1999 dollars** as they appear in the Regular Benefit Plans, unless I indicate otherwise. The approximate conversion rate for 1999 dollars to 2020 dollars is 1.487 (rounded from the rate Eckler has provided at page 12 of the Eckler 2019 Allocation Report in Mr. Reid's affidavit).

47. The payments under the Regular Benefit Plans are accounted for in the HCV Regular Benefit Account. All FPT Governments contribute to the payment of these benefits and to the costs of their administration.

48. The 2013 Special Distribution Benefits are expressed in 2014 dollars, which is the year immediately following the end date of that review and the start date of the next triennial financial sufficiency review period.

49. Except as provided in paragraph 50 below, the payments for 2013 Special Distribution Benefits are accounted for in the HCV Special Distribution Benefit Account. The PT Governments do not contribute to the payment of these benefits or to the costs of their administration.

50. The amounts payable under the HCV Late Claims Benefit Plan are identical to the benefits payable under the Regular Benefit Plans after indexing to 2014 dollars plus the 2013 Special Distribution Benefits that are included within the HCV Late Claims Benefit Plan itself.

51. The payments for these combined benefits under the HCV Late Claims Benefit Plan are accounted for in the HCV Late Claims Benefit Account. The PT Governments do not contribute to the payment of these benefits or to the costs of their administration.

52. The 2019 Special Distribution Benefits recommended by the Joint Committee are expressed in **2020 dollars**, which is the year immediately following the end date of that review and the start date of the next triennial financial sufficiency review period. If granted, it is proposed that the 2019 Special Distribution Benefits for all Plans be accounted for in the HCV Special Distribution Benefit Account. These applications expressly provide that the PT

Governments will not be required to contribute to the 2019 Special Distribution Benefits nor to the costs of their administration.

53. Most of the amounts payable under the Plans are indexed to the year in which they are actually paid using the Canadian Pension Index (section 7.02 of the Plans). Similarly, most of the 2013 Special Distribution Benefits are indexed to the year in which they are actually paid as provided for in the 2013 Special Distribution Benefits Allocation Orders. If granted, it is proposed that most of the 2019 Special Distribution Benefits also be indexed to the year in which they are paid.

#### **THE JOINT COMMITTEE'S FOUR RECOMMENDATIONS**

54. Similar to the circumstances at the time of the original settlement approval hearings and the 2013 allocation hearings, the discrete benefits recommended by the Joint Committee herein are limited by the funds available, so not all shortcomings in compensation to approved class members and family members under the Settlement Agreement have been addressed fully at this time.

#### **Recommendation 1 – Provide a Discrete Benefit for Approved Class Members and Family Members who are entitled to Fixed Payments for Non-Pecuniary General Damages or Death Benefits**

55. Approved class members alive on January 1, 1999, are entitled to fixed payments for non-pecuniary general damages based upon their disease level at the time of their approval and in the future based upon further progression of their disease (sections 4.01, 4.08, 5.02). Estates, family members and dependants of approved class members who died before January 1, 1999 are entitled to death benefits if the death was caused by HCV (section 5.01).

56. These non-pecuniary general damage and death benefit awards under the Settlement Agreement were an area of compromise for many approved class members and family members. The fixed payments for these heads of damage under the settlement were set lower than damage awards at law would permit to ensure that the fixed settlement amount would be sufficient to distribute across all of the heads of damages sought to be addressed and to meet the claims of the unknown number of class members who would come forward and be approved.

57. Non-pecuniary general damages seek to compensate for intangible losses, like pain and suffering and loss of enjoyment and loss of expectation of life. Many approved class members spoke about the nature and effects of their infection and its chronic and progressive harm, including the impacts on physical and mental wellbeing, daily living and family dynamics at the earlier town hall consultation sessions, many more wrote concerning them, and some testified to them at the 2013 allocation hearings. The uniform view expressed was that the awards did not adequately compensate for the life-altering, chronic, progressive and life-threatening nature of hepatitis C.

58. Based on the amount of 2013 Excess Capital available and the competing interests of the other benefits sought to be addressed at the time, the Joint Committee recommended a percentage increase for fixed payments that would move approved class members closer to the upper limit of compensation for non-pecuniary general damages set by the Supreme Court of Canada in 1978, yet not attain it. The available 2019 Excess Capital provides an opportunity to address this remaining shortfall.

59. The Courts previously held that addressing this compensatory shortfall was a permissible use of the Allocation Provision, accepted the allocation recommended by the Joint Committee and ordered the creation of a discrete benefit equal to 8.5% of fixed payments for



non-pecuniary general damages and death benefits as one of the 2013 Special Distribution Benefits.

60. By these applications, the Joint Committee recommends that the Courts allocate **\$54,684,000** of the 2019 Excess Capital to increase the discrete benefit for approved class members and family members entitled to fixed payments for non-pecuniary general damages and death benefits under sections 4.01, 4.08, 5.01 and 5.02 of the Plans by an amount equal to 6.8% of the combined value of their fixed payment under the Plans and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020, payable retroactively and prospectively as a special distribution.

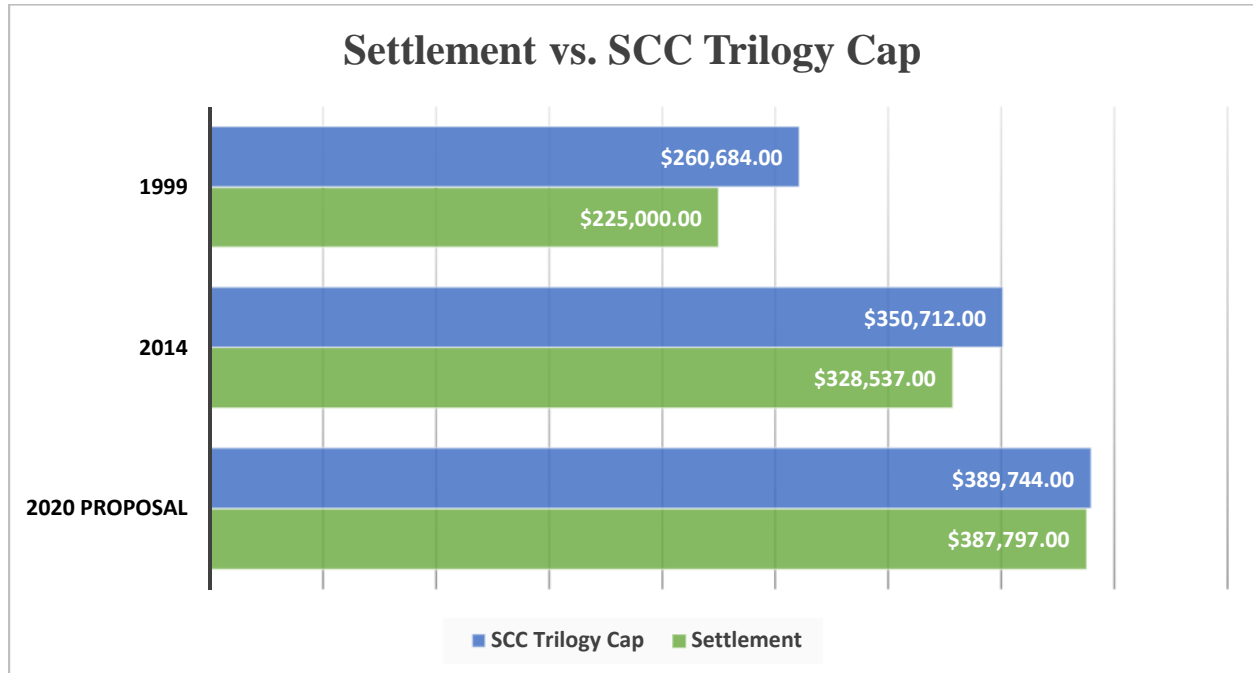
61. The maximum amount payable to approved class members for the cumulative disease level fixed payments for non-pecuniary general damages under the Regular Benefit Plans is a total of \$225,000 for those who attain disease level 6. Mr. Reid has advised that this cumulative amount is 15.9% below the \$260,684 limit on non-pecuniary general damages set by the Supreme Court of Canada in the trilogy of cases in 1978, after adjustment for inflation to 1999 dollars.

62. Following the Courts' creation of a 2013 Special Distribution Benefit equal to 8.5% of the fixed payments for non-pecuniary general damages, indexed to January 1, 2014, Mr. Reid advises the combined benefits payable based on cumulative disease levels are \$328,537 in 2014 dollars as compared to the 2014 adjusted trilogy limit of \$350,712.

63. The recommended 6.8% allocation would, while abiding the trilogy limit, address the remaining difference between the combined amounts payable based on the cumulative disease levels and the trilogy. Mr. Reid advises the recommended allocation of 6.8% would

make these combined benefits payable based on cumulative disease levels \$387,797 in 2020 dollars as compared to the 2020 adjusted trilogy limit of \$389,744.

64. In summary, the compensation shortfall under the settlement relative to the Supreme Court of Canada trilogy cap historically and under the Joint Committee's recommendation is as follows:



65. If the recommended allocation is granted, approved class members would be entitled to a discrete benefit in the following amounts based on their current cumulative disease level and any progression in disease level that may hereafter occur:

<b>Disease Level</b>	<b>6.8% Allocation on fixed payment + 2013 Special Distribution Benefit (in 2020 dollars)</b>	<b>Cumulative Total</b>
<b>Disease level 1</b>	\$1,097	\$1,097
<b>Disease level 2</b>	\$2,195	\$3,292
<b>Disease level 3</b>	\$3,292	\$6,584
<b>Disease level 5</b>	\$7,133	\$13,717
<b>Disease level 6</b>	\$10,974	\$24,691

66. The Joint Committee makes this recommendation based not only on the life altering impact of the disease communicated by class members, but also on the evidence from the report of the Medical Modelling Working Group (“**MMWG**”) attached to the affidavit of Dr. Murray Krahn and from the affidavit of Dr. Vince Bain, each filed in support of the phase one 2019 financial sufficiency review, one aspect of which I summarize below.

67. The administrative database records that the deaths of at least 487 approved class members who died before January 1, 1999 and 745 approved class members who died since January 1, 1999 were caused by hepatitis C. The MMWG 2019 medical model (summarized at Table 13 of the 2019 MMWG Report) predicts the long-term prognosis for the 3,393 approved class members alive as of May 31, 2019. Notwithstanding the higher efficacy of direct-acting anti-viral agents, the following proportion of the surviving class members already have or are predicted to go on to develop the following disease states by 2070:

<b>Disease Level</b>	<b>Cumulative</b>	<b>Transfused</b>	<b>Hemophiliac</b>
<b>Disease level 5</b> Cirrhosis	19.7%	16.2%	30.7%
<b>Disease level 6</b> Decompensated cirrhosis	9.3%	7.4%	15.5%
<b>Disease level 6</b> Hepatocellular cancer	3.8%	2.9%	6.6%
<b>Disease level 6</b> Liver-related mortality	13.9%	11.7%	21%

68. All approved class members alive on January 1, 1999, with the exception of those who were later determined to be Health Canada negative, would be entitled to benefit from this recommended allocation. This equates to approximately **4,926** approved class members eligible for disease level payments under the Plans through December 2021 who would benefit

retroactively from the allocation requested. The allocation would also benefit prospectively those approved class members whose disease continues to progress, as well as those claimants with in-progress claims and/or future claimants who are subsequently approved.

69. The other fixed payments included within the recommended 6.8% allocation are as follows:

- (a) a \$50,000 alternative to disease level payments for approved living hemophiliac class members co-infected with HIV who may be unable to establish that their disease level is caused by HCV because of their co-infection (section 4.08 Hemophiliac HCV Plan and 4.08(hemo) HCV Late Claims Benefit Plan);
- (b) two death benefit options for estates, dependants and family members of approved class members whose death prior to January 1, 1999 was caused by HCV: a fixed payment of \$50,000 to the estate with independent claims for family members and dependants; or, a fixed payment of \$120,000 to be shared among the estate, family members and dependants (sections 5.01(1),(2) Plans); and
- (c) an alternative death benefit option for estates, dependants and family members of approved hemophiliac class members co-infected with HIV whose death prior to January 1, 1999 is not proven to be caused by HCV: a fixed payment of \$72,000 to be shared among them (section 5.01(4) Hemophiliac HCV Plan and 5.01(4)(hemo) HCV Late Claims Benefit Plan).

The previous 8.5% allocation of 2013 Excess Capital also applied to each of these fixed payments.

70. If granted, the amounts payable for the discrete benefit created in relation to these fixed payments would be as follows:

Fixed Payment Type	<b>6.8% Allocation</b> on fixed payment + applicable 2013 Special Distribution Benefit (in 2020 dollars)
\$50,000 non-pecuniary general damages option for approved living co-infected hemophiliac class members	\$5,487
\$50,000 death benefit option for approved class members whose death prior to January 1, 1999 was caused by HCV	\$5,487
\$120,000 death benefit option for approved class members whose death before January 1, 1999 was caused by HCV	\$13,169
\$72,000 death benefit option for approved co-infected hemophiliac class members whose death before January 1, 1999 is not proven to be caused by HCV	\$7,901

71. The estates of all approved class members whose death before January 1, 1999 was caused by hepatitis C, with the exception of those who were later disqualified or determined to be Health Canada negative, would be entitled to benefit from this recommended allocation, as would their approved family members and dependants who elected the joint fixed payment options. All co-infected hemophiliac class members who did not initially elect or subsequently re-elect to receive the disease level fixed payments would also be eligible to benefit from this recommendation. This equates to approximately **487** estates, **1,816** family members and **30** co-infected hemophiliac class members eligible for these other fixed payment options under the Plans through December 2021. The allocation would also benefit prospectively those claimants with in-progress claims and/or future claimants who are subsequently approved and elect in favour of these options.

72. There are several provisions in the Plans that militate against approved class members being overcompensated for the pain and suffering and loss of amenities and enjoyment of life that they have suffered as a result of their infection with hepatitis C should the recommended allocation for fixed payments be approved:

- (a) unlike a one-time damages assessment, the sequential disease level payments are triggered by medical proof of the progression in the disease such that an approved class member can never be paid beyond the disease level he/she has clinically attained (section 4.01);
- (b) the benefits under the Plans are reduced by any collateral benefit associated with hepatitis C that the approved class member is entitled to, including insurance payments other than life insurance and compensatory government programs such as those offered by some of the Provinces (section 8.03); and
- (c) the benefits under the Plans are inclusive of prejudgment interest (section 4.09), unlike the award set by the Supreme Court of Canada in the trilogy cases.

**Recommendation 2 – Provide a Discrete Benefit for Approved Family Members who are entitled to Loss of Guidance, Care and Companionship Awards**

73. Approved family members of an approved class member whose death was caused by his or her infection with HCV are entitled to be paid loss of guidance, care and companionship awards, provided they do not choose one of the joint fixed payment options described above (section 6.02).

74. The loss of guidance, care and companionship awards under the Plans were an area of compromise for the majority of family members. These benefit levels were set below the amounts often awarded under this head of damages across the country in order to ensure the fixed amount that was available for settlement was sufficient to cover all class members and family members who come forward and are approved, as well as all of the areas of compensation sought to be addressed by the settlement.

75. While Canadian law has long recognized that no amount of money can replace the value of a lost life, these types of damages are awarded to give recognition and compensation for the seriousness of the family's loss. Many family members spoke about the quantum of these awards at the earlier town hall consultation sessions and many more wrote concerning them prior to the 2013 allocation hearings. The uniform view expressed, regardless of the level of familial relationship to the deceased, was that the awards were inadequate.

76. The Courts previously held that addressing this compensatory shortfall was a permissible use of the Allocation Provision, accepted the allocation recommended by the Joint Committee, and ordered the creation of a discrete benefit of \$4,600, indexed, for parents and children age 21 or older for loss of guidance, care and companionship as one of the 2013 Special Distribution Benefits.

77. The allocation requested at that time was limited to only parents and adult children because of the limit on the amount of 2013 Excess Capital available for allocation and the number of other compensatory shortfalls that the Joint Committee was asking the Courts to address. These awards to parents and adult children were first addressed because the Joint Committee believed their benefits were out of step with the grid of benefits created for loss of guidance, care and companionship payable to the other groups of family members under the settlement.

78. While this prior allocation of 2013 Excess Capital addressed a disparity between the benefits payable among the various groups of family members entitled to an award under the settlement, it did not address the broader compensatory shortfall of undervalued loss of guidance, care and companionship benefits under the settlement generally. The available 2019 Excess Capital provides the opportunity to address this disparity.

79. By these applications, the Joint Committee recommends that the Courts allocate **\$71,812,000** of the 2019 Excess Capital to create a discrete benefit for approved family members entitled to loss of guidance, care and companionship awards under section 6.02 in an amount equal to 50% of the combined value of their award under that section and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020, payable retroactively and prospectively as a special distribution.

80. If granted, the amounts payable to approved family members for the discrete benefit to be created for loss of guidance, care and companionship would be as follows:

<b>Family Member</b>	<b>50% allocation on loss of guidance, care and companionship + 2013 Special Distribution Benefit for Child &gt;21 and Parent (in 2020 dollars)</b>
<b>Spouse</b>	\$18,593
<b>Child &lt; 21</b>	\$11,155
<b>Child 21 &gt;</b>	\$7,139
<b>Parent</b>	\$7,139
<b>Sibling</b>	\$3,718
<b>Grandparent/grandchild</b>	\$372

81. In some provinces and territories, legislation fixes the quantum for awards for loss of guidance, care and companionship, bereavement or grief while the quantum is set by the courts on a case-by-case basis in the others. In those provinces and territories that fix the quantum of these types of awards, family members can deal with the tragedy without the requirement of proving their suffering, or the closeness of the relationship – an approach that aligns with the administration under the Settlement Agreement.



82. While neither legislation nor common law provides uniformity across the country, generally the loss of guidance, care and companionship awards under both the statutory schemes and the case law significantly exceed those under the Regular Benefit Plans and applicable 2013 Special Distribution Benefit, although a true direct comparison is difficult due to differing rules in each jurisdiction.

83. The following chart compares the combined benefits for loss of guidance, care and companionship plus the applicable 2013 Special Distribution Benefit, those combined benefits plus the recommended allocation of 2019 Excess Capital, and the four fixed quantum statutory awards in Canada:

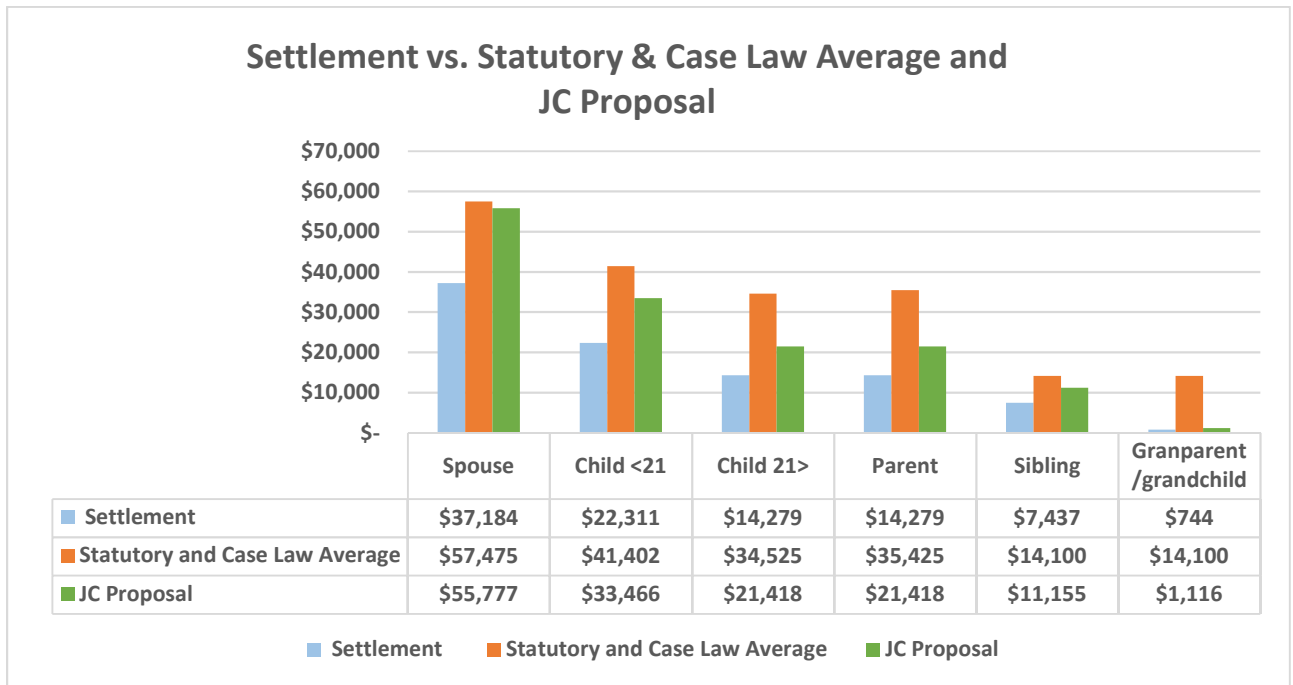
<b>Family Member</b>	Plans including the allocation of 2013 Excess Capital (1999 dollars)	Plans including the allocation of 2013 Excess Capital (2020 dollars)	<b>Combined benefits plus recommended allocation of 2019 Excess Capital (2020 dollars)</b>	Alberta statute	Manitoba statute	Sask. statute	Yukon statute
<b>Spouse</b>	\$25,000	\$37,184	<b>\$55,777</b>	\$82,000	\$42,301	\$60,000	\$75,000
<b>Child &lt; 21</b>	\$15,000	\$22,311	<b>\$33,466</b>	\$49,000	\$42,301	\$30,000	\$45,000
<b>Child 21 &gt;</b>	\$9,600	\$14,279	<b>\$21,418</b>	\$49,000	\$14,100	\$30,000	\$45,000
<b>Parent</b>	\$9,600	\$14,279	<b>\$21,418</b>	\$82,000 divided if two	\$42,301	\$30,000	\$37,500 each or \$75,000 if only one
<b>Sibling</b>	\$5,000	\$7,437	<b>\$11,155</b>		\$14,100		
<b>Grandparent/ grandchild</b>	\$500	\$744	<b>\$1,116</b>		\$14,100		

84. The following chart compares the combined benefits for loss of guidance, care and companionship plus the applicable 2013 Special Distribution Benefit, those combined benefits plus the recommended allocation of 2019 Excess Capital, and the average awards in those provinces where this litigation was commenced and where the quantum of awards are determined by the courts:

	Plans including the allocation of 2013 Excess Capital (1999 dollars)	Plans including the allocation of 2013 Excess Capital (2020 dollars)	<b>Combined benefits plus recommended allocation of 2019 Excess Capital (2020 dollars)</b>	British Columbia Courts	Ontario Courts	Québec Courts
Spouse	\$25,000	\$37,184	<b>\$55,777</b>	\$15,000	\$59,027	\$69,000
Child < 21	\$15,000	\$23,311	<b>\$33,466</b>	\$35,000	\$46,511	\$42,000
Child 21 >	\$9,600	\$14,279	<b>\$21,418</b>	\$35,000	\$46,511	\$42,000
Parent	\$9,600	\$14,279	<b>\$21,418</b>	\$7,250	\$51,527	\$38,400
Sibling	\$5,000	\$7,437	<b>\$11,155</b>			
Grandparent/ grandchild	\$500	\$744	<b>\$1,116</b>			

85. Annexed and marked as **Exhibit “Z”** is a report prepared for the Alberta Government released in September 2021 that compares these types of awards nationwide and is the basis for the information set out in the preceding charts.

86. The following graph summarizes the amount currently payable under the settlement for loss of guidance, care and companionship in 2020 dollars versus the combined average under statute and case law compared to the Joint Committee’s proposal:



87. All approved family members who elected a loss of guidance, care and companionship award under the Plans would be entitled to benefit from this recommended allocation. This equates to approximately **7,874** approved family members eligible for loss of guidance, care and companionship awards through December 2021. The group of family members who would benefit from this recommended allocation will also continue to grow as approved class members die from their infections and the claims of their family members are approved and as current in-progress and future claimants subsequently qualify.

88. The operative provisions of the Plans contain limitations on loss of guidance, care and companionship awards. Under the Plans these awards are only available following the death of an approved class member caused by HCV, while for many family members legislation in Ontario would permit such an award where a significant personal injury occurred. The awards under the Plans are also inclusive of prejudgment interest which would not be the case in traditional court awards. The fact of these uncompensated losses militates against any argument

that approved family members will be overcompensated if the Courts grant the recommended allocation.

**Recommendation 3 - Increase the Discrete Benefit created for Approved Class Members who are entitled to Lost or Diminished Pension Benefits**

89. The Regular Benefit Plans provide that persons who reach disease level 4 bridging fibrosis or the more severe medical conditions at higher disease levels are entitled to recover their loss of income caused by their HCV infection to age 65, provided that they are not claiming loss of services in the home for the same time period (section 4.02). Persons at disease level 3 who are at least 80% disabled due to their infection with HCV can elect to recover loss of income earlier if they forfeit the \$30,000 disease level 3 fixed payment.

90. The settlement does not however contain any provision to compensate for loss of employment benefits, including loss or diminishment of pension, suffered as a result of approved class members being disabled from working due to their infection with HCV.

91. Loss of income awards under the Settlement Agreement were an area of significant compromise for virtually all of the approved class members who suffered an income loss. In particular, the failure to compensate lost pension and employment benefits and the deductions from income required in the calculations of the loss departed from ordinary damages principles. These compromises were made to help ensure the fixed settlement amount would be sufficient to fund benefits to all class members who came forward and were approved.

92. The Joint Committee asked Eckler to investigate the creation of a lost or diminished pension benefit funded from the 2013 Excess Capital. Eckler opined in its report prepared for the 2013 allocation hearings that 14% of income would be a reasonable proxy for

lost or diminished pension benefits based on a 10% employer's share of a pension benefit and a 4.95% employer's share of Canadian Pension Plan ("CPP") contribution. The Joint Committee however only recommended 10% of income loss be allocated at that time because of the fixed amount of 2013 Excess Capital available and the competing interests of other benefits it sought to address. The available 2019 Excess Capital provides the opportunity to address this.

93. The Courts held that this was a permissible use of the Allocation Provision and ordered the creation of a discrete benefit in an amount equal to 10% of an approved class member's annual loss of income capped at \$200,000 to address lost or diminished pension benefits as one of the 2013 Special Distribution Benefits.

94. By these applications, the Joint Committee recommends that the Courts allocate **\$6,653,000** of 2019 Excess Capital to increase the discrete benefit created to compensate for lost or diminished pension benefits by an amount equal to an additional 4% of their annual loss of income payment capped at \$200,000 per annum before 2014 and \$200,000 per annum indexed thereafter, payable retroactively and prospectively as a special distribution benefit. For greater certainty, based on this formula, the additional annual lost or diminished pension benefit would be an amount of up to \$8,000 indexed, depending on the actual amount of a claimant's annual income loss payment.

95. Because the replacement value of this loss was not addressed in full by the allocation of 2013 Excess Capital, the Joint Committee asked Eckler to again consider the reasonable allocation for lost or diminished pension benefits. Eckler notes that although the employer's contribution rate to CPP has risen to 5.45% since the last allocation hearing and is set to increase yet again in 2025, it is their opinion 14% of income continues to be a reasonable and appropriate proxy for lost or diminished pension benefits.

96. Based on the income loss payment information recorded in the administration database that I have reviewed, 75% of those with current income loss claims would be entitled to up to an additional \$2,000 per annum, 15% would be entitled to an additional amount between \$2,000 and \$4,000 per annum, and 10% would be entitled to an additional amount between \$4,000 and \$8,000 per annum for loss or diminishment of pension benefits, if the allocation recommended is granted.

97. All approved class members entitled to receive loss of income awards would be eligible to benefit from this recommended allocation to address the difference between the 10% benefit created by the 2013 Special Distribution Benefit and the 14% recommended by Eckler as the reasonable equivalent rate for lost or diminished pension benefits. As at December 31, 2019, the administration database records approximately **338** approved loss of income claimants under the Plans who would be entitled to benefit retroactively and, to the extent their loss is ongoing, prospectively from this recommended increase to the lost or diminished pension benefit. This allocation may also benefit prospectively some of the approximately:

- (a) **1,234** living approved class members under age 65 at disease levels 2 and 3 who may yet progress in their disease and experience income loss;
- (b) **163** living approved class members under age 65 at disease level 4 or higher who have not yet claimed loss of income benefits who may yet experience an income loss; and
- (c) in-progress and future claimants who later qualify under the Plans and experience an income loss.

98. The operative provisions to calculate income loss under the Settlement Agreement require the deduction of collateral benefits from the income loss calculation,

therefore even the percentage for lost or diminished pension benefits is calculated on an artificially reduced loss of income that falls short of full compensation for many class members (section 4.02(2)(c)). The operative provisions also require the employee contribution of 4.95% of yearly pensionable earnings for CPP to be deducted from their income loss, yet these class members receive no entitlement to a CPP pension in respect of this deduction (section 4.02(2)(e)). These ongoing compromises in damages recoverable for this pecuniary loss supports the reasonableness of the increase to lost or diminished pension benefit that is requested and militates against any argument that approved class members will be overcompensated if the recommended allocation is granted.

**Recommendation 4 – Provide a Discrete Benefit for Approved Class Members and Approved Dependants who are entitled to awards for Loss of Services**

99. Approved class members at disease level 4 or higher may seek compensation for the services that they can no longer provide in the home if disabled from doing so because of their HCV (section 4.03). Approved class members may claim lost services earlier at disease level 3 if the class member is at least 80% disabled and forfeits the \$30,000 fixed payment for that disease level (section 4.03). Approved dependants who were living with the approved class member at the time of the class member's death may claim lost services if the death was caused by the infection with HCV (section 6.01).

100. Loss of services claims are payable to approved class members for their lifetime so long as they remain disabled, and thereafter to their dependants until the earlier of the statistical lifetime of the deceased calculated without regard to their HCV infection or the death of their last dependant. (One of the 2013 Special Distribution Benefits granted extends the timeframe benefits are payable for permanently disabled dependants.) Under the Regular

Benefit Plans loss of services in the home are compensated to a maximum of 20 hours per week at the rate of \$12 per hour.

101. Many written and oral communications to the Joint Committee from approved class members and their dependants received before the 2013 allocation hearings indicated that the number of hours and the amounts paid in respect of this loss were inadequate to permit them to replace the services that they had lost. Many also described how vital the loss of services payments are to their family's survival.

102. Before the 2013 allocation hearings, Kevin O'Connell, project manager for the Administrator at the time, advised that the claims data from the preceding three years showed approximately 95% of approved class members provided in excess of 20 hours per week of services in the home, and on average provided about 47 hours of services in the home per week pre-disability.

103. Because of the limits on the 2013 Excess Capital available and the competing interests of the other benefits it was seeking to address, the Joint Committee recommended only a 2 hour per week benefit to supplement loss of services in the home. The available 2019 Excess Capital provides the opportunity to further address this shortfall.

104. The Courts held that this was a permissible allocation under the Allocation Provision, accepted the recommendation, and ordered the creation of a discrete benefit of 2 hours per week payable retroactively and prospectively to those class members and dependants approved for the maximum number of hours recoverable for loss of services of the approved class member in the home.



105. By these applications, the Joint Committee recommends that the Courts allocate **\$60,272,000** of the 2019 Excess Capital to create a discrete benefit for approved class members and dependants who are entitled to loss of services in the home under section 4.03 and 6.01 equal to \$2 per hour, indexed to January 1, 2020, for the compensable hours of lost services from and after 2014 under the sections and any applicable 2013 Special Distribution Benefit, payable retroactively and prospectively as a special distribution. The Joint Committee was required to limit the retroactive component of the allocation that is being recommended to those years from and after 2014 because of the limits on the 2019 Excess Capital available and the competing interests of the other benefits it is seeking to address at this time.

106. Given the significant disparity between the losses that approved class members and dependants report experiencing and the amounts that they are receiving to compensate for these lost services and given that this disparity was only addressed in part by the 2013 Special Distribution Benefit created, the Joint Committee asked Eckler to once again investigate the current cost of replacing these services.

107. Eckler's investigation revealed regional differences in rates for these services. Nevertheless, it is Eckler's opinion that the current rate is insufficient to cover replacement services in many jurisdictions and that providing a \$2 per hour benefit for compensable hours of lost services results in a reasonable rate of compensation, which broadly reflects the actual replacement cost of services in the home. Eckler specifically notes that sales tax on invoices for these services that range from 5-15% across the country have not been included in the rates reported (Appendix A at page 15 of the Eckler 2019 Allocation Report).

108. Brown Economic Consulting Inc. ("**Brown**"), an economic consulting firm in Alberta, publishes annually a survey of Canadian "Housekeeping Replacement Rates" by

jurisdiction and a “Housekeeping Damages Calculator” to assist with estimating pecuniary loss. The rates that Brown has published are somewhat higher than the median range set out in Eckler’s 2019 Allocation Report for all jurisdictions and above the high range in Eckler’s 2019 Allocation Report in some jurisdictions. Brown also specifically notes that the rates included in its published table do not include provincial sales tax or GST payable on these services. Annexed and marked as **Exhibit “AA”** is a copy of Brown’s 2021 table of Housekeeping Replacement Rates.

109. The claims data from the most recent three-year review period shows that approximately 96% of loss of service claimants receive the maximum 20 hour loss of services benefit and the 2013 Special Distribution Benefit of 2 hours per week. As such, most loss of service claimants would be entitled to approximately an additional \$3,400 a year (2020 dollars) if this recommended allocation is granted.

110. The administration database records approximately **728** approved loss of services claimants under the Plans as of December 31, 2019 who would be entitled to benefit retroactively and, to the extent their loss is ongoing, prospectively from this recommended allocation. Additionally, as at December 31, 2019, the following may qualify prospectively for this award:

- (a) **163** alive approved class members at disease level 4 or higher not currently receiving the loss of services or loss of income benefit, some of whom may yet experience loss of services and claim in the future or whose dependants may claim following their death; and
- (b) **1,234** alive approved class members at disease levels 2 and 3 whose disease level may yet progress and loss of services may be claimed by them, or by their dependants following their death if it is caused by HCV;

- (c) **140** current loss of income and loss of support claimants who may switch to loss of services once the class member reaches or would have reached age 65; and
- (d) an as yet undetermined number of dependants of the 3,282 living approved class members, some of whom may subsequently die as a result of their HCV infection.

As well, in progress and future claimants who later qualify under the Plans and experience a loss of services would also benefit from the recommended allocation.

111. The operative provision under the Plans that limits the majority of claimants from recovering the full measure of the hours of services that they have lost militates against any argument that approved class members and dependants will be overcompensated if the Courts grant this recommended allocation.

#### **Logistics and Costs of Implementing the Recommended Allocations**

112. The Joint Committee considered both the burdens and the logistics of approved class members and family members triggering entitlement to the recommended allocations and the Administrator identifying, calculating, distributing and recording them. The costs of implementation of the recommended allocations were considered as well. All of these considerations factored into the Joint Committee's decision to recommend these four specific allocations to the Courts.

113. The decision to recommend allocations that address many of the same compensatory shortfalls as were addressed in part by the 2013 Special Distribution Benefits allows, for the most part, employment of the same methodologies and systems that have already been successfully implemented. Both the Joint Committee and the Administrator believe this

will make the implementation of these additional allocations simpler and more cost effective, if they are approved.

114. From the class member's perspective, for the most part, no additional action would be required on their part to initiate their entitlement. The Administrator would identify, calculate and distribute the discrete benefits based upon the data that is already contained in the claims database for the majority of approved class members and family members. Experience with the administration of the 2013 Special Distribution Benefits has shown that there will be approved class members and family members to be located as well as deaths and other changed circumstances that will however mean some class members will be required to take additional steps to facilitate the distribution.

115. From the Administrator's perspective, standard operating procedures already created in the course of implementing the 2013 Special Distribution Benefits would for the most part apply to these recommended allocations. Any adjustments that would be required are thought to be relatively minor at this point.

116. The Administrator has estimated the administration costs to implement, calculate and distribute the appropriate retroactive payments for the recommended allocations to the approved class members, their estates, dependants and family members who are so entitled. These estimated costs are based on the current fee per service structure approved by the Courts for the ongoing administration of the retroactive 2013 Special Distribution Benefits in place since 2017. Annexed and marked as **Exhibit "BB"** is the Administrator's chart of these estimated costs.

117. Eckler has estimated the present value of the administration fee for prospective payments to be \$127,000 based on the fixed fee of \$5,000 per annum approved by the Courts for the prospective component of the 2013 Special Distribution Benefits in place since 2017.

118. Eckler has compiled an implementation budget (at page 21 of its 2019 Allocation Report) that includes these estimated administration costs as well as the additional costs discussed below.

119. The structural accommodations previously made to the CLASS database to accommodate the 2013 Special Distribution Benefits will also accommodate the allocations under consideration. Minimal dedicated programming time would be required to create additional coding to ensure the integrity of the payment records in the database. Such recording is a significant requirement for future financial sufficiency review work. A line item totaling \$14,000 has been included in the implementation budget to account for this work.

120. The provisions of the Plans, the court approved protocols and the Administrator's standard operating procedures have been used successfully in respect of claims for deceased class members and family members across the country over the course of the administration, including for the implementation of the 2013 Special Distribution Benefits. The Joint Committee and the Administrator believe that they are adequate for the most part to address the various scenarios that will arise if these recommendations are implemented. However, there will be those who have died in circumstances where their estates have been wound up, where the executor of the estate may be deceased, or where they may have died intestate. As a precaution, a line item totaling \$75,000 has been included in the implementation budget to address additional costs that may arise in this regard.

121. In addition to these direct costs of the administration there are various service providers, including the Joint Committee, Eckler, the Auditors, and the Trustee, who will also perform work implementing, overseeing, recording and auditing the 2019 Special Distribution Benefits if granted, the costs of which should be allocated from 2019 Excess Capital and not borne by the PT Governments. A line item totaling \$300,000 has been included in the implementation budget for these additional anticipated costs.

122. Finally, a line item totaling \$170,000 has been included to account for the various provincial sales taxes and the GST required to be paid on the forgoing costs.

123. The total estimated cost to implement and administer the recommended 2019 Special Distribution Benefits is **\$1,520,000**, an amount which is only 0.08% of the value of the recommended allocations.


### **Future Considerations**

124. While the 2019 Excess Capital is undoubtedly a large amount of money and while the Joint Committee is effectively seeking to have almost all allocated for the benefit of the approved class members and family members, the Joint Committee does not believe that the allocations requested fully addresses all of the shortfalls in compensation under the Plans. Should there be significant 2019 Excess Capital that is not allocated or actuarially unallocated assets

realized in the future, the Joint Committee may wish to make additional recommendations at that time.

SWORN BEFORE ME at the City of )  
Windsor, in the County of Essex, this )  
12th day of May, 2022. )  
)  
)  
)

  
HEATHER RUMBLE PETERSON

  
\_\_\_\_\_  
Commissioner for taking affidavits

1870102

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts **LLP**,  
Barristers and Solicitors.  
Expires February 22, 2025.

*THE ATTACHED IS EXHIBIT "A" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

**Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Suttis LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.**





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*

## JUDGMENT

THIS MOTION, made by the representative plaintiffs, for judgment pursuant to subsection 29(2) of the *Class Proceedings Act, 1992, as amended*, (the "Act") approving the settlement of the Ontario Class Actions was heard on August 18, 19, 20, October 21 and 22, 1999 at Toronto, Ontario.

ON READING the following:

- (a) the notice of motion returnable August 18, 1999;
- (b) the Agreement;
- (c) the affidavits of R. Douglas Elliott, sworn July 10, 1999, August 16 and October 12, 1999;
- (d) the affidavits of Margaret Woltz, sworn July 7, 1999, August 11 and August 16, 1999;
- (e) the affidavit of Sharon D. Matthews, sworn July 9, 1999;
- (f) the affidavit of Dr. Frank H. Anderson, sworn July 8, 1999, as well as the cross-examination thereon by written interrogatories and answers thereto;

- (g) the affidavit of Jacob Levi, sworn July 9, 1999 and the transcript of the August 4, 1999 cross-examination of Jacob Levi and Murray Segal and the exhibits marked on the cross-examination;
- (h) the Eckler Partners letter, dated October 13, 1999;
- (i) the affidavits of Andrew Wister, Robert S. Hogg, Dianna Parsons, James Kreppner, and David Page, all sworn July 8, 1999;
- (j) the affidavit of Dr. Irwin Walker, sworn July 9, 1999;
- (k) the affidavits of David L. Robins, sworn July 9, 1999, August 12 and October 15, 1999;
- (l) the affidavit of Ron Etherington, sworn August 12, 1999;
- (m) the affidavit of Tracey Goegan, sworn August 3, 1999;
- (n) the affidavit of Dr. Nancy Oliveri, sworn October 5, 1999;
- (o) the reports of PricewaterhouseCoopers LLP dated August 6, 1999 and August 16, 1999;
- (p) the order of Mr. Justice Winkler dated August 10, 1999;
- (q) the written undertakings of Peterson Worldwide LLC and Reed Consulting, Ltd. carrying on business as Peterson Worldwide LLC of Canada agreeing to be bound by this judgment;
- (r) the written undertaking of Royal Trust Company agreeing to be bound by this judgment;
- (s) the written undertaking of TD Asset Management Inc. agreeing to be bound by this judgment;

- (t) the judgments of Madame Justice Morneau of the Superior Court of Quebec dated September 21, 1999 and the English translation thereof;
- (u) the reasons of Mr. Justice Kenneth Smith of the Supreme Court of British Columbia dated October 1, 1999; and
- (v) the reasons of Mr. Justice Winkler dated September 22, 1999,

AND ON HEARING the *viva voce* evidence of:

- (w) Joseph Hache and Joseph Hache, Jr.;
- (x) Deborah Last and Charles Beresford;
- (y) Bonnie and Paulette Patterson;
- (z) David Kerbel;
- (aa) Hon Ming Ho;
- (bb) Cynthia-Lee Belford;
- (cc) Irene Omman
- (dd) Mark Rambin; and
- (ee) Klaus Schaefer,

AND ON HEARING the submissions of counsel for the following:

- (ff) the representative plaintiffs;
- (gg) Her Majesty the Queen in the Right of Ontario, the Attorney General of Canada and The Canadian Red Cross Society (the "CRCS");
- (hh) Hubert Fullarton and Tracy Goegan, intervenors in this motion for judgment, by order of Mr. Justice Winkler made on June 23, 1999 (the

“June 23, 1999 Order”), said counsel, William P. Dermody having undertaken to this Court on August 10, 1999, that he would put forward to the Court the substance of the objections made by persons who have objected to the proposed settlement as reported in the PricewaterhouseCoopers LLC reports;

- (ii) the Hepatitis C Society, the Canadian Hemophilia Society, the Thalassemia Foundation of Canada, Dominique Honhon and Anita Endean, who were given leave to appear as friends of the court in this motion for judgment by the June 23, 1999 Order;
- (jj) 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;
- (kk) the Children’s Lawyer; and
- (ll) the Public Guardian and Trustee,

AND ON BEING ADVISED:

- (mm) that the parties agreed to this settlement on the basis that the PT Governments have the option to make periodic payments in accordance with Sections 4.02 and 4.04 of the Funding Agreement, in which event there will be no PT Government money or assets remaining in the Trust that are actuarially unallocated;
- (nn) that Harvey T. Strosberg, Q.C., counsel to the Ontario Transfused Class Action, has accepted an appointment to the Joint Committee;
- (oo) that Bonnie A. Tough, counsel to the Ontario Hemophiliac Class Action, has accepted an appointment to the Joint Committee; and
- (pp) of the consent of the Class Action Plaintiffs and the FPT Governments to the modifications set forth in paragraph 9 of this judgment,

AND WITHOUT ANY ADMISSION OF LIABILITY ON THE PART OF THE  
FPT GOVERNMENTS.

1. THIS COURT ORDERS AND DECLARES that since the Ontario Class Actions have been stayed against the CRCS by the order of Mr. Justice Blair made on July 20, 1998 in action no. 98-CL-002970 (Toronto) (the "Stay"), the Stay having been subsequently extended by further orders of the Court made on August 19, 1998, October 5, 1998, January 18, 1999, May 5, 1999 and July 28, 1999, nothing in this judgment is to have the effect of prejudicing the CRCS.

2. THIS COURT ORDERS AND DECLARES that for the purposes of this judgment, the following definitions apply:

- (a) **Agreement** means the 1986-1990 Hepatitis C Settlement Agreement between the Parties made as of June 15, 1999, which is annexed as Schedule 1 to this judgment.
- (b) **Claimants' Data** means all data, records, medical, personal and financial information, files, addresses, claims payment history, and all other information of any nature and kind whether in paper, recorded or electronic form or in any other medium including all individual personal identifying and non-personal identifying information and any compilation, selection, co-ordination or arrangement of individual information into an original, derivative or collective work or works capable of being reviewed, perceived, reproduced or otherwise communicated directly or indirectly with the aid of a machine or device or capable of being fixed in any tangible medium of expression now known or later developed or transmitted or displayed even for a transitory period.
- (c) **Class Actions** means collectively the Transfused Class Actions and the Hemophiliac Class Actions.
- (d) **Class Members** means collectively the Transfused Class Members and the Hemophiliac Class Members, and **Family Class Members** means collectively the Transfused Family Class Members and the Hemophiliac Family Class Members.
- (e) **Court** means the Superior Court of Justice for Ontario, and **Courts** has the meaning set out in Section 1.01 of the Agreement.
- (f) **Funding Agreement** means the Funding Agreement between the Parties made as of June 15, 1999, which is annexed as Schedule 2 to this judgment.
- (g) **Hemophiliac Class Actions** means collectively the **Ontario Hemophiliac Class Action**, which means *Kreppner et al. v. Canada et al.* Action no. 98-CV-146405 (Toronto), the **British Columbia Hemophiliac Class Action** which means *Mitchell et al. v. Canada et al.* Action no. A981187 (Vancouver) and the **Quebec Hemophiliac Class Action** which means *Page et al. v. Canada et al.* Action no. 500-06-000068-987 (Montreal).
- (h) **Hemophiliac Class Members** means collectively the Ontario Hemophiliac Class Members, the class certified in the British Columbia Hemophiliac Class Action and the class certified in the Quebec Hemophiliac Class Action, and the **Hemophiliac Family Class Members** means collectively the Ontario Hemophiliac Family Class Members, and for the British Columbia Hemophiliac

Class Action and the Quebec Hemophiliac Class Action, the Family Members as defined in Section 1.01 of the Hemophiliac HCV Plan.

- (i) **Investment Consultant** means the investment advisor appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Article Ten of the Agreement to consult on the investment and management of the assets of the Trust Fund.
- (j) **Investment Manager** means the investment advisor appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Article Ten of the Agreement to manage the investment of the whole or any portion of the assets of the Trust Fund.
- (k) **Ontario Class Actions** means collectively the Ontario Transfused Class Action and the Ontario Hemophiliac Class Action.
- (l) **Ontario Class Members** means collectively the Ontario Transfused Class Members and the Ontario Hemophiliac Class Members, and **Ontario Family Class Members** means collectively the Ontario Transfused Family Class Members and the Ontario Hemophiliac Family Class Members.
- (m) **Ontario Hemophiliac Class Members** means the members of the class certified in the Ontario Hemophiliac Class Action as amended by paragraph 7 of this judgment.
- (n) **Ontario Hemophiliac Family Class Members** means the members of the family class certified in the Ontario Hemophiliac Class Action as amended by paragraph 8 of this judgment.
- (o) **Ontario Transfused Class Members** means the members of the class certified in the Ontario Transfused Class Action as amended by paragraph 5 of this judgment.
- (p) **Ontario Transfused Family Class Members** means the members of the family class certified in the Ontario Transfused Class Action as amended by paragraph 6 of this judgment.
- (q) **Party** means any one of the FPT Governments or the Class Action Plaintiffs.
- (r) **Transfused Class Actions** means collectively the **Ontario Transfused Class Action**, which means *Parsons et al. v. Canada et al.* Action no. 98-CV-141369 (Toronto), the **British Columbia Transfused Class Action** which means *Endean et al. v. Canada et al.* Action no. C965349 (Vancouver) and the **Quebec Transfused Class Action** which means *Honhon et al. v. Canada et al.* Action no. 500-06-000016-900 (Montreal).



- (s) **Transfused Class Members** means collectively the Ontario Transfused Class Members, the class certified in the British Columbia Transfused Class Action and the class certified in the Quebec Transfused Class Action, and **Transfused Family Class Members** means collectively the Ontario Transfused Family Class Members and for the British Columbia Transfused Class Action and the Quebec Transfused Class Action, the Family Members as defined in Section 1.01 of the Transfused HCV Plan.

In this judgment, all other defined terms which are denoted with initial capital letters shall have the meanings ascribed to them in the Agreement and/or the Funding Agreement.

3. THIS COURT ORDERS AND DECLARES that 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 be and are hereby granted leave to intervene in this motion as added parties for the limited purpose of being bound by and they thereby are bound by this judgment, that they receive both the burden and the benefit of this judgment and that the title of proceedings in this judgment and in these actions be and are hereby amended accordingly.

4. THIS COURT ORDERS that this judgment shall be issued, entered and then filed in the Ontario Transfused Class Action Court file numbered 98-CV-141369 and the Ontario Hemophiliac Class Action Court file numbered 98-CV-146405.

5. THIS COURT ORDERS AND DECLARES that the definition of the "Class" certified in the Ontario Transfused Class Action by order dated June 23, 1998 and amended by order dated May 11, 1999 be and is hereby further amended to be:

- (a) all persons who received Blood (as defined in Section 1.01 of the Transfused HCV Plan) collected by the CRCS contaminated with HCV during the Class Period and who are or were infected for the first time with HCV and who are:
- (i) presently or formerly resident in Ontario and received Blood in Ontario and who are or were infected with post-transfusion HCV;
  - (ii) resident in Ontario and received Blood in any other Province or Territory of Canada other than the Province of Quebec and who are or were infected with post-transfusion HCV;
  - (iii) resident elsewhere in Canada and received Blood in Canada, other than in the Provinces of British Columbia and Quebec, and who are or were infected with post-transfusion HCV;
  - (iv) resident outside Canada and received Blood in any Province or Territory of Canada, other than in the Province of Quebec, and who are or were infected with post-transfusion HCV; and
  - (v) resident anywhere and received Blood in Canada and who are or were infected with post-transfusion HCV and who are not included as class members in the British Columbia Transfused Class Action or the Quebec Transfused Class Action;

- (b) all persons, resident anywhere, who received Blood (as defined in Section 1.01 of the Hemophiliac HCV Plan) in Canada during the Class Period, who have or had Thalassemia Major and who are or were infected with HCV and who are not included as class members in the British Columbia Transfused Class Action or the Quebec Transfused Class Action;
- (c) the Spouse of a person referred to in subparagraph (a) or (b) who is or was infected with HCV by such person; and
- (d) the child of a person referred to in subparagraph (a), (b) or (c) who is or was infected with HCV by such person.

6. THIS COURT ORDERS AND DECLARES that the definition of the "Family Class" certified in the Ontario Transfused Class Action by order dated May 11, 1999 be and is hereby amended to be:

- (a) the Spouse, child, grandchild, parent, grandparent or sibling of an Ontario Transfused Class Member;
- (b) the Spouse of a child, grandchild, parent or grandparent of an Ontario Transfused Class Member;
- (c) a former Spouse of an Ontario Transfused Class Member;
- (d) a child or other lineal descendant of a grandchild of an Ontario Transfused Class Member;
- (e) a person of the opposite sex to an Ontario Transfused Class Member who cohabited for a period of at least one year with that Ontario Transfused

Class Member immediately before the Ontario Transfused Class Member's death;

- (f) a person of the opposite sex to an Ontario Transfused Class Member who was cohabiting with that Ontario Transfused Class Member at the date of the Ontario Transfused Class Member's death and to whom that Ontario Transfused Class Member was providing support or was under a legal obligation to provide support on the date of the Ontario Transfused Class Member's death; and
- (g) any other person to whom an Ontario Transfused Class Member was providing support for a period of at least three years immediately prior to the Ontario Transfused Class Member's death.

7. THIS COURT ORDERS AND DECLARES that the definition of the "Class" certified in the Ontario Hemophiliac Class Action by order dated May 11, 1999 be and is hereby amended to be:

- (a) all persons who have 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; and who received or took Blood (as defined in Section 1.01 of the Hemophiliac HCV Plan) during the Class Period and who are:
  - (i) presently or formerly a resident in Ontario and received or took Blood in Ontario and who are or were infected with HCV;

- (ii) resident in Ontario and received or took Blood in any other Province or Territory of Canada other than Quebec and who are or were infected with HCV;
  - (iii) resident elsewhere in Canada and received or took Blood in Canada, other than in the Provinces of British Columbia and Quebec, and who are or were infected with HCV;
  - (iv) resident outside Canada and received or took Blood in any Province or Territory in Canada, other than in the Province of Quebec, and who are or were infected with HCV; and
  - (v) resident anywhere and received or took Blood in Canada, who are or were infected with HCV and who are not included as class members in the British Columbia Hemophiliac Class Action or the Quebec Hemophiliac Class Action;
- (b) the Spouse of a person referred to in subparagraph (a) who is or was infected with HCV by such person; and
  - (c) the child of a person referred to in subparagraph (a) or (b) who is or was infected with HCV by such person.

8. THIS COURT ORDERS AND DECLARES that the definition of the "Family Class" certified in the Ontario Hemophiliac Class Action by order dated May 11, 1999 be and is hereby amended to be:

- (a) the Spouse, child, grandchild, parent, grandparent or sibling of an Ontario Hemophiliac Class Member;

- (b) the Spouse of a child, grandchild, parent or grandparent of an Ontario Hemophiliac Class Member;
- (c) a former Spouse of an Ontario Hemophiliac Class Member;
- (d) a child or other lineal descendant of a grandchild of an Ontario Hemophiliac Class Member;
- (e) a person of the opposite sex to an Ontario Hemophiliac Class Member who cohabited for a period of at least one year with that Ontario Hemophiliac Class Member immediately before the Ontario Hemophiliac Class Member's death;
- (f) a person of the opposite sex to an Ontario Hemophiliac Class Member who was cohabiting with that Ontario Hemophiliac Class Member at the date of the Ontario Hemophiliac Class Member's death and to whom that Ontario Hemophiliac Class Member was providing support or was under a legal obligation to provide support on the date of the Ontario Hemophiliac Class Member's death; and
- (g) any other person to whom an Ontario Hemophiliac Class Member was providing support for a period of at least three years immediately prior to the Ontario Hemophiliac Class Member's death.

9. THIS COURT ORDERS AND ADJUDGES that the Agreement, annexed hereto as Schedule 1, and the Funding Agreement, annexed hereto as Schedule 2, both made as of June 15, 1999 are fair, reasonable, adequate, and in the best interests of the Ontario Class Members and the Ontario Family Class Members in the Ontario Class

Actions and this good faith settlement of the Ontario Class Actions is hereby approved on the terms set out in the Agreement and the Funding Agreement, both of which form part of and are incorporated by reference into this judgment, subject to the following modifications, namely:

- (a) those persons who meet the description at subparagraph (b) of the definition of Ontario Transfused Class Members shall be entitled to meet the required proof for compensation and to receive benefits under the Hemophilic HCV Plan, *mutatis mutandis*, as if they were Primarily-Infected Hemophiliacs and they are deemed, for the purpose of the Agreement and the Hemophilic HCV Plan, to be Primarily-Infected Hemophiliacs except that the proviso in Section 4.01(5) of the Hemophilic HCV Plan shall not apply, and their Spouses or children who meet the description at subparagraph (c) or (d) of the definition of Ontario Transfused Class Members and their Ontario Transfused Family Class Members shall also be entitled to meet the required proof for compensation and to receive benefits under the Hemophilic HCV Plan except that the proviso in Section 4.01(5) of the Hemophilic HCV Plan shall not apply;
- (b) in their unfettered discretion, the Courts may order, from time to time, at the request of any Party or the Joint Committee, that all or any portion of the money and other assets that are held by the Trustee pursuant to the Agreement and are actuarially unallocated be:

- (i) allocated for the benefit of the Class Members and/or the Family Class Members in the Class Actions;
  - (ii) allocated in any manner that may reasonably be expected to benefit 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 all of the circumstances provided that in distribution there shall be no discrimination based upon where the Class Member received Blood or based upon where the Class Member resides;
- (c) in exercising their unfettered discretion under subparagraph 9(b), the Courts may consider, but are not bound to consider, among other things, the following:
- (i) the number of Class Members and Family Class Members;
  - (ii) the experience of the Trust Fund;
  - (iii) the fact that the benefits provided under the Plans do not reflect the tort model;
  - (iv) section 26 (10) of the Act;



- (v) whether the integrity of the Agreement will be maintained and the benefits particularized in the Plans ensured;
  - (vi) whether the progress of the disease is significantly different than the medical model used in the Eckler actuarial report found at Volume 3 of the Motion Record, Tab 5, page 508 and following;
  - (vii) the fact that the Class Members and Family Class Members bear the risk of insufficiency of the Trust Fund;
  - (viii) the fact that the FPT Governments' contributions under the Agreement are capped;
  - (ix) the source of the money and other assets which comprise the Trust Fund; and
  - (x) any other facts the Courts consider material;
- (d) the amount to be paid or payable by the FPT Governments, pursuant to the Agreement and the Funding Agreement, shall be reduced by \$10,533,000, as of September 30, 1999, being the \$10,000,000 representing the estimated present value of the excess costs to the Trust Fund of resolving any action or actions instituted or prosecuted by all persons who opt out of a Class Action or are deemed to opt out of a Class Action and all other persons who claim over or bring a third party claim or make any claim or demand or take any action or proceeding against any FPT Government in any way relating to or arising from (i) in the case of a Transfused Class Member or Transfused Family Class Member

under the Transfused HCV Plan, the infection of a Primarily-Infected Person with HCV during the Class Period or, (ii) in the case of a Transfused Class Member, Transfused Family Class Member, Hemophiliac Class Member or Hemophiliac Family Class Member under the Hemophiliac HCV Plan, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) (collectively, the "Opt Out Plaintiffs") and the sum of \$533,000, representing the actuarially calculated present value of one-third of the costs of defending actions prosecuted by the Opt Out Plaintiffs. For greater certainty, any person who is a Class Member as presently defined may participate in the Plans created by the Agreement;

- (e) no person may opt out a person under a disability from either one of the Ontario Class Actions without the leave of this Court after notice to the Public Guardian and Trustee and/or the Children's Lawyer as appropriate;
- (f) upon delivery to the Trustee of a copy of a final judgment (as defined in Section 1.07 of the Agreement) obtained by an Opt Out Plaintiff against the FPT Governments or some or one of them or minutes of settlement entered into by an Opt Out Plaintiff and the FPT Governments or some or one of them and a copy of a final order of a Court approving the minutes of settlement, the FPT Governments or their designate shall be paid out of the Trust Fund:

(i) as at the date of said judgment or settlement, an amount equal to the amount that the Opt Out Plaintiff would have been entitled to receive from the Trust Fund had he or she qualified under a Plan; and

(ii) a one-time lump sum amount, to be approved by one of the Courts, in satisfaction of the amount that the Opt Out Plaintiff may thereafter have become entitled to receive from the Trust Fund from time to time had he or she qualified under a Plan, calculated in accordance with a protocol to be approved by the Courts;

provided however that in no circumstances shall the amount to be paid from the Trust Fund to the FPT Governments or some or one of them exceed the amount of the judgment or settlement paid to the Opt Out Plaintiff by the FPT Governments or some or one of them plus interest thereon;

- (g) no other amount shall be paid out of the Trust Fund to settle any action prosecuted by any Opt Out Plaintiff or to pay any judgment in any action prosecuted by any Opt Out Plaintiff or to indemnify the FPT Governments or some or one of them from any judgment or settlement of any action instituted or prosecuted by any Opt Out Plaintiff; and
- (h) the provisions of Section 11.02 of the Agreement and Section 6.03 of the Funding Agreement are inoperative and superceded by the provisions of subparagraphs 9(d), (e), (f) and (g) of this judgment.

10. THIS COURT ORDERS AND DECLARES that the Ontario Transfused Class Members and the Ontario Transfused Family Class Members who qualify pursuant to the provisions of:

- (a) the Transfused HCV Plan shall be paid in accordance with the provisions of the Transfused HCV Plan;
- (b) the Hemophiliac HCV Plan shall be paid in accordance with the provisions of the Hemophiliac HCV Plan as provided in subparagraph 9(a) of this judgment.

11. THIS COURT ORDERS AND DECLARES that the Ontario Hemophiliac Class Members and the Ontario Hemophiliac Family Class Members who qualify pursuant to the provisions of the Hemophiliac HCV Plan shall be paid in accordance with the provisions of the Hemophiliac HCV Plan.

12. THIS COURT DECLARES that:

- (a) If an Ontario Class Member or Ontario Family Class Member was receiving any medical, ancillary medical, health or drug benefits from any of the PT Governments on April 1, 1999, the receipt of payments pursuant to a Plan will not affect the quantity, nature or duration of any corresponding benefits that any Ontario Class Member or Ontario Family Class Member receives from any of the PT Governments after April 1, 1999, except to the extent that such benefits are related to the said

Ontario Class Member's infection with HCV in which case they are recoverable exclusively under Sections 4.06 and 4.07 of a Plan.

- (b) The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to an Ontario Class Member or Ontario Family Class Member pursuant to any legislation of any PT Government referred to in Appendix A to a Plan, provided that the receipt of loss of income or loss of support payments pursuant to Sections 4.02 and 6.01 of a Plan may have such an effect.
- (c) The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to an Ontario Class Member or Ontario Family Class Member pursuant to any social benefit programs of the Federal Government such as old age security and Canada Pension Plan, because 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 of a Plan may have such an effect.

13. THIS COURT DECLARES that, save and except for any payment made under subparagraph 9(f), no subrogation payment of any nature or kind shall be paid, directly or indirectly, under the Plans, and without restricting the generality of this provision, that:

- (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 a Plan;
- (b) no municipality and no department of a municipality will be paid under a Plan;
- (c) no person exercising a right of subrogation will be paid under a Plan; and
- (d) no Ontario Class Member or Ontario Family Class Member will be paid compensation if the claim is being asserted as a subrogated claim or if the Ontario Class Member or Ontario Family Class Member will hold any money paid under a Plan in trust for any other party exercising a right of subrogation or, except as provided in Section 8.02 of a Plan, if a payment under a Plan will lead to a reduction in other payments for which the Ontario Class Member or Ontario Family Class Member would otherwise qualify.

14. ~~THIS COURT ORDERS that Peterson Worldwide LLC, a limited liability company incorporated under the laws of the State of Illinois and Reed Consulting, Ltd., an Ontario corporation, carrying on business as Peterson Worldwide LLC of Canada, be and are hereby appointed, with joint and several liability, as the Administrator of the Plans with further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule B.~~

Amended by Order dated May 10, 2000. (See page 22A)

14. THIS COURT ORDERS that Crawford Adjusters Canada Incorporated/Expertises Crawford Canada Incorporée and Garden City Group Inc. be and are hereby appointed, with joint and several liability, as the Administrator of the Plans until further order of the Courts on the terms and conditions and with powers, rights, and duties and responsibilities set out in Schedule 3.

15. THIS COURT ORDERS that Royal Trust Company be and is hereby appointed as the Trustee of the Trust until further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 4 which are approved on an interim basis only.
16. THIS COURT ORDERS that the Investment Manager shall manage the investment of the whole or any portion of the assets of the Trust but only in accordance with the investment guidelines set out in Schedule 5 annexed hereto which are approved on an interim basis only.
17. THIS COURT ORDERS that TD Asset Management Inc. be and is hereby appointed as the Investment Manager until further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 6 annexed hereto which are approved on an interim basis only.
18. THIS COURT ORDERS AND DECLARES that by further order the Courts will appoint an Investment Consultant on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 7 annexed hereto which are approved on an interim basis only.
19. THIS COURT DECLARES that the Joint Committee shall be comprised of four persons: one Class Action Counsel to the Ontario Transfused Class Action appointed by this Court; one Class Action Counsel to the British Columbia Transfused Class Action



appointed by the Supreme Court of British Columbia; one Class Action Counsel to the Quebec Transfused Class Action appointed by the Superior Court of Quebec; and one Class Action Counsel to the Hemophiliac Class Actions appointed by the Courts.

20. THIS COURT ORDERS that Harvey T. Strosberg, Q.C. be and is hereby appointed to the Joint Committee as the Class Action Counsel to the Ontario Transfused Class Action until further order of this Court with the duties and responsibilities set out in the Agreement.

21. THIS COURT ORDERS that Bonnie A. Tough be and is hereby appointed to the Joint Committee as the Class Action Counsel to the Hemophiliac Class Actions until further order of the Courts with the duties and responsibilities set out in the Agreement.

22. THIS COURT ORDERS that, as soon as practicable after their appointments, the Trustee, the Investment Manager, the Investment Consultant and Fund Counsel shall consult each with the other and review the terms and conditions of their appointments, the investment guidelines and their interim powers, rights, duties and responsibilities and shall report to the Courts with their recommendations, if any, as to amendments to the terms and conditions of their appointments and their interim powers, rights, duties and responsibilities.

23. THIS COURT ORDERS AND DECLARES that the Joint Committee shall report to the Courts on or before June 30, 2000 and at least semi-annually thereafter until further order of the Courts.

24. THIS COURT DECLARES that, on September 30, 1999, the Contribution Amount as defined in the Funding Agreement was \$1,187,985,360.

25. THIS COURT DECLARES that, on the Approval Date, pursuant to Section 4.01(1) and 4.02(1) of the Funding Agreement, the Federal Government shall pay to the Trustee the amount due and owing as at September 30, 1999, being the sum of \$846,327,527, plus interest from and after September 30, 1999 to the date of payment in accordance with the Funding Agreement plus or minus any adjustment as provided in the Funding Agreement.

26. THIS COURT DECLARES that:

- (a) If any income taxes under the *Income Tax Act*, R.S.C. 1985, Chap.1 (5<sup>th</sup> Supp.), as amended, (the "*Income Tax Act (Canada)*") or the equivalent provisions of the income tax act of any Province or Territory are paid by the Trustee in respect of income of the Trust, the FPT Government to which the taxes were paid will pay an amount equivalent to the amount so paid to the Trustee and such amount will thereafter form part of the Trust Fund;
- (b) The amount of compensation paid to or received by a Class Member or Family Class Member pursuant to a Plan will not be required to be included

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

27. THIS COURT ORDERS AND DECLARES that, pursuant to subsection 26(7) of the Act and Section 10.01 of the Agreement, Mr. Justice Winkler shall supervise the execution of this judgment and the distribution, pursuant to the Plans and that, without limiting the generality of the foregoing, this Court may issue judgments or orders, in such form as are necessary, to implement and enforce the provisions of the Agreement, the Plans, the Funding Agreement and this judgment and may retain any advisor this Court in its discretion considers necessary and the costs of so doing shall be an expense of the Trust Fund.

28. THIS COURT DECLARES that, from time to time, it may:
- (a) remove the Fund Counsel for the Ontario Class Actions and appoint a replacement;
  - (b) remove its appointee of Class Action Counsel for the Ontario Transfused Class Action to the Joint Committee and appoint a replacement;
  - (c) remove any Referee/Arbitrator for the Ontario Class Actions and appoint a replacement;
  - (d) hear motions opposing the confirmation of the Referee's reports for the Ontario Class Actions;
  - (e) approve any costs incurred or to be incurred by Fund Counsel appointed for the Ontario Class Actions and its appointee as Class Action Counsel for the Ontario Transfused Class Action to the Joint Committee; and
  - (f) award costs of any motions opposing the confirmation of the Referee's reports for the Ontario Class Actions.

29. THIS COURT ORDERS AND DECLARES that the Children's Lawyer and the Public Guardian and Trustee:

- (a) shall be given notice of any motions to this Court for approval, amendment or rescission of protocols; and
- (b) may apply to this Court for advice and directions as he, she, it or they deem necessary.

30. ~~THIS COURT ORDERS AND DECLARES that this judgment is binding on all Ontario Class Members, including minors, unborn persons and persons under a disability, and all Ontario Family Class Members, including minors, unborn persons and persons under a disability, unless an Ontario Class Member or an Ontario Family Class~~

~~Member opts out of an Ontario Class Action by filing a written notice with the Administrator on or before June 30, 2000 or unless an Ontario Family Class Member is deemed to opt out in accordance with the provisions of this judgment.~~

31. THIS COURT ORDERS AND DECLARES that if an Ontario Class Member opts out of an Ontario Class Action each of his or her Ontario Family Class Members are deemed to have opted out of the Ontario Class Action in his or her capacity as an Ontario Family Class Member.

32. THIS COURT ORDERS that the Administrator shall, on or before September 1, 2000, report to this Court and advise as to the names of those persons who have opted out of the Ontario Class Actions.

33. THIS COURT ORDERS AND DECLARES that each Ontario Class Member, unless the Ontario Class Member opts out in accordance with the provisions of this judgment, and each Ontario Family Class Member unless the Ontario Family Class Member opts out or is deemed to have opted out in accordance with the provisions of this judgment, has released each of the Releasees from any and all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any such Ontario Class Member or Ontario Family Class Member ever had, now has or may hereafter have in any way relating to or arising from (i) in the case of each Ontario Transfused Class Member and Ontario Transfused Family Class Member under the Transfused HCV Plan,

30. THIS COURT ORDERS AND DECLARES that this judgment is binding on all Ontario Class Members, including minors, unborn persons and persons under a disability, and all Ontario Family Class Members, including minors, unborn persons and person under a disability, unless an Ontario Class Member or an Ontario Family Class Member opts out of an Ontario Class Action by filing a written notice with the Administrator on or before January 31, 2001 or unless an Ontario Family Class Member is deemed to opt out in accordance with the provisions of this judgment.

the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of each Ontario Transfused Class Member, Ontario Transfused Family Class Member, Ontario Hemophiliac Class Member and Ontario Hemophiliac Family Class Member under the Hemophiliac HCV Plan, the infection of a Primarily-Infected Hemophiliac with HCV from Blood including, in each case, the infection of a Secondly-Infected Person, whether such claims were made or could have been made in any proceeding including the Ontario Class Actions.

34. THIS COURT ORDERS AND DECLARES that the Ontario Class Members and the Ontario Family Class Members, unless the Ontario Class Member opts out in accordance with the provisions of this judgment, or the Ontario Family Class Member opts out or is deemed to opt out in accordance with the provisions of this judgment, separately and severally, have fully, finally and forever released each of the Releasees, separately and severally, and in each and every capacity that such actions, causes of actions, liabilities, claims or demands referred to in paragraph 33 of this judgment may be asserted against any Releasee.

35. THIS COURT ORDERS AND DECLARES that the Ontario Class Members and the Ontario Family Class Members, unless the Ontario Class Member opts out in accordance with the provisions of this judgment, or the Ontario Family Class Member opts out or is deemed to opt out in accordance with the provisions of this judgment, are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person 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*, R.S.O. 1990, c. N.1, as amended, or its counterpart in other jurisdictions, the common law or any other statute of Ontario or any other jurisdiction in any way relating to or arising from (i) in the case of each Ontario Transfused Class Member and Ontario Transfused Family Class Member under the Transfused HCV Plan, the infection of a Primarily-Infected Person with HCV during the Class Period, or (ii) in the case of each Ontario Transfused Class Member, Ontario Transfused Family Class Member, Ontario Hemophiliac Class Member and Ontario Hemophiliac Family Class Member under the Hemophiliac HCV Plan, the infection of a Primarily-Infected Hemophiliac with HCV from Blood, including, in each case, the infection of a Secondarily-Infected Person, provided that the foregoing excludes the CRCS.

36. THIS COURT ORDERS AND DECLARES that at the option of the FPT Governments or their representatives, each Ontario Class Member and Ontario Family Class Member receiving payment under one of the Plans will either,

- (a) pursue any claims as described in Section 11.01(c) of the Agreement that the Ontario Class Member or Ontario Family Class Member has against the CRCS, and assign to the FPT Governments the proceeds received by the Ontario Class Member or Ontario Family Class Member from any such claim, or
- (b) within the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, proceedings relating to the CRCS, prove, vote and otherwise act



- to promote those claims as described in Section 11.01(c) of the Agreement that the Ontario Class Member or Ontario Family Class Member has against the CRCS in accordance with directions given to the Ontario Class Member or Ontario Family Class Member 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 Ontario Class Member or Ontario Family Class Member, or
- (c) enter into a release of all of such claims against the CRCS substantially in the form of the releases attached as appendices to the Plans.

37. THIS COURT ORDERS AND DECLARES that the FPT Governments' obligations and liabilities pursuant to Article Four of the Agreement, the Funding Agreement and this judgment constitute the consideration for the releases and other matters referred to in this judgment and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Ontario Class Members and the Ontario Family Class Members, unless the Ontario Class Member opts out in accordance with the provisions in this judgment, or the Ontario Family Class Member opts out or is deemed to opt out in accordance with the provisions of this judgment are limited to the compensation payable pursuant to the Plans, as funded, pursuant to the Funding Agreement and this judgment as their only recourse on account of any and all

such actions, causes of actions, liabilities, claims and demands referred to in paragraph 33 of this judgment.

38. THIS COURT ORDERS AND DECLARES that, pursuant to subsection 26(10) of the Act, Sections 10.01(1)(o) and 12.03 of the Agreement and Section 10.02 of the Funding Agreement, but subject to the provisions of subparagraph 9(b) and (c) of this judgment, once the Plans and the Program have been fully administered in accordance with the Agreement and all obligations under this judgment have been satisfied, and the Courts have declared that the Plans and the Program have been fully administered in accordance with the Agreement, any assets remaining in the Trust Fund will be the sole property of the FPT Governments and shall be paid and transferred to the FPT Governments.

39. THIS COURT ORDERS AND DECLARES that, unless the Ontario Class Member opts out in accordance with the provisions of this judgment, or the Ontario Family Class Member opts out or is deemed to opt out in accordance with the provisions of this judgment, this judgment and the Agreement are binding upon all the Ontario Class Members and all the Ontario Family Class Members who are minors, unborn persons or persons under a disability, that the requirements of rule 7.08(4) of the Rules of Civil Procedure are dispensed with and that no additional court approval is necessary relating to any payment made to or for the benefit of any Ontario Class Member or Ontario Family Class Member who is a minor, an unborn person or a person under a disability.

40. THIS COURT ORDERS AND DECLARES that all information in any form whatsoever received, obtained, compiled or created by the Administrator, Trustee, Investment Manager, Investment Consultant and Auditors as a result of his, her, their or its involvement with the Agreement, Funding Agreement, administration of the Plans and the implementation of this judgment including the Claimants' Data is to be held in confidence and is to be used or disseminated solely for the purposes of administration of the Plans and the implementation of this judgment and is not to be used or disseminated for any other purposes whatsoever without an order of the Courts.

41. THIS COURT ORDERS AND DECLARES that the Administrator, Trustee, Investment Manager, Investment Consultant and Auditors do not have and shall not obtain any interest of any nature or kind in the Claimants' Data and in any information received, obtained, compiled or created by him, her, them or it in the course of the performance of his, her, their or its duties, in the course of administration of the Plans and in the implementation of this judgment.

42. THIS COURT ORDERS AND DECLARES that the Trustee shall hold in trust for the Class Members and Family Class Members legal title to the Claimants' Data received, obtained, compiled or created by the Administrator, Trustee, Investment Manager, Investment Consultant and Auditors.

43. THIS COURT ORDERS AND DECLARES that the Administrator, Investment Manager, Investment Consultant, Joint Committee and members of the Joint

Committee have no right, authority or ability to pledge the credit of the Trust Fund or in any way to encumber the Trust Fund.

44. THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceedings against the Administrator, Trustee, Investment Manager, Investment Consultant, Auditors, Fund Counsel, Joint Committee or members of the Joint Committee or their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Agreement, the Funding Agreement, the administration of the Plans or the implementation of this judgment, except with the leave of the Courts.

45. THIS COURT ORDERS AND DECLARES that the Ontario Class Members and the Ontario Family Class Members shall be given notice of the certification of the Ontario Class Actions and of this judgment in a manner which shall be directed by this Court by further order.

46. THIS COURT DECLARES that by further order it shall:

- (a) appoint Fund Counsel for the Ontario Class Actions on the terms and conditions and with the powers, rights, duties and responsibilities to be particularized;
- (b) appoint Referees/Arbitrators for the Ontario Class Actions on the terms and conditions and with the powers, rights, duties and responsibilities to be particularized; and

- (c) make all other necessary and ancillary orders for the implementation of the Agreement, the Funding Agreement and this judgment and the ongoing supervision thereof.

47. THIS COURT DECLARES that the Courts shall appoint a firm of Auditors on the terms and conditions and with the powers, rights, duties and responsibilities to be particularized and make all other necessary and ancillary orders for the implementation of the Agreement, the Funding Agreement and the Approval Orders and the ongoing supervision thereof.

48. THIS COURT ORDERS that the title of proceedings in this judgment shall be as follows:

BETWEEN:

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

Plaintiffs

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

Defendants

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

Intervenor

Proceeding under the Class Proceedings Act, 1992

Court File No. 98-CV-148405

BETWEEN:

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

Intervenor

Proceeding under the Class Proceedings Act, 1992

49. THIS COURT ORDERS that the title of proceedings in action number 98-CV-141369 shall be as follows:

Court file # 98-CV-141369

BETWEEN:

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

Plaintiffs

and

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

Defendants

and

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

Intervenor

Proceeding under the Class Proceedings Act, 1992

50. THIS COURT ORDERS that the title of proceedings in action number 98-CV-146405 shall be as follows:

Court File No. 98-CV-146405

BETWEEN:

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*

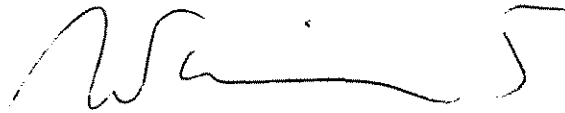
51. THIS COURT ORDERS that the fees and disbursements of :
- (a) the solicitors for the Class Action Plaintiffs in the Ontario Transfused Class Action;
  - (b) the solicitors for the Class Action Plaintiffs in the Ontario Hemophilic Class Action; and
  - (c) the solicitors for the intervenors and for the friends of the Court in the Ontario Class Actions;
- and all matters relating thereto be dealt with by this Court on December 9 and 10, 1999.

52. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, the Ontario Transfused Class Action and the Ontario Hemophilic Class Action be and are hereby dismissed without costs.

ENTERED AT/INSCRIT A TORONTO  
 ON/BOOK NO:  
 LE/DANS LE REGISTRE NO.:

DEC 14 1999

AS DOCUMENT NO.:  
 A TITRE DE DOCUMENT NO.:  
 PER/PAR: *A. Vancin*



JUSTICE

**JANUARY 1, 1986 - JULY 1, 1990 HEPATITIS C SETTLEMENT AGREEMENT**

**MADE AS OF**

**15 June 1999**



**JANUARY 1, 1986 - JULY 1, 1990 HEPATITIS C SETTLEMENT****Document****Tab****Settlement Agreement**

Schedule A - Transfused HCV Plan	A
Schedule B - Hemophiliac HCV Plan	B
Schedule C - Program	C
Schedule D - Funding Agreement	D
Schedule E - Social Benefits Legislation	E

**1986-1990 HEPATITIS C SETTLEMENT AGREEMENT**

**MADE AS OF**

**15 June 1999**

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**1986-1990 HEPATITIS C SETTLEMENT AGREEMENT**

THIS AGREEMENT is made as of 15 June 1999

**B E T W E E N:**

**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 GOUVERNEMENT DU QUEBEC** ("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**, plaintiffs in the Ontario Transfused Class Action

(the "Ontario Transfused Plaintiffs"), **DOMINIQUE HONHON**, plaintiff in the Québec Transfused Class Action (the "Québec Transfused Plaintiff"), **CHRISTOPHER FORREST MITCHELL**, plaintiff in the British Columbia Hemophiliac Class Action (the "British Columbia Hemophilia Plaintiff"), **JAMES KREPPNER**, and **BARRY ISAAC**, plaintiffs in the Ontario Hemophiliac Action (the "Ontario Hemophilia Plaintiffs") and **DAVID PAGE**, plaintiff in the Québec Hemophiliac Class Action (the "Québec Hemophilia Plaintiff") (collectively, the "Class Action Plaintiffs").

WHEREAS:

- A.** On 21 June 1996 the Québec Transfused Plaintiff commenced Action No. 500-06-000016-960 in the Superior Court of the Province of Québec for the District of Montreal against Canada, Québec, the CRCS and others (the "Québec Transfused Class Action"); on 19 September 1996 the British Columbia Transfused Plaintiff commenced Action No. C965349 in the Vancouver Registry of the Supreme Court of British Columbia against Canada, British Columbia and the CRCS (the "British Columbia Transfused Class Action"); and on 10 February 1998 the Ontario Transfused Plaintiffs commenced Action No. 98-CV-141369 in the Ontario Court (General Division), at Toronto, against Canada, Ontario and the CRCS (the "Ontario Transfused Class Action") (collectively, the "Transfused Class Actions").
- B.** On 24 April 1998 the Ontario Hemophilia Plaintiffs commenced Action No. 98-CV-146405 in the Ontario Court (General Division), at Toronto, against the CRCS and Canada (the "Ontario Hemophiliac Class Action"); on 1 May 1998 the British Columbia Hemophilia Plaintiff commenced Action No. A981187 in the Vancouver Registry of the Supreme Court of British Columbia against the CRCS and Canada (the "British Columbia Hemophiliac Class Action"); and on 7 May 1998 the Québec Hemophilia Plaintiff commenced Action No. 500-06-000068-987 in the Superior Court of the Province of Québec for the District of Montréal against the CRCS, Canada and Québec (the "Québec Hemophiliac Class Action") (collectively, the "Hemophiliac Class Actions").
- C.** The FPT Governments deny the allegations raised in the Class Actions and nothing in this Agreement will be construed as an admission of liability by any FPT Government.
- D.** The FPT Governments and the Class Action Plaintiffs, subject to the Approval Orders, have agreed to settle the Class Actions upon the terms contained in this Agreement.

E. So as to be bound by the Approval Orders in the Ontario Transfused Class Action and the Ontario Hemophiliac Class Action, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, PEI, Newfoundland, the Northwest Territories, Nunavut and the Yukon Territory may intervene therein.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the premises and the covenants and agreements herein contained, the Parties agree that all actions, causes of actions, liabilities, claims and demands whatsoever of the Class Members in any way relating to or arising from, in the case of Transfused Class Members, the infection of a Primarily-Infected Person with HCV during the Class Period and, in the case of Hemophiliac Class Members, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) will be finally settled based on the terms and conditions set forth herein upon delivery of the Approval Orders:

## **ARTICLE ONE INTERPRETATION**

### **1.01 Definitions**

In this Agreement, in addition to the terms defined in the description of the Parties and in the recitals set out above:

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

“**Agreement**” means this agreement, including its recitals and Schedules, as amended, supplemented or restated from time to time.

“**Approval Date**” means the date when the last Approval Order becomes final, provided there are no material differences in the Approval Orders.

“**Approval Orders**” means the judgments or orders of the Courts to be granted approving this 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 Québec.

“**Arbitrator**” means a person appointed as an arbitrator by the Courts pursuant to the provisions of Article Ten hereof and Article Ten of a Plan.

“**Auditors**” means the auditors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of Articles Eight and Ten.



“**Blood**” means Blood as defined in the Transfused HCV Plan or, in relation to hemophiliacs, as defined in the Hemophiliac HCV Plan.

“**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.

“**Claim**” means a claim made and a claim that may be made in the future pursuant to the provisions of a Plan.

“**Class Action Counsel**” means the respective counsel for each of the Class Action Plaintiffs.

“**Class Actions**” means, collectively, the British Columbia Transfused Class Action, the Ontario Transfused Class Action (which includes all Class Members as defined in the Transfused HCV Plan who are not included in the British Columbia Transfused Class Action or the Québec Transfused Class Action), the Québec Transfused Class Action, the British Columbia Hemophiliac Class Action, the Ontario Hemophiliac Class Action (which includes all Class Members as defined in the Hemophiliac HCV Plan who are not included in the British Columbia Hemophiliac Class Action or the Québec Hemophiliac Class Action) and the Québec Hemophiliac Class Action.

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

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

“**Contribution Amount**” has the meaning set out in Section 1.01 of the Funding Agreement.

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

“**CRCS**” means The Canadian Red Cross Society and its successors.

“**Disbursements**” has the meaning set out in Section 1.01 of the Funding Agreement.

“**Family Members**” means the Family Members as defined in both of the Plans.

“**Federal Government**” means the government of Canada.

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

**“Funding Agreement”** means an agreement in the form attached hereto as Schedule D.

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

**“Hemophiliac Class Members”** means Class Members as defined in the Hemophiliac HCV Plan.

**“Hemophiliac HCV Plan”** has the meaning set out in Section 3.02.

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

**“HIV Secondarily-Infected Persons”** means persons who are entitled to receive compensation under the Program.

**“Investment Advisors”** means the investment advisors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of Article Ten.

**“Joint Committee”** means a committee of four persons comprised of one Class Action Counsel from each of the Transfused Class Actions and one Class Action Counsel from the Hemophiliac Class Actions.

**“Parties”** means each of the FPT Governments, the British Columbia Transfused Plaintiff, the Ontario Transfused Plaintiffs, the Québec Transfused Plaintiff, the British Columbia Hemophilia Plaintiff, the Ontario Hemophilia Plaintiffs and the Québec Hemophilia Plaintiff.

**“Plans”** means, collectively, the Hemophiliac HCV Plan and the Transfused HCV Plan.

**“Primarily-Infected Person”** has the meaning set out in Section 1.01 of the Transfused HCV Plan.

**“Primarily-Infected Hemophiliac”** has the meaning set out in Section 1.01 of the Hemophiliac HCV Plan.

**“Program”** means the program described in Schedule C hereto which devolved from the Federal/Provincial/Territorial Assistance Program for HIV Secondarily-Infected Persons announced by the FPT Governments on 15 December 1998.

**“Provinces”** means, collectively, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, PEI and Newfoundland.

**“Referee”** means a person appointed as a referee by the Courts pursuant to the provisions of Article Ten hereof and Article Ten of a Plan.

**“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 or Primarily-Infected Hemophiliac received or took Blood, 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 the covenants set forth in Section 11.01 for those persons listed in (b) to (h) inclusive and holds the benefit of those covenants on their behalf as well as on its own behalf. For greater certainty, the CRCS is not a Releasee.

**“Secondarily-Infected Person”** has the meaning set out in Section 1.01 of the Transfused HCV Plan or the Hemophiliac HCV Plan, as applicable.

**“Settlement Amount”** has the meaning set out in Section 1.01 of the Funding Agreement.

**“Term”** means the period from and including the Approval Date to the date when this Agreement is terminated pursuant to the provisions of Section 12.03.

**“Territories”** means, collectively, the Northwest Territories, Nunavut and the Yukon Territory.

**“Transfused Class Members”** means Class Members as defined in the Transfused HCV Plan.

**“Transfused HCV Plan”** has the meaning set out in Section 3.01.

**“Trust”** has the meaning set out in Section 1.01 of the Funding Agreement.

**“Trust Fund”** means the trust fund to be established pursuant to the Funding Agreement.

**“Trustee”** means the trustee appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Articles Six and Ten.

## **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 Schedules are to Articles, Sections and Schedules of this Agreement.

## **1.03 Extended Meanings**

In this Agreement 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”.

## **1.04 No Contra Proferentem**

The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party is not applicable in interpreting this Agreement.

## **1.05 Statutory References**

In this Agreement, 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.

**1.06 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.

**1.07 Final Order**

For the purposes of this Agreement a judgment or order becomes final when the time for appealing or seeking leave to appeal the judgment or order has expired without an appeal being taken or leave to appeal being sought or, in the event that an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired.

**1.08 Currency**

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

**1.09 Schedules**

The following are the Schedules to this Agreement:

- Schedule A - Transfused HCV Plan;
- Schedule B - Hemophiliac HCV Plan;
- Schedule C - Program;
- Schedule D - Funding Agreement; and
- Schedule E - Social Benefits Legislation.

**1.10 Obligations of the FPT Governments**

It is understood that the FPT Governments will not have any obligations relating to the ongoing operations of the Plans except for their obligations as set out in Article Four of this Agreement and in the Funding Agreement.

## **ARTICLE TWO PURPOSES AND EFFECT OF AGREEMENT**

### **2.01 Purposes**

The purposes of this Agreement are (i) to establish the Transfused HCV Plan and the Hemophiliac HCV Plan, (ii) to settle the Class Actions and (iii) to provide for payment by the FPT Governments of the Contribution Amount to the Trustee and the payment by the Trustee of the Disbursements, in accordance with and as provided in the Funding 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. Each Approval Order will constitute approval of this Agreement in respect of all 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 Class Member will be necessary.

### **2.03 Effective in Entirety**

The Approval Orders must be issued with respect to this Agreement in its entirety (including all the Schedules) so that none of the provisions of this Agreement will become effective unless all the provisions of this Agreement become effective.

## **ARTICLE THREE PLANS AND PROGRAM**

### **3.01 Transfused HCV Plan**

On the Approval Date, the plan to provide compensation to persons who were infected with HCV through a Blood transfusion received in Canada during the Class Period and secondarily-infected spouses, secondarily-infected children and certain family members, all in the form attached hereto as Schedule A (the "Transfused HCV Plan"), will become effective.

### **3.02 Hemophiliac HCV Plan**

On the Approval Date, the plan to provide compensation to persons who are hemophiliacs, who received or took Blood during the Class Period and who were infected with HCV and secondarily-infected spouses, secondarily-infected children and certain family members, all in the form attached hereto as Schedule B (the "Hemophiliac HCV Plan"), will become effective.

### **3.03 Program**

The FPT Governments have established the Program to provide HIV Secondarily-Infected Persons with a lump-sum payment of \$240,000 per HIV Secondarily-Infected Person. Such payments will be made out of the Trust to a maximum of 240 payments. A description of the Program is set out in Schedule C attached hereto.

## **ARTICLE FOUR FPT GOVERNMENTS**

### **4.01 Funding Agreement**

The Parties will enter into the Funding Agreement.

### **4.02 Social Benefits**

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

(2) The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any legislation of any PT Government referred to in Schedule E hereto, provided that the receipt of loss of income or loss of support payments pursuant to Sections 4.02 and 6.01 of the Plans may have such an effect. The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any social benefit programs of the Federal Government 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 of a Plan may have such an effect.

### **4.03 No Additional Liability**

On and after the Approval Date, the only obligations and liabilities of any of the FPT Governments, including their respective past, present and future ministers and employees and their past and present agents, and their respective successors, under this Agreement are their obligations and liabilities under this Article Four and the Funding Agreement. For greater certainty, none of the FPT Governments will be liable to provide any additional funds if the

amount of funds to be provided by the FPT Governments pursuant to this Article Four and the Funding Agreement are insufficient to make all the payments to be made pursuant to this Agreement including, for greater certainty, the Plans and the Funding Agreement.

## **ARTICLE FIVE THE ADMINISTRATOR**

### **5.01 Appointment of Administrator**

The Courts will appoint an Administrator to administer the Plans with such powers, rights, duties and responsibilities as are determined by the Joint Committee and approved by the Courts.

### **5.02 Administrator's Duties**

Subject to obtaining the approval of the Courts, the Administrator's duties and responsibilities will include the following:

- (a) establishing and staffing "The 1986-1990 Hepatitis C Claims Centre";
- (b) developing, installing and implementing systems and procedures for receiving, processing, evaluating and making decisions respecting Claims including making all necessary inquiries (including consulting medical personnel) to determine the validity of any Claim and requiring any claimant to have a medical examination;
- (c) reporting to the Joint Committee and the Courts respecting Claims received and being administered;
- (d) providing personnel in such reasonable numbers as are required for the performance of its duties, and training and instructing them;
- (e) keeping or causing to be kept accurate accounts of its activities and its administration of the Plans, preparing such financial statements, reports and records as are required by the Joint Committee, Fund Counsel and the Courts, in form and content as directed by the Courts, and submitting them to the Joint Committee, Fund Counsel and the Courts monthly or so often as the Courts direct;
- (f) receiving and responding to all enquiries and correspondence respecting Claims, supplying claim forms, reviewing and evaluating all Claims, making decisions in respect of Claims, giving notice of its decision, receiving compensation payments on behalf of the Class Members out of the Trust and forwarding the compensation in accordance with the provisions of the Plans within a reasonable



period of time and communicating with a claimant, in either English or French, as the claimant elects;

(g) assisting in the completion of claim forms and attempting to resolve any disputes with claimants;

(h) maintaining a database with all information necessary to permit the Courts to evaluate the financial viability and sufficiency of the Trust Fund from time to time; and

(i) such other duties and responsibilities as the Courts may from time to time by order direct.

### **5.03 Decisions of the Administrator**

The Administrator will give notice of its decision in respect of a Claim to a claimant promptly after the decision is made. A decision of the Administrator in respect of a Claim will, subject to the claimant's right to refer the decision to a Referee or an Arbitrator pursuant to provisions of the Plans, be final and binding upon the claimant and the Administrator.

### **5.04 Fees**

The fees, disbursements and other costs of the Administrator will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

## **ARTICLE SIX THE TRUSTEE**

### **6.01 Appointment of Trustee**

The Courts will appoint a Trustee to act as the trustee of the Trust with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Trustee will include its duties and responsibilities as set out in the Funding Agreement and the Trustee will be obliged to act in accordance with the provisions of the Funding Agreement.

**6.02 Fees**

The fees, disbursements and other costs of the Trustee will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

**ARTICLE SEVEN  
FUND COUNSEL****7.01 Appointment of Fund Counsel**

The Courts will appoint Fund Counsel with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Fund Counsel will include:

- (a) defending decisions made by the Administrator;
- (b) defending and advancing the interests of the Trust;
- (c) receiving financial statements and actuarial and other reports relating to the financial sufficiency of the Trust Fund from time to time; and
- (d) if deemed necessary or desirable by Fund Counsel, making applications to the Courts pursuant to Section 10.01.

**7.02 Fees**

The fees, disbursements and other costs of the Fund Counsel will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

**ARTICLE EIGHT  
THE AUDITORS****8.01 Appointment of Auditors**

The Courts will appoint Auditors with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Auditors will include (i) to audit the accounts of the Administrator for the Plans and the Trust in accordance with generally accepted auditing standards on an

annual basis and (ii) to file the financial statements of the Administrator for the Plans and the Trust together with the Auditors' report thereon with the Courts and deliver a copy thereof to the Joint Committee, the Trustee and the Fund Counsel within 60 days after the end of each financial year of the Plans and the Trust.

#### **8.02 Fees**

The fees, disbursements and other costs of the Auditors will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

### **ARTICLE NINE JOINT COMMITTEE**

#### **9.01 Appointment of Joint Committee**

The Courts will appoint a Joint Committee with such powers, rights, duties and responsibilities as the Courts direct.

#### **9.02 Joint Committee's Duties**

Without limiting the generality of the foregoing, the duties and responsibilities of the Joint Committee will include:

- (a) recommending from time to time persons for appointment by the Courts pursuant to the provisions of Article Ten;
- (b) establishing protocols, which must be approved by the Courts, for the Administrator, Trustee, Referees and Arbitrators for the administration of this Agreement and for the processing and payment of Claims, and rescinding or amending any of such protocols with the approval of the Courts;
- (c) receiving and assessing information received from the Administrator, the Trustee, the Auditors and Fund Counsel and applying to the Courts for advice and direction;
- (d) retaining actuaries to determine the financial sufficiency of the Trust Fund from time to time;
- (e) receiving advice from the Investment Advisors on the investment of the assets of the Trust; and
- (f) making applications to the Courts pursuant to Section 10.01(1).

Decisions of the Joint Committee will require the approval of all members of the Joint Committee.

### **9.03 Fees**

The fees, disbursements and other costs of the Joint Committee will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

## **ARTICLE TEN SUPERVISION BY THE COURTS**

### **10.01 Supervising Role of the Courts**

(1) The Courts will issue judgments or orders in such form as is necessary to implement and enforce the provisions of this Agreement and will supervise the ongoing performance of this Agreement including the Plans and the Funding Agreement. Without limiting the generality of the foregoing, the Courts will:

- (a) appoint and, if necessary, remove the Administrator;
- (b) appoint and, if necessary, remove the Trustee;
- (c) appoint and, if necessary, remove the Fund Counsel;
- (d) appoint and, if necessary, remove the Auditors;
- (e) appoint and, if necessary, remove any member of the Joint Committee;
- (f) appoint and, if necessary, remove any Referee or Arbitrator;
- (g) appoint and, if necessary, remove any Investment Advisor;
- (h) approve, rescind or amend the protocols submitted by the Joint Committee or any Class Action Counsel;
- (i) on application of any Party or the Joint Committee made within 180 days after (i) 31 December 2001 and (ii) each third anniversary of such date, and on application of the Joint Committee or any Class Action Counsel or the Fund Counsel made at any time, assess the financial sufficiency of the Trust Fund and determine, among other things, (A) whether the restrictions on payments of amounts in full in the Plans should be varied or removed in whole or in part, and (B) whether the terms of the Plans

should be amended due to a financial insufficiency or anticipated financial insufficiency of the Trust Fund;

- (j) hear motions opposing confirmation of any Referee's reports;
- (k) on application of the Joint Committee, approve the terms of investment guidelines for the assets of the Trust;
- (l) on application of the Administrator, Fund Counsel, the Auditors, any Class Action Counsel, the Joint Committee or the Trustee, provide advice and direction;
- (m) approve any amendment or supplement to, or restatement of, this Agreement agreed to in writing by the FPT Governments and the Joint Committee;
- (n) approve any costs incurred or to be incurred in administering this Agreement including, for greater certainty, the Plans, the Program (up to a maximum of \$2 million) and the Funding Agreement and the defence costs payable out of the Trust pursuant to Section 11.02 hereof; and
- (o) declare this Agreement to be terminated and, if applicable, order that any assets remaining in the Trust Fund be the sole property of and transferred to the FPT Governments.

(2) All matters to be determined by the Courts pursuant to Section 10.01(1) will take effect only upon the date when the last judgment or order of the Courts becomes final without any material differences in the three judgments or orders.

## **ARTICLE ELEVEN RELEASES**

### **11.01 Releases**

The Approval Orders will declare that:

- (a) each Class Member has released each of the Releasees from any and all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any such Class Member ever had, now has or may hereafter have in any way relating to or arising from (i) in the case of each Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of each Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected

Person) whether such claims were made or could have been made in any proceeding including the Class Actions;

(b) the Class Members, separately and severally, fully, finally and forever release each of the Releasees, separately and severally, and in each and every capacity that such actions, causes of actions, liabilities, claims or demands may be asserted against any Releasee;

(c) the Class Members are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person 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 Ontario or any other jurisdiction in any way relating to or arising from (i) in the case of each Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period, or (ii) in the case of each Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person), provided that the foregoing excludes the CRCS;

(d) at the option of the FPT Governments or their representatives, each Class Member receiving payment under one of the Plans will either,

- (i) pursue any claims as described in Section 11.01(c) that the Class Member has against the CRCS, and assign to the FPT Governments the proceeds received by the Class Member from any such claims, or
- (ii) within the *Companies' Creditors Arrangement Act* (Canada) proceedings relating to the CRCS, prove, vote and otherwise act to promote those claims as described in Section 11.01(c) that the Class Member has against the CRCS in accordance with directions given to the Class Member 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 Class Member, or
- (iii) enter into a release of all of such claims against the CRCS substantially in the form of the releases attached as appendices to the Plans.

(e) the FPT Governments' obligations and liabilities pursuant to Article Four hereof and the Funding Agreement constitute the consideration for the releases and other matters referred to in Sections 11.01(a) to (d) inclusive and such consideration

is in full and final settlement and satisfaction of any and all claims referred to therein and the Class Members are limited to the compensation payable pursuant to the Plans as funded, in whole or in part, pursuant to the Funding Agreement as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.

#### **11.02 Claims by Opt-Outs and Others**

If any person who opts out of a Class Action or any Class Member who is not bound by the provisions of this Agreement or any other person who claims over or brings a third party claim makes any claim or demand or takes any action or proceeding against any FPT Government in any way relating to or arising from (i) in the case of a Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or, (ii) in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person), the amount payable by a FPT Government to the person who opts out of a Class Action or Class Member who is not bound by the provisions of this Agreement or person who claims over or brings a third party claim pursuant to either a final judgment of a court in a contested action or a settlement approved by one of the Courts and an amount equal to one-third of the defence costs (including costs of counsel, disbursements and applicable taxes) arising out of any action (whether an FPT Government has been successful in defending the action or not) or settlement and approved by one of the Courts will be paid out of the Trust.

#### **11.03 Dismissal of Actions**

Each of the Class Actions will be dismissed on the Approval Date in accordance with the terms of the Approval Orders.

#### **11.04 Cessation of Litigation**

(1) Upon execution of this Agreement, the Class Action Plaintiffs and Class Action Counsel will cooperate with the FPT Governments to obtain approval of this Agreement and general participation by Class Members in the Plans.

(2) Each Class Action Counsel will undertake, within five Business Days after the Approval Date, not to commence or assist or advise on the commencement or continuation of 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 Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person), provided that nothing in the Agreement

will prevent any Class Action Counsel from advising any person to obtain independent legal advice before deciding whether to opt out of a Class Action.

(3) Each Class Member who has commenced any action or proceeding as described in Section 11.04(2), other than the Class Actions, must consent to a dismissal of such action or proceeding without costs before receiving any payment under a Plan.

## **ARTICLE TWELVE CONDITIONS, AMENDMENT AND TERMINATION**

### **12.01 Agreement Conditional**

This Agreement will not be effective unless and until it is approved by the Court in each of the Class Actions, and if such approvals are not granted without any material differences therein, this Agreement will be thereupon terminated and none of the Parties will be liable to any of the other Parties hereunder.

### **12.02 Amendments**

Except as expressly provided in this Agreement, no amendment or supplement may be made to the provisions of this Agreement and no restatement of this Agreement may be made unless agreed to by the FPT Governments and all members of the Joint Committee in writing and any such amendment, supplement or restatement is approved by the Courts without any material differences.

### **12.03 Termination**

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

(2) Any of the FPT Governments or the Joint Committee may apply for a declaration pursuant to Section 12.03(1).

(3) After this Agreement is terminated by the Courts, any assets remaining in the Trust will be the sole property of and transferred to the FPT Governments.



**ARTICLE THIRTEEN  
GENERAL**

**13.01 Notices**

Any notice or other communication to be given in connection with this Agreement will be given in writing and will be given by personal delivery or by electronic communication addressed to the recipient as follows:

- (a) to The Attorney General of Canada:

Justice Canada, Department of Health  
Brooke Claxton Building, 2nd Floor  
Tunney's Pasture  
P. O. Box: Postal Locator: 0902D  
Ottawa, Ontario  
K1A 0K9

Attention:               Senior General Counsel  
Facsimile No.:         (613) 957-1327

- (b) to Her Majesty the Queen In Right of the Province of British Columbia:

c/o Ministry of the Attorney General  
6th Floor, 1001 Douglas Street  
Victoria, B.C.  
V8W 2C5

Attention:               Supervising Counsel  
Facsimile No.:         (250) 356-9154

- (c) to Her Majesty the Queen In Right of the Province of Alberta:

c/o Alberta Justice  
Civil Law Branch, 5th Floor  
9833 - 109th Street  
Edmonton, Alberta  
T5K 2E8

Attention:               Minister of Health and Wellness  
Facsimile No.:         (780) 415-0961

Attention: Minister of International and Intergovernmental  
Relations

(d) to Her Majesty the Queen In Right of the Province of Saskatchewan:

c/o Saskatchewan Justice  
Civil Law Division  
9th Floor  
1874 Scarth Street  
Regina, Saskatchewan  
S4P 3V7

Attention: Darryl Bogdasavich, Q.C.  
Facsimile No.: (306) 787-0581

(e) to Her Majesty the Queen In Right of the Province of Manitoba:

Manitoba Justice  
Suite 730  
405 Broadway  
Winnipeg, Manitoba  
R3C 3L6

Attention: Director of Legal Services  
Facsimile No.: (204) 948-2041

(f) to Her Majesty the Queen In Right of Ontario:

c/o Ministry of the Attorney General for Ontario  
Director, Crown Law Office Civil  
8th Floor, 720 Bay Street  
Toronto, Ontario  
M5G 2K1

Facsimile No.: (416) 326-4181

(g) to Le Gouvernement du Québec:

c/o La Procureure Générale du Québec  
1 est, rue Notre-Dame, 8 ième étage  
Montreal, Québec  
H2Y 1B6

Attention: Robert Monette  
Facsimile No.: (514) 873-7074

(h) to Her Majesty the Queen In Right of the Province of New Brunswick:

c/o Department of Justice  
Legal Services Branch  
Room 444, Centennial Building  
670 King Street  
P. O. Box 6000  
Fredericton, New Brunswick  
E3B 5H1

Attention: William A. Anderson  
Facsimile No.: (506) 453-3275

(i) to Her Majesty the Queen In Right of the Province of Nova Scotia:

Department of Health  
P. O. Box 488  
Halifax, Nova Scotia  
B3J 2R8

Attention: Deputy Minister of Health  
Facsimile No.: (902) 424-0559

(j) to Her Majesty the Queen In Right of the Province of Prince Edward Island:

Department of Community Affairs and Attorney General  
P. O. Box 2000, 11 Kent Street, 1st Floor  
Charlottetown, Prince Edward Island  
C1A 7N8

Attention: Adele MacLeod  
Facsimile No.: (902) 368-4563

(k) to Her Majesty the Queen In Right of the Province of Newfoundland:

Department of Justice  
Confederation Building  
P. O. Box 8700  
St. John's, Newfoundland  
A1B 4J6

Attention: Mrs. Lynn Spracklin, Q.C.  
Deputy Attorney General  
Facsimile No.: (709) 729-2129

(l) to The Government of the Northwest Territories:

Government of the Northwest Territories  
Legislative Assembly (2)  
P. O. Box 1320  
Yellowknife, Northwest Territories  
X1A 2L9

Attention: The Honourable Floyd Roland  
Minister of Health and Social Services  
Facsimile No.: (867) 873-0399

(m) to The Government of Nunavut:

Department of Justice  
Government of Nunavut  
P. O. Box 800  
Iqaluit, NT  
X0A 0H0

Attention: Nora Sanders  
Deputy Minister of Justice  
Facsimile No.: (867) 979-5977

(n) to The Government of the Yukon Territory:

c/o Yukon Justice  
Legal Services, 2nd Floor  
Andrew Philipsen Law Centre  
2130 Second Avenue  
Whitehorse, Yukon  
Y1A 5C3

Attention: Director of Legal Services  
Facsimile No.: (867) 393-6379

(o) to Anita Endean:

c/o Camp Church & Associates  
4th Floor, Randall Building  
555 West George Street  
Vancouver, British Columbia  
V6B 1Z5

Attention: J.J. Camp, Q.C.  
Facsimile No.: (604) 689-7554

(p) to Martin Henry Griffen and Anna Kardish:

c/o Gignac, Sutts  
600 Westcourt Place  
251 Goyeau Street  
Windsor, Ontario  
N9A 6V4

Attention: Harvey T. Strosberg, Q.C.  
Facsimile No.: (519) 258-9527

(q) to Dominique Honhon:

c/o Pierre R. Lavigne  
220-440 Laurier Avenue, West  
Ottawa, Ontario  
K1R 7X6

Facsimile No.: (613) 782-2445

and to:

Marchand, Magnan, Melanson, Forget  
Ste. 1640  
600 rue de la Gauchetiere  
Montreal, Québec  
H3B 4L8

Attention: Michel Savonitto  
Facsimile No.: (514) 861-0727

(r) to Christopher Forrest Mitchell:

c/o Blake, Cassels & Graydon  
Three Bentall Centre, Suite 2600  
595 Burrard Street  
Vancouver, British Columbia  
V7X 1L3

Attention: Marvin R. V. Storrow  
Facsimile No.: (604) 631-3309

(s) to James Kreppner and Barry Isaac:

c/o Hodgson Tough Shields DesBrisay O'Donnell  
36 Toronto Street, Suite 550  
Toronto, Ontario  
M5C 2C5

Attention: Bonnie A. Tough  
Facsimile No.: (416) 304-6406

(t) to David Page:

c/o Petit Blaquiére Dagenais  
5929, Transcanadienne, Suite 230  
Ville St-Laurent, Québec  
H4T 1Z6

Attention: Jean Blaquiére  
Facsimile No.: (514) 744-8003

or to such other address, individual or electronic communication number as a Party may from time to time advise by notice given pursuant to this Section. Any notice or other communication will be exclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not so transmitted.

### **13.02 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth in this Agreement.

### **13.03 Class Action Counsel Fees**

The fees, disbursements, costs, GST and other applicable taxes of Class Action Counsel will be paid out of the Trust. Fees will be fixed by the Court in each Class Action on the basis of a lump sum, hourly rate, hourly rate increased by a multiplier or otherwise, but not on the basis of a percentage of the Settlement Amount.

### **13.04 Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Parties.

### **13.05 Counterparts**

This Agreement may be executed in English or French in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement.

SIGNED, SEALED AND DELIVERED )	THE ATTORNEY GENERAL OF CANADA
in the presence of: )	)
)	)
)	)
)	By: "Ivan G. Whitehall" _____
)	Name: I. G. Whitehall, Q.C.
)	Office: Chief General Counsel

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF BRITISH COLUMBIA  
)  
)

) By: "Penny Priddy"  
) Name: Honourable Penny Priddy, Minister of  
) Office: Health and Minister Responsible for Seniors  
)

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF ALBERTA  
)  
)

) By: "Halvar Jonson"  
) Name: H. C. Jonson  
) Office: Minister of Health and Wellness  
)

) And: "S. McClellan"  
) Name: Hon. Shirley McClellan, Minister of  
) Title: International & Intergovernmental Affairs  
)

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF SASKATCHEWAN  
)  
)

) By: "Pat Atkinson"  
) Name: Pat Atkinson  
) Office: Minister of Health  
)

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF MANITOBA  
)  
)

) By: "Eric Stefanson"  
) Name: Honourable Eric Stefanson  
) Office: Minister of Health  
)

) HER MAJESTY THE QUEEN IN RIGHT  
) OF ONTARIO  
)  
)

) By: "Jeffrey C. Lozon"  
) Name: Jeffrey C. Lozon  
) Office: Deputy Minister of Health



28

) LE GOUVERNEMENT DU QUEBEC

)

)

) By: "P. Marois"

) Name: Pauline Marois

) Office: Ministre d'État à la Santé et aux Services sociaux

)

)

) And: "J. Facal"

) Name: Joseph Facal, Ministre délégué aux

) Office: affaires intergouvernementales canadiennes

)

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF NEW BRUNSWICK

)

)

) By: "Ann Breault"

) Name: Ann Breault, Minister of

) Office: Health and Community Services

)

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF NOVA SCOTIA

)

)

) By: "James A. Smith"

) Name: Dr. James A. Smith

) Office: Minister of Health

)

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF PRINCE EDWARD  
) ISLAND

)

)

) By: "Mildred Dover"

) Name: Mildred Dover, Minister of

) Office: Health and Social Services

)

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Deborah E. Fry  
Deputy Minister

Tim Murphy  
Assistant Deputy Minister

"J. J. Camp"  
as to the signature of  
Anita Endean

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF NEWFOUNDLAND  
)  
)  
)

) By: "Joan Aylward"  
) Name: Joan Marie Aylward  
) Office: Minister of Health and Community Services  
)  
)

) And: "B. Tobin"  
) Name: Brian Tobin  
) Office: Premier  
)  
)

) THE GOVERNMENT OF  
) THE NORTHWEST TERRITORIES  
)  
)

) By: "Floyd K. Roland"  
) Name: Floyd K. Roland  
) Office: Minister of Health and Social Services  
)  
)

) THE GOVERNMENT OF NUNAVUT  
)  
)

) By: "Edward Picco"  
) Name: Edward Picco  
) Office: Minister of Health and Social Services  
)  
)

) THE GOVERNMENT OF THE YUKON  
) TERRITORY  
)  
)

) By: "David Sloan"  
) Name: David Sloan  
) Office: Minister, Health and Social Services  
)  
)

) "Anita Endean"  
) Anita Endean  
)  
)

)  
 )  
 )  
"Harvey T. Strosberg"  
 as to the signature of  
 Martin Henry Griffen

)  
 )  
 )  
"M. H. Griffen"  
 Martin Henry Griffen

)  
 )  
 )  
"Harvey T. Strosberg"  
 as to the signature of  
 Anna Kardish

)  
 )  
 )  
"A. Kardish"  
 Anna Kardish

)  
 )  
 )  
"Pierre R. Lavigne"  
 as to the signature of  
 Dominique Honhon

)  
 )  
 )  
"Dominique Honhon"  
 Dominique Honhon

)  
 )  
 )  
"David Gruber"  
 as to the signature of  
 Christopher Forrest Mitchell

)  
 )  
 )  
"Christopher Mitchell"  
 Christopher Forrest Mitchell

)  
 )  
 )  
"David Robins"  
 as to the signature of  
 James Kreppner

)  
 )  
 )  
"James Kreppner"  
 James Kreppner

)  
 )  
 )  
"Elena Likhof"  
 as to the signature of  
 Barry Isaac

)  
 )  
 )  
"Barry M. Isaac"  
 Barry Isaac

)  
 )  
 )  
"David Robins"  
 as to the signature of  
 David Page

)  
 )  
 )  
"David Page"  
 David Page

**SCHEDULE A**

**TRANSFUSED HCV PLAN**

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**SCHEDULE A**  
**TRANSFUSED HCV PLAN**

**ARTICLE ONE**  
**INTERPRETATION**

**1.01 Definitions**

**“Administrator”** means the Administrator appointed from time to time by the Courts pursuant to the Settlement Agreement.

**“Approval Date”** means the date when the judgments or orders of the Courts approving the Settlement Agreement become final and, as a result, this Plan becomes effective.

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

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

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

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

**“Arbitrator”** means a person appointed as an arbitrator by the Courts pursuant to the provisions of Section 10.02 hereof and 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”** means whole blood and the following blood products: packed red cells, platelets, plasma (fresh frozen and banked) and white blood cells. 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



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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.

**“Claim”** means a claim made and a claim that may be made in the future pursuant to the provisions of this Plan.

**“Class Action Counsel”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“Class Members”** means, collectively, all Primarily-Infected Persons, all Secondarily-Infected Persons, all HCV Personal Representatives and all Family Members but excludes, for greater certainty, all persons who opt 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.

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“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 opts out of the Class Action in which he or she would otherwise be a Class Member.

“FPT Governments” means, collectively, (i) the government of Canada, (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” has the meaning set out in Section 1.01 of the Settlement Agreement.

“Grandchild” means the Child of a Child.

“Grandparent” means the Parent of a Parent.

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**“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 Person or a Secondarily-Infected Person.

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

**“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”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“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 Person or a person who would otherwise be a Secondarily-Infected Person but is not because he or she opts out of the Class Action in which he or she would otherwise be 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 opts out of the Class Action in which he or she would otherwise be 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.

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**“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.

**“Plan”** means this Transfused HCV Plan including its Appendices, as amended, supplemented or restated from time to time.

**“Primarily-Infected Person”** means a person who received a Blood 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 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 transfusion received in Canada during the Class Period; or
- (c) such person opts out of the Class Action in which he or she would otherwise be 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 pursuant to the provisions of Section 10.02 hereof and Article Ten of the Settlement Agreement.

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

- (a) a Spouse of a Primarily-Infected Person or Opted-Out Primarily-Infected Person who is or was infected with HCV by such Primarily-Infected Person or Opted-Out Primarily-Infected Person provided the Claim of the Spouse is made:
  - (i) before the expiration of three years from the date the Primarily-Infected Person first makes a Claim, his or her HCV Personal Representative makes the first Claim on his or her behalf or the Opted-Out Primarily-Infected Person opts out;

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- (ii) in accordance with the provisions of Section 3.05(1), where a HCV Personal Representative makes the first Claim on behalf of a Primarily-Infected Person who is deceased; or
- (iii) in accordance with the provisions of Section 3.08, where the Primarily-Infected Person has not made a Claim; 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 Person 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 opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Settlement Agreement”** means the agreement made as of 15 June 1999 between the FPT Governments and the plaintiffs in the Class Actions.

**“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 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

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- (ii) in a relationship of some permanence if they are the Parents of a Child.

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

**“Traceback Procedure”** means a targeted search for and investigation of the donor and/or the units of Blood received by a HCV Infected Person.

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

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

## **1.02 Headings**

The division of this 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 Plan. The terms “hereof”, “hereunder” and similar expressions refer to this 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 Schedules of this Plan.

## **1.03 Extended Meanings**

In this 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 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 Class Member is deemed to be resident in the Province or Territory where he or she ordinarily resides or, if the Class Member resides outside of Canada, in the Province or Territory where the relevant Primarily-Infected Person or Opted-Out Primarily-Infected Person first received a Blood 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**

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

**1.08 Appendices**

The following are the Appendices to this Plan:

- Appendix A - Social Benefits Legislation;
- Appendix B - Release;
- Appendix C - Reference Rules; and
- Appendix D - Arbitration Rules.

**ARTICLE TWO  
PURPOSE AND EFFECT OF PLAN**

**2.01 Purpose**

The purpose of this Plan is to provide compensation to Class Members on the terms and subject to the conditions set out herein.

**2.02 Binding Effect**

This Plan is binding on all Class Members.

**ARTICLE THREE  
REQUIRED PROOF FOR COMPENSATION**

**3.01 Claim by Primarily-Infected Person**

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

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- (a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Québec records demonstrating that the claimant received a Blood transfusion in Canada 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) 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 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 transfusion in Canada during the Class Period and at the time of delivery of the application hereunder.

(2) Notwithstanding the provisions of Section 3.01(1)(a), if a claimant cannot comply with the provisions of Section 3.01(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 transfusion in Canada during the Class Period.

(3) Notwithstanding the provisions of Section 3.01(1)(c), if a claimant cannot comply with the provisions of Section 3.01(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 transfusion in Canada during the Class Period.

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

(1) A person claiming to be a Secondarily-Infected Person must deliver to the Administrator an 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 Person or an Opted-Out Primarily-Infected Person or by a Parent who is an HCV-Infected Person or an Opted-Out HCV Infected Person including a statutory declaration of the claimant declaring that (i) he or she never used non-prescription intravenous drugs and (ii) 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) an HCV Antibody Test report, a PCR Test report or similar test report pertaining to the claimant; and



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- (c) the evidence required by Sections 3.01 and 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 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 Person or Opted-Out Primarily-Infected Person or 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;
- (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 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 Claim.

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### **3.04 Traceback Procedure**

(1) Notwithstanding any other provision of this Agreement, if the results of a Traceback Procedure demonstrate that one of the donors or units of Blood received by a HCV-Infected Person or Opted-Out HCV Infected Person before 1 January 1986 is or was HCV antibody positive or that none of the donors or units of Blood 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 Claim of such HCV Infected Person and all Claims pertaining to such HCV Infected Person or Opted-Out HCV Infected Person including Claims of Secondarily-Infected Persons, HCV Personal Representatives, Dependents 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 transfusion received in Canada during the Class Period or that the relevant Secondarily-Infected Person or Secondarily-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 Parent who is a HCV Infected Person or Opted-Out HCV 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 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 must deliver to the Administrator, within three years after the death of such HCV Infected Person or within two years after the Approval Date, whichever event is the last to occur, an 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 Person, the proof required by Sections 3.01 and 3.03; or
  - (ii) if the deceased was a Secondarily-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

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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 a minor or incompetent must deliver to the Administrator an 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 Person, the proof required by Sections 3.01 and 3.03; 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) Notwithstanding the provisions of Section 3.01(1)(b), if a deceased Primarily-Infected Person was not tested for the HCV antibody or HCV the HCV Personal Representative of such deceased Primarily-Infected Person may deliver, instead of the evidence referred to in Section 3.01(1)(b), evidence of any one of the following:

- (a) a liver biopsy consistent with HCV in the absence of any other cause of chronic hepatitis;
- (b) an episode of jaundice within three months of a Blood transfusion in the absence of any other cause; or
- (c) a diagnosis of cirrhosis in the absence of any other cause.

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.

(4) Notwithstanding the provisions of Section 3.02(1)(b), if the HCV Personal Representative of a deceased Secondarily-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 Secondarily-Infected Person was infected with HCV.

(5) For the purposes of Sections 3.05 (1) and (2), the statutory declaration required by Sections 3.01(1)(c) and 3.02(1)(a) must be made by a person who is or was

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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 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 a 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;
- (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 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 Claim.

### **3.06 Claim by Dependant**

A person claiming to be a Dependant of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year of the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

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- (a) proof as required by Sections 3.05(1)(a) and (b) (or, if applicable, Section 3.05(3) or (4)) and 3.05(5) and (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 Claim by Family Member**

A person claiming to be a Family Member referred to in clause (a) of the definition of Family Member in Section 1.01 of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year of the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

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

### **3.08 First Claim Deadline**

Except as otherwise expressly provided in this Agreement, no person may make a Claim for the first time under this Plan after 30 June 2010 unless:

- (a) the Claim is made within one year of the person attaining his or her age of majority; or
- (b) the Claim is made within the three year period following the date upon which the person first learned of his or her infection with HCV and the Court having jurisdiction over the person grants leave to the person to apply for compensation.

## **ARTICLE FOUR COMPENSATION TO APPROVED HCV INFECTED PERSONS**

### **4.01 Fixed Payments**

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

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- (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 (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 tests blood tests for a minimum of three months demonstrating:
    - a. polyclonal increase in gamma globulins on a serum protein electrophoresis with decreased albumin;

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- 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 \$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 such 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;

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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(3), 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 medical 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.

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

(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, (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

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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

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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**

(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.

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

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**

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**

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**

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**

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.

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

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.

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

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

(1) If a HCV Infected Person died prior to 1 January 1999 and his or her HCV Personal Representative delivers to the Administrator the evidence required under Article Three within the period set out in Section 3.05, the Approved HCV Personal Representative is entitled to be reimbursed for the uninsured funeral expenses incurred up to a maximum of \$5,000 and, subject to the provisions of Section 5.01(2), the Approved HCV Personal Representative will be paid the amount of \$50,000 in full satisfaction of any and all Claims that the HCV Infected Person would have had under this Plan if he or she had been alive on or after 1 January 1999. This \$50,000 payment to the Approved HCV Personal Representative is in addition to the Claims of Dependents and other Family Members pursuant to Article Six and will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

(2) Instead of the \$50,000 payment pursuant to Section 5.01(1), if the Approved 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 Claims under this Plan agree to be paid \$120,000 in full satisfaction of all their Claims pursuant to this Plan (including all potential Claims pursuant to Article Six), such amount will be paid jointly to them, but such payment will not affect the personal 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 Claims of the Approved HCV Personal Representative and 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).

**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 HCV Personal Representative after his or her death and within the period set out in Section 3.05, the Approved HCV Personal Representative will be paid (i) the uninsured funeral expenses incurred up to a maximum of \$5,000 and (ii) whether or not the evidence required under Section 3.05(1)(a) is provided, the amount of all 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 Plan), but such payments are in addition to the Claims of Dependents and Family

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Members pursuant to Article Six and will not affect the personal 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 Claims of the Approved HCV Personal Representative and the deceased HCV Infected Person's Dependants and other Family Members pursuant to Article Six exceed an aggregate of \$240,000.

**ARTICLE SIX  
COMPENSATION TO APPROVED DEPENDANTS AND APPROVED  
FAMILY MEMBERS**

**6.01 Compensation to Approved Dependants**

(1) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved 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 70% of 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 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 \$12 per hour to a maximum of \$240 per week.

(3) The amounts payable pursuant to Sections 6.01(1) or (2) will be allocated as the Approved Dependants may agree or, failing any agreement, as the Administrator so determines based on the extent of support received by each of the Dependants prior to the death of the HCV Infected Person. Notwithstanding any of the provisions hereof, the Approved Dependants of a HCV Infected Person whose death was caused by his or her

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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 Family Members**

Each Approved 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) \$25,000 for the Spouse;
- (b) \$15,000 for each Child under the age of 21 years at the date of death of the HCV Infected Person;
- (c) \$5,000 for each Child 21 years or older at the date of the death of the HCV Infected Person;
- (d) \$5,000 for each Parent;
- (e) \$5,000 for each Sibling;
- (f) \$500 for each Grandparent; and
- (g) \$500 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**

Dependants and other Family Members of a HCV Infected Person will only be entitled to make 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 Claims or to any additional or other compensation. Nothing in this Section will affect the personal 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 HCV Infected Person or the Approved Dependants 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 HCV Infected Person or the Approved Dependents if the Administrator determines that there has been a material change in circumstances.

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

The amount of all of the payments to be made pursuant to Articles Four (other than Sections 4.02, 4.06 and 4.07), Five and Six will be adjusted on the first day of January of each calendar year during the Term commencing on 1 January 2000 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 1999.

### **7.03 Periodic Re-assessment by Courts**

(1) The Joint Committee must apply to the Courts within 180 days after (i) 31 December 2001 and (ii) each third anniversary of such date to determine whether, among other things, the restriction on the payment of \$5,000 in Section 4.01(1)(b), the 70% limitation in Sections 4.02 and 6.01 and the \$75,000 limitation in Sections 4.02 and 6.01 should be amended (i.e., either increased or decreased) or removed in whole or in part.

(2) If the Courts decide to amend the restrictions 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 Plan will be amended by deleting the restriction upon payment contained in Section 4.01(1)(b) requiring the postponement of payment of \$5,000 and by providing that the full amount of \$20,000 will be paid. Each person entitled to receive a payment that has been postponed for his or her account in accordance with Section 4.01(1)(b) will thereupon be paid the amount postponed plus interest thereon at the Prime Rate commencing on the date of payment of the \$15,000 under Section 4.01(1)(b);
- (b) secondly, after the amendment referred to in Section 7.03(2)(a) has been made and all amounts payable under that Section have been paid, the Plan will then be amended by deleting the words "70% of" from Sections 4.02 and 6.01 and substituting the percentage that is to be recovered. Thereafter, these restrictions will again be amended until such time as they are deleted. Each person who previously received compensation pursuant to Section 4.02 or 6.01 will be paid the difference between the amount that he or she

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received and the amount that he or she would have received had the substituted 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

- (c) thirdly, after the amendments referred to in Sections 7.03(2)(a) and (b) have been made and all amounts payable under those Sections have been paid, the Plan will then be amended by amending or deleting the words "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" in the definition of "Pre-claim Net Income" in Section 4.02(2)(b) and the words "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" in the definition of "Post-claim Net Income" in Section 4.02(2)(c). Thereafter, such restriction will again be amended until such time as it is deleted. Once an amendment has been made, each person who previously received compensation pursuant to Section 4.02 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 Trust Fund and whether the restriction on the payment of \$5,000 under Section 4.01(1)(b), the 70% limitation in Sections 4.02 and 6.01 and the \$75,000 limitation in Sections 4.02 and 6.02 should be amended (i.e., either increased or decreased) or removed in whole or in part.

#### **7.04 Interest**

Interest will not accrue on amounts payable under this Plan except as specifically provided in Section 7.03(2). Interest payable under this 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 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 Plan.

### **7.06 Payments to Public Trustee**

Notwithstanding any of the other provisions of this 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 a Class Member pursuant to this 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 Plan, would be the person entitled to the compensation under this Plan or in respect of any tax payable Part XIII of the *Income Tax Act* (Canada) or the equivalent provisions of the income tax act of any Province or Territory by any 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 Plan.

### **8.02 Social Benefits**

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

(2) The receipt of any payments pursuant to this Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to

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a 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 Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a 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 Class Member.

### **8.03 Collateral Benefits**

(1) If a Class Member is or was entitled to be paid compensation under this 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 Plan will be reduced by the amount of the compensation that the 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 Class Member will not be taken into account for any purposes whatsoever under this Plan.

### **8.04 Subrogation**

No subrogation payment of any nature or kind will be paid, directly or indirectly, under this 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 Plan;
- (b) no municipality and no department of a municipality will be paid under this Plan;
- (c) no person exercising a right of subrogation will be paid under this Plan; and
- (d) no claimant will be paid compensation if the claim is being asserted as a subrogated Claim or if the claimant will hold any money paid under this 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 Plan will lead

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to a reduction in other payments for which the claimant would otherwise qualify.

#### **8.05 No Assignment**

Any amount payable under this 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 Claims and for obtaining funds from the Trust on behalf of Class Members under this Plan and distributing such funds as compensation payable to Class Members under this Plan. No payments will be made to any Class Member under this Plan unless and until the Class Member, or if the Class Member is deceased, a minor or mentally incompetent, his or her Personal Representative, duly executes and delivers to the Administrator a valid and binding release in the form attached to this Plan as Appendix B 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 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) including the Class Actions as provided in the Approval Orders as defined in the Settlement Agreement.

### **ARTICLE TEN DISPUTE RESOLUTION**

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

A person making a Claim may, within 30 days after he or she receives notice of the Administrator's decision respecting his or her 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 its 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.

#### **10.02 Rosters of Referees and Arbitrators**

The Courts will appoint rosters of Referees and of Arbitrators. The rosters of Referees and of Arbitrators will include persons resident in each of the Provinces and Territories. Each Referee and Arbitrator will be paid only for the actual services he or

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she performs and in accordance with a tariff established by the Courts. The fees and disbursements of the Referees and Arbitrators will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts. Each Referee and Arbitrator may exercise all of the jurisdiction and powers granted to him or her hereunder.

### **10.03 Forwarding 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 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 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 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:

*Social Assistance Act*, RSN 1990 cS-17 as amended

Nova Scotia:

*Social Assistance Act*, R.S., c.432  
*Family Benefits Act*, R.S., c.158  
*Disabled Persons' Allowance Act*, R.S. 1954, c.70

Prince Edward Island:

*Welfare Assistance Act*

New Brunswick:

*Family Income Security Act*

Québec:

*Loi sur La Securite du Revenu*  
(Act respecting income security) LRQ cS. 3.1.1.

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 Employment and Income Assistance Act*, CCSM, E-98  
*The Municipal Act*, CCSM, M225

Saskatchewan:

*Saskatchewan Assistance Act*

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## Alberta:

*Social Development Act*, R.S.A. 1980, cs-16

*Assured Income for the Severely Handicapped Act*, R.S.A. 1980 CA-48

*Widows Pension Act*, S.A. 1983, W-75

## British Columbia:

*B.C. Benefits (Income Assistance) Act*, R.S. c.27

*B.C. Benefits (Youth Works) Act*, R.S. c. 28

*Disability Benefits Program Act*, R.S. c.97

## Yukon:

*Social Assistance Act*

## North West Territories &amp; 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**

**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, 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 Settlement Agreement, including its Schedules. 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”.

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THIS RELEASE WITNESSES that in consideration of the right of the Releasor to participate in the Transfused HCV 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 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 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

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- (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 ●, 19●.

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 \$10,000 the Referee will be deemed to have carried on an arbitration and the report will be deemed to be an arbitration award.

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**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 RULESJurisdiction 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;

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- (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.



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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.

**SCHEDULE B**

**HEMOPHILIAC HCV PLAN**

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**SCHEDULE B**  
**HEMOPHILIAC HCV PLAN**

**ARTICLE ONE**  
**INTERPRETATION**

**1.01 Definitions**

**“Administrator”** means the Administrator appointed from time to time by the Courts pursuant to the Settlement Agreement.

**“Approval Date”** means the date when the judgments or orders of the Courts approving the Settlement Agreement become final and, as a result, this Plan becomes effective.

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

**“Approved Family Member”** means a Family Member referred to in clause (a) of the definition of Family Member in this Section 1.01 whose Claim made pursuant to Section 3.06 has been accepted by the Administrator.

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

**“Approved HCV Personal Representative”** means a HCV Personal Representative whose Claim made pursuant to Section 3.04 has been accepted by the Administrator.

**“Arbitrator”** means a person appointed as an arbitrator by the Courts pursuant to the provisions of Section 10.02 hereof and 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”** 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%,

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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).

**“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.

**“Claim”** means a claim made and a claim that may be made in the future pursuant to the provisions of this Plan.

**“Class Action Counsel”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“Class Members”** means, collectively, all Primarily-Infected Hemophiliacs, all Secondarily-Infected Persons, all HCV Personal Representatives and all Family Members but excludes, for greater certainty, all persons who opt 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.

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**“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 opts out of the Class Action in which he or she would otherwise be a Class Member.

**“FPT Governments”** means, collectively, (i) the government of Canada, (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”**).



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**“Fund Counsel”** has the meaning set out in Section 1.01 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 or a Secondarily-Infected Person.

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

**“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”** has the meaning set out in Section 1.02 of the Settlement Agreement.

**“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 or a person who would otherwise be a Secondarily-Infected Person but is not because he or she opts out of the Class Action in which he or she would otherwise be a Class Member.

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

**“Plan”** means this Hemophiliac HCV Plan including its Appendices, as amended, supplemented or restated from time to time.

**“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, (ii) received or took Blood 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; or
- (b) such person opts out of the Class Action in which he or she would otherwise be 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 pursuant to the provisions of Section 10.02 and Article Ten of the Settlement Agreement.

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

- (a) a Spouse of a Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac who is or was infected with HCV by such Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac provided the Claim of the Spouse is made:
  - (i) before the expiration of three years from the date the Primarily-Infected Hemophiliac first makes a Claim, his or her HCV Personal Representative makes the first Claim on his or her behalf or the Opted-Out Primarily-Infected Hemophiliac opts out;
  - (ii) in accordance with the provisions of Section 3.04(1), where a HCV Personal Representative makes the first Claim on behalf of a Primarily-Infected Hemophiliac who is deceased; or
  - (iii) in accordance with the provisions of Section 3.07, where the Primarily-Infected Hemophiliac has not made a Claim; 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 Opted-Out Primarily-Infected Hemophiliac 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 opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Settlement Agreement”** means the agreement made as of 15 June 1999 between the FPT Governments and the plaintiffs in the Class Actions.

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

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**“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 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 Approval Date and ending on the date that this Plan is terminated by the Courts.

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

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

## **1.02 Headings**

The division of this 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 Plan. The terms “hereof”, “hereunder” and similar expressions refer to this 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 Schedules of this Plan.

## **1.03 Extended Meanings**

In this 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 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 Class Member is deemed to be resident in the Province or Territory where he or she ordinarily resides or, if the 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 during the Class Period. An 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**

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

#### **1.08 Appendices**

The following are the Appendices to this Plan:

- Appendix A - Social Benefits Legislation;
- Appendix B - Release;
- Appendix C - Reference Rules; and
- Appendix D - Arbitration Rules.

### **ARTICLE TWO PURPOSE AND EFFECT OF PLAN**

#### **2.01 Purpose**

The purpose of this Plan is to provide compensation to Class Members on the terms and subject to the conditions set out herein.

## **2.02 Binding Effect**

This Plan is binding on all Class Members.

### **ARTICLE THREE REQUIRED PROOF FOR COMPENSATION**

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

(1) A person claiming to be a Primarily-Infected Hemophiliac must deliver to the Administrator an 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 and (ii) the claimant received or took Blood 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 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 during the Class Period and at the time of delivery of the application hereunder.

(2) Notwithstanding the provisions of Section 3.01(1)(a), if a claimant cannot comply with the provisions of Section 3.01(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 and received or took Blood during the Class Period.

(3) Notwithstanding the provisions of Section 3.01(1)(c), if a claimant cannot comply with the provisions of Section 3.01(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.

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**3.02 Claim by Secondarily-Infected Person**

- (1) A person claiming to be a Secondarily-Infected Person must deliver to the Administrator an 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 an Opted-Out Primarily-Infected Hemophiliac or by a Parent who is an HCV-Infected Person or an Opted-Out HCV Infected Person including a statutory declaration of the claimant declaring that he or she has never used non-prescription intravenous drugs;
  - (b) an HCV Antibody Test report, a PCR Test report or similar test report pertaining to the claimant; and
  - (c) the evidence required by Sections 3.01 and 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 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 Opted-Out Primarily-Infected Hemophiliac or 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 an independent medical examination;

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- (d) income tax returns and other records and accounts pertaining to loss of income; and
- (e) any other information, books, records or 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 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 Claim.

### **3.04 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 must deliver to the Administrator, within three years after the death of such HCV Infected Person or within two years after the Approval Date, whichever event is the last to occur, an 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, the proof required by Sections 3.01 and 3.03; or
  - (ii) if the deceased was a Secondarily-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 a minor or incompetent must deliver to the Administrator an application form prescribed by the Administrator together with:



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- (a) unless the required proof has already been previously delivered to the Administrator:
  - (i) if the HCV Infected Person is a Primarily-Infected Hemophiliac, the proof required by Sections 3.01 and 3.03; 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) Notwithstanding the provisions of Sections 3.01(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 3.01(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 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 Secondarily-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 Secondarily-Infected Person was infected with HCV.

(5) For the purposes of Sections 3.04 (1) and (2), the statutory declaration required by Sections 3.01(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

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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 or the Secondarily-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 a 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 an independent medical examination;
- (d) income tax returns and other records and accounts pertaining to loss of income; and
- (e) any other information, books, records or 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 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 Claim.

### **3.05 Claim by Dependant**

A person claiming to be a Dependant of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year after the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

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- (a) proof as required by Sections 3.04(1)(a) and (b) (or, if applicable, Section 3.04(3) or (4)) and 3.04(5) and (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.

### **3.06 Claim by Family Member**

A person claiming to be a Family Member referred to in clause (a) of the definition of Family Member in Section 1.01 of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year after the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

- (a) proof as required by Sections 3.04(1)(a) and (b) (or, if applicable, Section 3.04(3) or (4)) and 3.04(5) and (6), unless the required proof has been previously delivered to the Administrator; and
- (b) proof that the claimant was a Family Member referred to in clause (a) of the definition of Family Member in Section 1.01 of the HCV Infected Person.

### **3.07 First Claim Deadline**

Except as otherwise expressly provided in this Agreement, no person may make a Claim for the first time under this Plan after 30 June 2010 unless:

- (a) the Claim is made within one year of the person attaining his or her age of majority; or
- (b) the Claim is made within the three year period following the date upon which the person first learned of his or her infection with HCV and the Court having jurisdiction over the person grants leave to the person to apply for compensation.

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**ARTICLE 1.FOUR**  
**COMPENSATION TO APPROVED HCV INFECTED PERSONS**

**4.01 Fixed Payments**

(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

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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  $30 \times 10^9$  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 \$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.

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(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) 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**

(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

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- (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, (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

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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



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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**

(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

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- (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 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 loss of services in the home for the same period.

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

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

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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 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**

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**

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

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- (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 Infected Persons**

(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 Dependants 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**

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.

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

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

(1) If a HCV Infected Person died prior to 1 January 1999 and his or her HCV Personal Representative delivers to the Administrator the evidence required under Article Three within the period set out in Section 3.04, the Approved HCV Personal Representative is entitled to be reimbursed for the uninsured funeral expenses incurred up to a maximum of \$5,000 and, subject to the provisions of Sections 5.01(2) and (3), the Approved HCV Personal Representative will be paid the amount of \$50,000 in full satisfaction of any and all Claims that the deceased HCV Infected Person would have had under this Plan if he or she had been alive on or after 1 January 1999. This \$50,000 payment to the Approved HCV Personal Representative is in addition to the Claims of Dependents and other Family Members pursuant to Article Six and will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

(2) Instead of payment pursuant to Section 5.01(1), if a HCV Infected Person died prior to 1 January 1999 and his or her HCV Personal Representative delivers to the Administrator the evidence required under Article Three within the period set out in Section 3.04 and the Approved HCV Personal Representative of such HCV Infected Person and all the deceased HCV Infected Person's Dependents and other Family Members having Claims under this Plan agree to be paid \$120,000 in full satisfaction of all their Claims pursuant to this Plan (including all potential Claims pursuant to Article Six), such amount will be paid jointly to them, but such payment will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

(3) Notwithstanding the provisions of Section 5.01(1) and (2), if the deceased HCV Infected Person was also an 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 Claims of the Approved HCV Personal Representative and 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) 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 HCV Personal Representative and all the deceased Primarily-Infected Hemophiliac's Dependents and other Family Members having Claims under this Plan agree to be paid \$72,000 in full satisfaction of all their Claims pursuant to this Plan (including all Claims pursuant to Article Six), such amount will be paid jointly to them upon receipt of the following:

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- (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 3.01(1)(a);
- (c) the evidence referred to in Section 3.04(3)(a), (b), (c) or (d);
- (d) a statutory declaration referred to in Section 3.04(4); and
- (e) any evidence required by the Administrator pursuant to Section 3.04(5).

Such payment will not affect the personal 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 HCV Personal Representative after his or her death and within the period set out in Section 3.04, the Approved HCV Personal Representative will be paid (i) the uninsured funeral expenses incurred up to a maximum of \$5,000 and (ii) whether or not the evidence required under Section 3.04(1)(a) is provided, the amount of all 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 Plan), but such payments are in addition to the Claims of Dependents and Family Members pursuant to Article Six and will not affect the personal Claim of a Family Member 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 Claims of the Approved HCV Personal Representative and the deceased HCV Infected Person's Dependents and other Family Members pursuant to Article Six exceed an aggregate of \$240,000.

**ARTICLE SIX  
COMPENSATION TO APPROVED DEPENDANTS AND  
APPROVED FAMILY MEMBERS**

**6.01 Compensation to Approved Dependants**

(1) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved 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 70% of his or her Annual Loss of Net Income for such year until he or she would have attained the age of 65 years determined in accordance with Section 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" will be 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 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 \$12 per hour to a maximum of \$240 per week.

(3) The amounts payable pursuant to Sections 6.01(1) or (2) will be allocated as the Approved Dependants may agree, or failing any agreement, as the Administrator so determines based on the extent of support received by each of the Dependants prior to the death of the HCV Infected Person. Notwithstanding any of the provisions hereof, the Approved 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 Family Members**

Each Approved 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) \$25,000 for the Spouse;

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- (b) \$15,000 for each Child under the age of 21 years at the date of death of the HCV Infected Person;
- (c) \$5,000 for each Child 21 years or older at the date of the death of the HCV Infected Person;
- (d) \$5,000 for each Parent;
- (e) \$5,000 for each Sibling;
- (f) \$500 for each Grandparent; and
- (g) \$500 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**

Dependants and other Family Members of a HCV Infected Person will only be entitled to make Claims pursuant to Sections 6.01 and 6.02 (or, in lieu thereof, under Section 5.01(2) or (3)) and they will not be entitled to make any other Claims or to any additional or other compensation. Nothing in this Section will affect the personal 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 HCV Infected Person or the Approved Dependants 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 HCV Infected Person or the Approved



Dependants if the Administrator determines that there has been a material change in circumstances.

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

The amount of all of the payments to be made pursuant to Articles Four (other than Sections 4.02, 4.06 and 4.07), Five and Six will be adjusted on the first day of January of each calendar year during the Term commencing on 1 January 2000 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 1999.

## **7.03 Periodic Re-assessment by Courts**

(1) The Joint Committee must apply to the Courts within 180 days after (i) 31 December 2001 and (ii) each third anniversary of such date to determine whether, among other things, the restriction on the payment of \$5,000 in Section 4.01(1)(b), the 70% limitation in Sections 4.02 and 6.01 and the \$75,000 limitation in Sections 4.02 and 6.01 should be amended (i.e., either increased or decreased) or removed in whole or in part.

(2) If the Courts decide to amend the restrictions referred to in Section 7.03(1) to increase the amount of any payment, then the amendment will be made strictly in accordance with the following priorities:

- (a) firstly, the Plan will be amended by deleting the restriction upon payment contained in Section 4.01(1)(b) requiring the postponement of payment of \$5,000 and by providing that the full amount of \$20,000 will be paid. Each person entitled to receive a payment that has been postponed for his or her account in accordance with Section 4.01(1)(b) will thereupon be paid the amount postponed plus interest thereon at the Prime Rate commencing on the date of payment of the \$15,000 under Section 4.01(1)(b);
- (b) secondly, after the amendment referred to in Section 7.03(2)(a) has been made and all amounts payable under that Section have been paid, the Plan will then be amended by deleting the words "70% of" from Sections 4.02 and 6.01 and substituting the percentage that is to be recovered. Thereafter, these restrictions will again be amended until such time as they are deleted. Each person who previously received compensation pursuant to Section 4.02 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 substituted percentage been in place, together with interest on the

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difference at the Prime Rate commencing on the date of payment of the reduced amount, as amended from time to time; and

- (c) thirdly, after the amendments referred to in Sections 7.03(2)(a) and (b) have been made and all amounts payable under those Sections have been paid, the Plan will then be amended by amending or deleting the words "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" in the definition of "Pre-claim Net Income" in Section 4.02(2)(b) and the words "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" in the definition of "Post-claim Net Income" in Section 4.02(2)(c). Thereafter, such restriction will again be amended until such time as it is deleted. Once an amendment has been made, each person who previously received compensation pursuant to Section 4.02 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 Trust Fund and whether the restriction on the payment of \$5,000 under Section 4.01(1)(b), the 70% limitation in Sections 4.02 and 6.01 and the \$75,000 limitation in Sections 4.02 and 6.02 should be amended (i.e., either increased or decreased) or removed in whole or in part.

#### **7.04 Interest**

Interest will not accrue on amounts payable under this Plan except as specifically provided in Section 7.03(2). Interest payable under this 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 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 Plan.

### **7.06 Payments to Public Trustee**

Notwithstanding any of the other provisions of this 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 a Class Member pursuant to this 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 reserved by a person other than the person that, but for any assignment of any amount of compensation payable under this Plan, would be the person entitled to the compensation under this 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 Class Member or any amount required to be withheld by the Trustee or Administration on account of such tax in respect of any compensation paid or received under this Plan.

### **8.02 Social Benefits**

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

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(2) The receipt of any payments pursuant to this Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a 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 Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a 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 Class Member.

### **8.03 Collateral Benefits**

(1) If a Class Member is or was entitled to be paid compensation under this Plan and is or was also entitled to be paid compensation payable 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 under this Plan will be reduced by the amount of the compensation that the 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 Class Member will not be taken into account for any purposes whatsoever under this Plan.

### **8.04 Subrogation**

No subrogation payment of any nature or kind will be paid, directly or indirectly, under this 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 Plan;
- (b) no municipality and no department of a municipality will be paid under this Plan;

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- (c) no person exercising a right of subrogation will be paid under this Plan; and
- (d) no claimant will be paid compensation if the claim is being asserted as a subrogated Claim or if the claimant will hold any money paid under this 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 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 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 Claims and for obtaining funds from the Trustee on behalf of Class Members under this Plan and distributing such funds as compensation payable to Class Members under this Plan. No payments will be made to any Class Member under this Plan unless and until the Class Member, or if the Class Member is deceased, a minor or mentally incompetent, his or her Personal Representative, duly executes and delivers to the Administrator a valid and binding release in the form attached to this Plan as Appendix B 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 a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) commenced against any Releasee (as defined in the form of release attached hereto as Appendix B) including the Class Actions as provided in the Approval Orders as defined in the Settlement Agreement.

## **ARTICLE TEN DISPUTE RESOLUTION**

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

A person making a Claim may, within 30 days after he or she receives notice of the Administrator's decision respecting his or her 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 its 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.

### **10.02 Rosters of Referees and Arbitrators**

The Courts will appoint rosters of Referees and of Arbitrators. The rosters of Referees and of Arbitrators will include persons resident in each of the Provinces and Territories. Each Referee and Arbitrator will be paid only for the actual services he or she performs and in accordance with a tariff established by the Courts. The fees and disbursements of the Referees and Arbitrators will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts. Each Referee and Arbitrator may exercise all of the jurisdiction and powers granted to him or her hereunder.

### **10.03 Forwarding 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 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 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 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:

*Social Assistance Act*, RSN 1990 cS-17 as amended

Nova Scotia:

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

*Family Benefits Act*, R.S., c.158

*Disabled Persons' Allowance Act*, R.S. 1954, c.70

Prince Edward Island:

*Welfare Assistance Act*

New Brunswick:

*Family Income Security Act*

Québec:

*Loi sur La Securite du Revenu*

(Act respecting income security) LRQ cS. 3.1.1.

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 Employment and Income Assistance Act*, CCSM, E-98

*The Municipal Act*, CCSM, M225

Saskatchewan:

*Saskatchewan Assistance Act*



## Alberta:

*Social Development Act*, R.S.A. 1980, cs-16  
*Assured Income for the Severely Handicapped Act*, R.S.A. 1980 CA-48  
*Widows Pension Act*, S.A. 1983, W-75

## British Columbia:

*B.C. Benefits (Income Assistance) Act*, R.S. c.27  
*B.C. Benefits (Youth Works) Act*, R.S. c. 28  
*Disability Benefits Program Act*, R.S. c.97

## Yukon:

*Social Assistance Act*

## North West Territories &amp; 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**

**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, 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,

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 Settlement Agreement, including its Schedules. 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,

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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 Hemophiliac HCV 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 (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 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 (including the infection of a Secondarily-Infected Person) including the Class Actions as provided in the 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 (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 (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 (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 (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 (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

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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 (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 ●, 19●.

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 considered;
- (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

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less than \$10,000 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 arbitration;
  - (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;



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- (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.

**SCHEDULE C**

**FEDERAL/PROVINCIAL/TERRITORIAL ASSISTANCE PROGRAM  
FOR HIV SECONDARILY-INFECTED INDIVIDUALS**

**FEDERAL/PROVINCIAL/TERRITORIAL ASSISTANCE PROGRAM  
FOR HIV SECONDARILY-INFECTED INDIVIDUALS**

1. APPLICATION PROGRAM CRITERIA

On March 27, 1998, Federal/Provincial Health Ministers announced a \$1.1 billion financial assistance package to assist persons infected with Hepatitis C from the Canadian blood system. This assistance package also includes assistance to HIV/AIDS secondarily infected persons who are first order relatives of primary EAP recipients.

The criteria for application to the Federal / Provincial / Territorial Assistance Program for HIV Secondarily Infected Individuals are:

- relationship defined: partner or child of primarily infected person who is an approved Extraordinary Assistance Plan (EAP) recipient;
- to be HIV positive, resulting from the relationship with the primary EAP recipient;
- to have legal status in Canada at the date of infection (diagnosis date - first HIV positive test).

HIV/AIDS secondarily infected persons are entitled to receive \$240,000 tax free in one lump sum payment upon receipt of signed RELEASE.

2. PARAMETERS FOR A MEDICAL EVALUATION

Route of HIV/AIDS Transmission

The HIV virus is transmitted through sexual intercourse (vaginal, anal and rarely oral), from a mother to her fetus/infant (during pregnancy, child birth or breast feeding), and parenterally (such as in the sharing of drug injection equipment, the transfusion of HIV-infected blood or blood products, and the transplantation of a variety of tissues and organs).

## Assessment

The onus of providing proof that the eligibility criteria are met rests on the applicant. Applicants are required to provide proof that they became HIV infected as a result of their sexual relationship with a primary EAP recipient or from a primary EAP mother to her fetus/infant.

Applicants must also provide consent of EAP recipient (or estate representative), to have access to the EAP recipient's personal information collected under the EAP.

Applicants must complete an application form (Form A - Adult; Form B - Minor; Form C - Estate) and are asked to submit Form D to their physician.

In assessing an applicant's eligibility, the medical reviewer takes into consideration all evidence put forward by the applicant. When an applicant provides information as to the existence of a risk factor other than his/her sexual relationship with a primary EAP recipient, it is incumbent on this individual to provide information which would discount that risk factor. If he/she fails to do so, the medical reviewer has to take into consideration the impact of this risk factor on the application. This may require that the medical reviewer consider statistical evidence as to the extent of the risks of HIV acquisition associated with this factor as opposed to the risk associated with the risk of having acquired HIV as a result of a sexual relationship with a primary EAP recipient (or mother to fetus/infant).

## Presence of other risk factors

In the AIDS Quarterly Surveillance Update: AIDS in Canada, there is a pre-defined hierarchy of risk used to assign each AIDS case to one "exposure category". For example, if the only risk behaviour is that the man has had sex with other men, the case would be assigned to the "men who have sex with men" (MSM) exposure category. If the same person also had a blood transfusion, for instance in 1983, he would still be assigned to the "MSM" exposure category, since homosexual contact is considered to be a more significant risk factor for HIV transmission than is a blood transfusion in 1983.

This risk hierarchy is used in the United States, the United Kingdom, the European Centre for the Epidemiological Monitoring of AIDS also known as INSERM, and Australia. In addition, it is used by the World Health Organization, the Pan-American Health Organization, Centers for Disease Control and Prevention in Atlanta, and the Public Laboratory Service in the UK.

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If an individual is in two "at risk groups" for example "men who have sex with men" and "IV drug use", these are factors which must be considered by the medical reviewer in his assessment of that person's application. The applicant must provide information to discount the existence of other risk factors. The medical reviewer cannot without any such evidence, take upon himself the task of discounting the implications of other risk factors.

The applicant's physician(s) is required to indicate whether there exists other risks for HIV infection. In this respect, the Program Administrator relies on the integrity of the applicant's physician(s) to report the existence of other risks.

Entitlement to a benefit is not based on a mere possibility of becoming HIV infected as a result of a sexual relationship with a primary EAP recipient, but rather on a conclusion, arrived at on a balance of probability by the medical reviewer, that an individual was so infected. Where, on the basis of the evidence before him/her, the medical reviewer cannot conclude on a balance of probability that the applicant was HIV infected as a result of a sexual relationship with a primary EAP recipient, or from a primary EAP mother to her fetus/infant, he/she recommends rejection of the application.

#### Summary of Medical Paramters

In carrying out an applicant's evaluation, the medical reviewer assesses on a balance of probabilities, whether the applicant became HIV infected as a result of their sexual relationship with the primary EAP recipient or from a primary EAP mother to her fetus/infant. To make a recommendation, he/she looks at the following:

1. The stated relationship of the applicant to the EAP-primary.
2. The duration/time of relationship and proof submitted to confirm relationship.
3. If there was a sexual contact, what evidence is supplied.
4. Consideration of LCDC data on "Probabilities of HIV transmission".
5. For mother to fetus/infant infection, consider the date of transfusion(s) by the mother and the child's birth (secondary).
6. Consideration of EAP-primary date of blood transfusion, secondary sexual relationship and compare this in temporal sequence to determine if secondary is asymptomatic, symptomatic or has AIDS; consistent in temporal sequence with the timing of receipt of blood by EAP-primary.
7. Consideration of other risk factors present and the risk of having acquired the infection by these means and the evidence supplied by the applicant to discount

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other risk factors.

8. Consideration of clinical information (CD-4 counts and viral load measurements) and drug therapies as provided by the applicant and his/her physician(s).
9. Consideration of information (medical history, physical examination, laboratory examination, etc.) obtained during physical examination as may be requested by the medical reviewer.

May 21, 1999

**SCHEDULE D**  
**FUNDING AGREEMENT**

**MADE AS OF**

**15 JUNE 1999**



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**FUNDING AGREEMENT**

THIS AGREEMENT is made as of 15 June 1999

**B E T W E E N:**

**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 GOUVERNEMENT 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

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“British Columbia Transfused Plaintiff”), **MARTIN HENRY GRIFFEN** and **ANNA KARDISH**, plaintiffs in the Ontario Transfused Class Action (the “Ontario Transfused Plaintiffs”), **DOMINIQUE HONHON**, plaintiff in the Québec Transfused Class Action (the “Québec Transfused Plaintiff”), **CHRISTOPHER FORREST MITCHELL**, plaintiff in the British Columbia Hemophiliac Class Action (the “British Columbia Hemophilia Plaintiff”), **JAMES KREPPNER** and **BARRY ISAAC**, plaintiffs in the Ontario Hemophiliac Action (the “Ontario Hemophilia Plaintiffs”) and **DAVID PAGE**, plaintiff in the Québec Hemophiliac Class Action (the “Québec Hemophilia Plaintiff”) (collectively, the “Class Action Plaintiffs”).

**WHEREAS:**

A. On 21 June 1996 the Québec Transfused Plaintiff commenced Action No. 500-06-000016-960 in the Superior Court of the Province of Québec for the District of Montreal against Canada, Québec, the CRCS and others (the “Québec Transfused Class Action”); on 19 September 1996 the British Columbia Transfused Plaintiff commenced Action No. C965349 in the Vancouver Registry of the Supreme Court of British Columbia against Canada, British Columbia and the CRCS (the “British Columbia Transfused Class Action”); and on 10 February 1998 the Ontario Transfused Plaintiffs commenced Action No. 98-CV-141369 in the Ontario Court (General Division), at Toronto, against Canada, Ontario and the CRCS (the “Ontario Transfused Class Action”) (collectively, the “Transfused Class Actions”).

B. On 24 April 1998 the Ontario Hemophilia Plaintiffs commenced Action No. 98-CV-146405 in the Ontario Court (General Division), at Toronto, against the CRCS and Canada (the “Ontario Hemophiliac Class Action”); on 1 May 1998 the British Columbia Hemophilia Plaintiff commenced Action No. A981187 in the Vancouver Registry of the Supreme Court of British Columbia against the CRCS and Canada (the “British Columbia Hemophiliac Class Action”); and on 7 May 1998 the Québec Hemophilia Plaintiff commenced Action No. 500-06-000068-987 in the Superior Court of the Province of Québec for the District of Montréal against the CRCS, Canada and Québec (the “Québec Hemophiliac Class Action”) (collectively, the “Hemophiliac Class Actions”).

C. Pursuant to the Settlement Agreement, the FPT Governments agreed to enter into this Agreement to provide for the payment by the FPT Governments of certain amounts

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in relation to the funding, in whole or in part, of the Disbursements (including payments under the Plans), on and subject to the terms set out in this Agreement.

D. The FPT Governments have agreed to establish the Trust for the purpose, among other things, of receiving such amounts from time to time from the FPT Governments and thereafter holding, investing and distributing such amounts and any other funds subsequently received by the Trust, on and subject to the terms set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the premises and the covenants and agreements herein contained, the Parties agree as follows:

## ARTICLE ONE INTERPRETATION

### 1.01 Definitions

In this Agreement, in addition to the terms defined in the description of the Parties set out above:

**“Administrative Costs”** as at any time means the amounts as at such time referred to in paragraphs (c), (d), and (e) (other than Program Costs) of the definition of Other Fees and Disbursements in this Section 1.01 and Administrative Costs without any reference to a time means those amounts that if paid would constitute Administrative Costs as at any time.

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

**“Agreement”** means this agreement including its recitals, as amended, supplemented or restated from time to time.

**“Approval Date”** means the date when the judgments or orders of the Courts approving the Settlement Agreement become final and, as a result, this Agreement becomes effective.

**“Auditors”** means the auditors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of the Settlement Agreement.

**“Blood”** means Blood as defined in the Transfused HCV Plan or, in relation to hemophiliacs, as defined in the Hemophiliac HCV Plan.

**“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 such

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notice is given is situated or the federal laws of Canada applicable in the said Province or Territory.

**“Class Action Counsel”** means the respective counsel for each of the Class Action Plaintiffs.

**“Class Actions”** has the meaning set out in Section 1.01 of the Settlement Agreement.

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

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

**“Contribution Account”** has the meaning set out in Section 4.03.

**“Contribution Account Balance”** of an FPT Government as at any time means an amount equal to the sum of the Proportionate Contributions plus the Proportionate Interest Amount minus the Proportionate Disbursements, each of such FPT Government as at such time.

**“Contribution Amount”** as at any time means an amount equal to the sum of \$1.118 billion plus the Total Interest Amount as at such time.

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

**“Dependants”** has the meaning set out in Section 1.01 of the Transfused HCV Plan and the Hemophiliac HCV Plan.

**“Disbursements”** as at any time means an amount equal to the sum of the Plan Disbursements plus the Other Fees and Disbursements, each as at such time, and Disbursements without any reference to a time means those amounts that if paid would constitute Plan Disbursements or Other Fees and Disbursements as at any time.

**“EAP”** means the HIV Extraordinary Assistance Plan announced by the Federal Government on 14 December 1989.

**“Expert Costs”** as at any time means the amounts as at such time referred to in paragraph (d) of the definition of Other Fees and Disbursements in this Section 1.01 and Expert Costs without any reference to a time means those amounts that if paid would constitute Expert Costs as at any time.

**“Federal Government”** means the government of Canada.

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

**“Fund Year”** means the period from 1 April to 31 March in the immediately succeeding year except for the initial period which will commence on the Approval Date and end at the close of business on 31 March 2000 and the last period which will commence on 1 April and end on the last day of the Term.

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

**“HCV Infected Person”** has the meanings set out in Section 1.01 of both of the Plans.

**“Hemophiliac Class Members”** means Class Members as defined in the Hemophiliac HCV Plan.

**“Hemophiliac HCV Plan”** means the plan attached as Schedule B to the Settlement Agreement.

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

**“HIV Secondarily-Infected Persons”** means persons who are entitled to receive compensation under the Program.

**“Interest Calculation Date”** means the last day of an Interest Period.

**“Interest Period”** means the calendar quarterly period commencing on the first days of January, April, July and October in each year during the Term with the first period commencing on 1 April 1998 provided that, if the Term ends prior to the end of an Interest Period, such Interest Period will end on the last day of the Term.

**“Investment Advisors”** means the investment advisors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of the Settlement Agreement.

**“Joint Committee”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“Opted-Out Primarily-Infected Hemophiliac”** has the meaning set out in Section 1.01 of the Hemophiliac HCV Plan.

**“Opted-Out Primarily-Infected Person”** has the meaning set out in Section 1.01 of the Transfused HCV Plan.

**“Other Fees and Disbursements”** as at any time means the aggregate of the following amounts, to the extent that they have been paid prior to or as at such time:

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- (a) an amount equal to the aggregate of all Program Disbursements, provided the amount determined under this (a) will at no time exceed \$57.6 million;
- (b) an amount equal to the total of (i) the aggregate of all amounts paid by any FPT Government, in respect of either a final judgment of a court in a contested action or a settlement approved by one of the Courts, to any person who opted out of a Class Action or a Class Member who is not otherwise bound by the provisions of the Settlement Agreement or any other person who claims over or brings a third party claim against any FPT Government in any way relating to or arising from, in the case of a Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or, in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) and (ii) the aggregate of all amounts each of which is an amount equal to one-third of the defence costs (including costs of counsel, disbursements and applicable taxes) arising out of any action (whether an FPT Government has been successful in defending an action or not) or settlement and approved by one of the Courts;
- (c) an amount equal to the aggregate of all fees, costs, disbursements and applicable taxes (other than income taxes) of counsel representing any of the Class Action Plaintiffs, as approved by the Court in which the Class Action was commenced;
- (d) an amount equal to the aggregate of all amounts paid pursuant to contracts between any of the FPT Governments with experts or consultants entered into at the request of counsel representing any of the Class Action Plaintiffs; and
- (e) as approved by the Courts, an amount equal to the aggregate of all costs of administering the Settlement Agreement and Schedules including the fees, disbursements and other costs of the Administrator, the Trustee, the Auditors, the Fund Counsel, the Referees, the Arbitrators, the Investment Advisors, the members of the Joint Committee, the costs of any application to the Courts pursuant to the Settlement Agreement, and the Program Costs, including the fees, disbursements and other costs of the Program Administrator, to a maximum of \$2 million,

and Other Fees and Disbursements without any reference to a time means those amounts that if paid would constitute Other Fees and Disbursements as at any time.

**“Parties”** means the FPT Governments and the Class Action Plaintiffs.

**“Plan Disbursements”** as at any time means the aggregate of all amounts that have been paid under the Plans prior to or as at such time and Plan Disbursements without any



reference to a time means those amounts that if paid would constitute Plan Disbursements as at any time.

**"Plans"** means, collectively, the Hemophiliac HCV Plan and the Transfused HCV Plan.

**"Primarily-Infected Hemophiliac"** has the meaning set out in Section 1.01 of the Hemophiliac HCV Plan.

**"Primarily-Infected Person"** has the meaning set out in Section 1.01 of the Transfused HCV Plan.

**"Program"** means the Program attached as Schedule C to the Settlement Agreement.

**"Program Administrator"** means the person who administers the Program and its successor from time to time under contract with Health Canada.

**"Program Costs"** at any time means the amounts as at such time which are costs of administering the Program and Program Costs without any reference to a time means those amounts that if paid would constitute Program Costs as at any time.

**"Program Disbursements"** at any time means the amounts as at such time paid under the Program to HIV Secondarily-Infected Persons and Program Disbursements without any reference to a time means those amounts that if paid would constitute Program Disbursements as at any time.

**"Program Disbursements and Costs"** as at any time means an amount equal to the sum of the Program Disbursements plus the Program Costs, each as at such time, and Program Disbursements and Costs without any reference to a time means those amounts that if paid would constitute Program Disbursements and Costs as at any time.

**"Proportionate Contributions"** of an FPT Government as at any time means an amount equal to:

- (a) in the case of the Federal Government, an amount equal to (i) \$851,978,925.40 plus (ii) an amount equal to 8/11 of the amount by which (A) the Total Interest Amount as at the date the Federal Government makes its required contribution under Section 4.02(1) (for purposes of applying the definition of Interest Period to this calculation, such date will be deemed to be the last day of the Term) exceeds (B) the Total Interest Amount as at 31 March 1999, minus (iii) the Withheld Amount, and
- (b) in the case of a PT Government, the amount of all contributions made by such PT Government to the Trust prior to or as at such time.

**"Proportionate Disbursements"** of an FPT Government as at any time means an amount equal to:

- (a) in the case of the Federal Government, 8/11 (i.e., 72.7273%) of the Disbursements as at such time, and

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- (b) in the case of a PT Government, the Sharing Proportion of such PT Government as at such time multiplied by  $\frac{3}{11}$  (i.e., 27.2727%) of the Disbursements as at such time.

**“Proportionate Interest Amount”** of an FPT Government as at any time means the aggregate of all amounts each of which is an amount determined as at each Interest Calculation Date occurring prior to or as at such time equal to the Treasury Bill Rate for the Interest Period ending on such Interest Calculation Date multiplied by the proportion that the number of days in the Interest Period (including the first and last days of the Interest Period) is of 365 days or 366 days, as the case may be, and multiplied by the average of the Proportionate Principal Amount as at the first day of such Interest Period and the Proportionate Principal Amount as at such Interest Calculation Date.

**“Proportionate Principal Amount”** of an FPT Government as at any time is an amount determined as at such time equal to the sum of the Proportionate Contributions of such FPT Government as at such time plus the Proportionate Interest Amount of such FPT Government as at the immediately preceding Interest Calculation Date minus an amount equal to the Proportionate Disbursements of such FPT Government as at the first-mentioned time.

**“Provinces”** means, collectively, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, PEI and Newfoundland.

**“PT Governments”** means the governments of the Provinces and Territories.

**“Secondarily-Infected Person”** has the meaning set out in Section 1.01 of the Transfused HCV Plan or the Hemophilic HCV Plan, as applicable.

**“Settlement Agreement”** means the agreement made as of 15 June 1999 between the FPT Governments and the Class Action Plaintiffs and its recitals and Schedules, as amended, supplemented or restated from time to time.

**“Settlement Amount”** as at any time means an amount equal to the sum of the amount of the Trust Fund as at such time plus the amount of the remaining obligations, if any, of the FPT Governments under Section 4.01 and minus the amount by which the estimated Other Fees and Disbursements as at the end of the Term exceeds the Other Fees and Disbursements as at such time.

**“Sharing Proportion”** of a PT Government as at any time means the proportion that the sum of:

- (i) the aggregate amount of the Disbursements (other than Program Disbursements and Costs and Administrative Costs) as at such time which are payable in relation to persons who were resident in the Province or Territory (as determined pursuant to Section 1.07(1)(a)) of such PT Government; plus

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- (ii) the aggregate amount of the Program Disbursements and Costs as at such time which are payable in relation to persons who were resident in the Province or Territory (as determined pursuant to section 1.07(1)(b)) of such PT Government, and, for this purpose, Program Costs will be considered to be paid in relation to persons who were resident in a Province or Territory in proportion to the Program Disbursements paid in relation to persons who were resident in such Province or Territory; plus
- (iii) the aggregate of amounts each of which is an amount determined in respect of each Fund Year ending prior to or as at such time equal to the amount determined when the Administrative Costs as at the end of such Fund Year which were paid in such Fund Year is multiplied by the quotient obtained when the population of the Province or Territory using estimated census data from Statistics Canada on July 1 of such Fund Year is divided by the aggregate population of all the Provinces and Territories using estimated census data from Statistics Canada as at such date;

is of the aggregate of the Disbursements (other than Administrative Costs) as at such time and the Administrative Costs as at such time which were paid in a Fund Year ending prior to or as at such time.

**“Spouse”** has the meaning set out in Section 1.01 of the Transfused HCV Plan or the Hemophiliac HCV Plan, as applicable.

**“Term”** means the period from and including the Approval Date to the date when the Settlement Agreement is terminated.

**“Territories”** means, collectively, the Northwest Territories, Nunavut and the Yukon Territory.

**“Total Interest Amount”** as at any time means the aggregate of all amounts each of which is an amount determined as at each Interest Calculation Date occurring prior to or as at such time equal to the Treasury Bill Rate for the Interest Period ending on such Interest Calculation Date multiplied by the proportion that the number of days in the Interest Period (including the first and last days of the Interest Period) is of 365 days or 366 days, as the case may be, and multiplied by the average of the Total Principal Amount as at the first day of such Interest Period and the Total Principal Amount as at such Interest Calculation Date.

**“Total Principal Amount”** as at any time is an amount determined as at such time equal to the sum of \$1.118 billion plus an amount equal to the Total Interest Amount as at the immediately preceding Interest Calculation Date minus an amount equal to the sum of the Other Fees and Disbursements plus the Plan Disbursements, each as at the first-mentioned time.

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**“Transfused Class Members”** means Class Members as defined in the Transfused HCV Plan.

**“Transfused HCV Plan”** means the plan attached as Schedule A to the Settlement Agreement.

**“Treasury Bill Rate”** means, for each Interest Period, the money market yield of the three-month Federal Government treasury bill for the first day of such Interest Period as determined and, from time to time, published by the Bank of Canada, provided that, if the first day of an Interest Period is not a Business Day, the Treasury Bill Rate will be determined as if the first day of the Interest Period were the next following Business Day.

**“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 construction to the effect that any ambiguity is to be resolved against the drafting party is not applicable in interpreting this Agreement.

### **1.05 Statutory References**

In this Agreement, 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.

### **1.06 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.

### **1.07 Residence**

- (1) For the purposes of determining the liability of each of the Provinces and Territories hereunder:
  - (a) with respect to Disbursements (other than Program Disbursements and Costs), a person will be deemed to be resident in the Province or Territory where the relevant Primarily-Infected Person or Opted-Out Primarily-Infected Person or Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac, as the case may be, was ordinarily resident when he or she first received or took Blood during the Class Period, and, for this purpose, if the relevant Primarily-Infected Person or Opted-Out Primarily-Infected Person or Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac was not resident in Canada when he or she first received or took Blood during the Class Period, he or she will be deemed to have been resident in the Province or Territory where he or she first received or took Blood during the Class Period, and

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- (b) with respect to Program Disbursements and Costs, a person will be deemed to be resident in the Province or Territory where the relevant HIV primarily-infected person was ordinarily resident when he or she first applied for compensation under the EAP.

(2) For purposes of this Agreement, ordinarily resident means the place where the person, in the settled routine of his or her life, regularly, normally or customarily lives. In making this determination, all relevant factors will be considered. Notwithstanding the above, a person will be deemed to be resident in the Province or Territory in which he or she has a permanent home available to him or her, or, if the person has no permanent home available to him or her in any Province or Territory or a permanent home available to him or her in more than one Province or Territory, in any such Province or Territory in which he or she has an 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 the Administrator be entitled to receive any amount on behalf of the Class Members pursuant to this Agreement as at any time in excess of the Settlement Amount as at such time.

### **3.02 Canadian Income Taxes**

(1) If any income taxes under the *Income Tax Act* (Canada) or the equivalent provisions of the income tax act of any Province or Territory are paid by the Trustee in respect of income of the Trust, the FPT Government to which the taxes were paid will pay an amount equivalent to the amount so paid to the Trustee and such amount will thereafter form part of the Trust Fund.

(2) The amount of compensation paid to or received by a Class Member pursuant to a Plan will not be required to be included in the taxable income of the recipient thereof under the *Income Tax Act* (Canada) or the equivalent provisions of 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 a Plan, would be the person entitled to the compensation under the 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 Class Member or any amount required to be withheld by the Trustee or the Administrator on account of such tax in respect of any compensation paid or received under a Plan.

### **3.03 No Additional Liability**

For greater certainty, subject to Section 3.02, neither the Administrator nor any of the Class Members will have any recourse if the Settlement Amount as at any time is insufficient to fund Plan Disbursements to be paid at or after such time.

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## ARTICLE FOUR CONTRIBUTION AMOUNT

### 4.01 Liability to Pay

(1) The Federal Government is severally liable to make the single payment provided for in Section 4.02(1) (representing 8/11 (i.e., 72.7273%) of the Contribution Amount as at the date of such payment minus the Withheld Amount). Subject to Section 3.02 of this Agreement, the Federal Government will not be liable to pay any further amounts pursuant to this Agreement.

(2) The several liability of each of the PT Governments under this Agreement added together will equal 3/11 (i.e., 27.2727%) of the Contribution Amount as at the time that the liability is being determined.

(3) Each PT Government will be severally liable to pay a proportion of the Contribution Amount as at the time that the liability is being determined, such liability to be determined in accordance with Section 4.01(4). Subject to Section 3.02 of this Agreement, no PT Government will be liable to pay any further amounts pursuant to this Agreement as at the time that the liability is being determined.

(4) Each PT Government will be severally liable to pay the Sharing Proportion of such PT Government as at the time that the liability is being determined multiplied by 3/11 (i.e., 27.2727%) of the Contribution Amount as at the time that the liability is being determined.

(5) Notwithstanding any other provision of this Agreement, for purposes of this Agreement, each FPT Government will be considered to have paid the Trustee hereunder as at any time an amount equal to the sum of the Proportionate Contributions and the Proportionate Interest Amount of such PT Government as at such time. For greater certainty, the crediting of the Proportionate Interest Amount of a PT Government as against the required contributions of such PT Government is intended to give PT Governments credit for interest at the Treasury Bill Rate for any advance contributions (such deemed interest being computed after their share of Disbursements).

### 4.02 Payment

(1) On or prior to the Approval Date, the Federal Government will transfer an amount equal to the Proportionate Contribution of the Federal Government by electronic fund transfer to an account therefore specified by the Trustee in full satisfaction of all its liabilities and obligations to pay any part of the Contribution Amount hereunder.

(2) Subject to Section 4.01, each PT Government will make payments to the Trustee (by way of lump-sum or periodic payments or any combination thereof) such that the Contribution Account of such PT Government has at all times a positive or zero balance.



#### **4.03 Contribution Account**

(1) The Trustee will establish a separate journal account for each of the FPT Governments (a "Contribution Account").

(2) The amount standing to the credit of a Contribution Account of an FPT Government as at any time will be the Contribution Account Balance of such FPT Government as at such time.

#### **4.04 Calculation and Notice of Payments**

(1) The Sharing Proportion of each PT Government will be calculated by the PT Governments from time to time. The PT Governments will notify the Trustee of the Sharing Proportions within one month following the Approval Date and upon any changes therein.

(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.

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**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 Secondarily-Infected Persons will requisition from the Trustee an amount equal to the amount of all Program Disbursements to be made to HIV Secondarily-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 Secondarily-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.

### **6.03 Payments for Actions and Settlements**

If any amount is payable by any FPT Government pursuant to either a final judgment of a court in a contested action or a settlement approved by one of the Courts to any person who opted out of a Class Action or a Class Member who is not otherwise bound by the provisions of the Settlement Agreement or any other person who claims over or brings a third party claim against any FPT Government in any way relating to or arising from, in the case of a Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or, in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) and an FPT Government delivers to the Trustee:

- (a) a notarized copy of a final judgment (as defined in Section 1.07 of the Settlement Agreement) or minutes of settlement and a notarized copy of an order of a Court approving the minutes of settlement; and/or

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- (b) a notarized copy of an order of a Court approving the defence costs (including costs of counsel, disbursements and applicable taxes (other than income taxes)) arising out of any action or settlement,

in the month following the receipt of such documents the Trustee will transfer an amount equal to the amount payable pursuant to the final judgment or minutes of settlement plus one-third of all defence costs (whether an FPT Government has been successful in defending an action or not) as so approved to the applicant FPT Government in trust by electronic fund transfer to an account specified by the applicant FPT Government.

#### **6.04 Payments to Class Action Counsel**

If a notarized copy of an order of the Court in which a Class Action was commenced approving the fees, costs, disbursements and applicable taxes (other than income taxes) of Class Action Counsel representing the Class Action Plaintiff in such Class Action is delivered to the Trustee, in the month following the receipt of such documents the Trustee will transfer an amount equal to the aggregate amount of such fees, costs, disbursements and taxes by electronic fund transfer to an account specified by such Class Action Counsel.

#### **6.05 Payments for Administration Costs**

If a notarized copy of an order of a Court approving any of the costs of administering the Settlement Agreement, including the costs referred to in paragraphs (d) and (e) of the definition of Other Fees and Disbursements in Section 1.01 is delivered to the Trustee, in the month following the receipt of such documents the Trustee will pay an amount equal to the amount of such costs to or to the order of the payee thereof as set out in the Court Order by cheque or, if requested by such payee, by electronic fund transfer to an account specified by the payee. For greater certainty, a Court may approve specific costs or the terms of any commitment under which costs will be payable on an ongoing basis and, in the latter case, such costs will be payable by the Trustee in the month following delivery of an invoice therefor.

### **ARTICLE SEVEN INVESTMENTS**

#### **7.01 Investment**

(1) The Trustee will invest the assets of the Trust in accordance with the investment instructions delivered to the Trustee from time to time by the Joint Committee within the investment guidelines approved by the Courts.

(2) In investing the assets of the Trust, the Joint Committee will:

- (a) invest in the best interests of the beneficiaries of the Trust with a view to achieving a maximum rate of return without undue risk of

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loss, having regard to the ability of the Trust to meet its financial obligations;

- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, having regard to the overall rate of return and risk of loss of the entire portfolio of investments held by the Trust; and
- (c) recommend the names of recognized professional investment and asset management advisors for appointment as the Investment Advisors.

## ARTICLE EIGHT INCOME AND CAPITAL

### 8.01 Disbursements

All Disbursements paid out of the Trust will be considered to have been paid first out of the income of the Trust and next out of the capital of the Trust.

### 8.02 Additions to Capital

Any income of the Trust not paid as Disbursements in a Fund Year will at the end of such Fund Year be added to the capital of the Trust.

### 8.03 Tax Elections

For each taxation year of the Trust, the Trustee will file any available elections and designations under the *Income Tax Act* (Canada) and equivalent provisions of the income tax act of any Province or Territory and take any other reasonable steps such that the Trust and no other person is liable to taxation on the income of the Trust, including the filing of an election under subsection 104(13.1) of the *Income Tax Act* (Canada) and equivalent provisions of the income tax act of any Province or Territory for each taxation year of the Trust and the amount to be specified under such election will be the maximum allowable under the *Income Tax Act* (Canada) or the income tax act of any Province or Territory, as the case may be.

## ARTICLE NINE RECORDS, REPORTING AND FINANCIAL STATEMENTS

### 9.01 Records

The Trustee will keep such books, records and accounts as are necessary or appropriate to document the assets of the Trust and each transaction of the Trust. Without limiting the generality of the foregoing, the Trustee will keep, at its principal

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office in Toronto, records of all transactions of the Trust and a list of the assets held in trust and a record of the Contribution Account Balance for each Contribution Account from time to time.

### **9.02 Quarterly Reporting**

The Trustee will deliver to the Administrator, the Fund Counsel, the Joint Committee and each of the FPT Governments, within 30 days after the end of each calendar quarter, a quarterly report setting forth the assets held as at the end of such quarter in the Trust Fund (including the term, interest rate or yield and maturity date of each investment) and a record of the Contribution Account Balance for each Contribution Account during such quarter.

### **9.03 Annual Reporting**

The Auditors will deliver to the Administrator, the Trustee, the Fund Counsel, the Joint Committee, each of the FPT Governments and the Courts, within 60 days after the end of each Fund Year:

- (a) the audited financial statements of the Trust for the most recently completed Fund Year together with the report of the Auditors thereon; and
- (b) a report setting forth a summary of the assets held in trust as at the end of the Fund Year for the Trust Fund and the Disbursements made during the preceding Fund Year.

## **ARTICLE TEN AMENDMENT AND TERMINATION**

### **10.01 Amendment**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by the FPT Governments and the Joint Committee and approved by the Courts.

### **10.02 Termination**

(1) This Agreement and the Trust will terminate on the date on which the Courts declare the Settlement Agreement to be terminated pursuant to the provisions of the Settlement Agreement.

(2) As soon as practicable after the termination of the Trust, the Trustee will transfer the assets in the Trust Fund to the FPT Governments in accordance with this provision. The amount to be paid to each FPT Government will be determined as follows:

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- (a) if the amount of the Trust Fund is equal to or exceeds the aggregate of amounts each of which is an amount determined in respect of each FPT Government equal to the Contribution Account Balance of such FPT Government as at the time the determination is being made, each FPT Government will be paid an amount equal to the amount of its Contribution Account Balance as at such time and the excess, if any, will be distributed among the FPT Governments in proportion to the average of the Contribution Account Balance of each FPT Government at the end of each month over the term of this Agreement, or
- (b) if the amount of the Trust Fund is less than the aggregate of amounts each of which is an amount determined in respect of each FPT Government equal to the Contribution Account Balance of such FPT Government as at the time the determination is being made, the amount of the Trust Fund will be distributed among the FPT Governments in proportion to the Contribution Account Balance of each FPT Government as at such time.

(3) For purposes of this Section 10.02, the Contribution Account Balance of each FPT Government as at the time the determination is being made will be adjusted as follows:

- (a) the Contribution Account Balance of the Federal Government as at such time will be increased by an amount that reflects the amount by which the Contribution Account Balance of the Federal Government would be increased if the Federal Government's contribution under Section 4.02(1) had been increased on the date of such payment by 3/11 (i.e., 27.2727%) of the Withheld Amount, and
- (b) the Contribution Account Balance of each PT Government as at such time will be reduced by an amount that reflects the amount by which the Contribution Account Balance of such PT Government would be reduced if such PT Government's contributions to the Trust under this Agreement were reduced by the Sharing Proportion of such PT Government as at such time multiplied by 3/11 (i.e., 27.2727%) of the Withheld Amount (such reduction of contributions being made to the first contribution or contributions of such PT Government).

## ARTICLE ELEVEN GENERAL

### 11.01 Notices

Any notice or other communication to be given in connection with this Agreement will be given in writing and will be given by personal delivery or by electronic communication addressed to the recipient as follows:

- (a) to the Attorney General of Canada:

Justice Canada, Department of Health  
Brooke Claxton Building, 2nd Floor  
Tunney's Pasture  
P. O. Box: Postal Locator: 0902D  
Ottawa, Ontario  
K1A 0K9

Attention:                   Senior General Counsel  
Facsimile No.:           (613) 957-1327



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- (b) to Her Majesty the Queen In Right of the Province of British Columbia:

c/o Ministry of the Attorney General  
6th Floor, 1001 Douglas Street  
Victoria, B.C.  
V8W 2C5

Attention: Supervising Counsel  
Facsimile No.: (250) 356-9154

- (c) to Her Majesty the Queen In Right of the Province of Alberta:

c/o Alberta Justice  
Civil Law Branch, 5th Floor  
9833 - 109th Street  
Edmonton, Alberta  
T5K 2E8

Attention: Minister of Health and Wellness  
Facsimile No.: (780) 415-0961

Attention: Minister of International and  
Intergovernmental Relations

- (d) to Her Majesty the Queen In Right of the Province of Saskatchewan:

c/o Saskatchewan Justice  
Civil Law Division  
9th Floor  
1874 Scarth Street  
Regina, Saskatchewan  
S4P 3V7

Attention: Darryl Bogdasavich, Q.C.  
Facsimile No.: (306) 787-0581

- (e) to Her Majesty the Queen In Right of the Province of Manitoba:

Manitoba Justice

Suite 730  
405 Broadway  
Winnipeg, Manitoba  
R3C 3L6

Attention: Director of Legal Services  
Facsimile No.: (204) 948-2041

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(f) to Her Majesty the Queen In Right of Ontario:

c/o Ministry of the Attorney General for Ontario  
Director, Crown Law Office Civil  
8th Floor, 720 Bay Street  
Toronto, Ontario  
M5G 2K1

Facsimile No.: (416) 326-4181

(g) to Le Gouvernement du Québec:

c/o La Procureure Générale du Québec  
1 est, rue Notre-Dame, 8 ième étage  
Montreal, Québec  
H2Y 1B6

Attention: Robert Monette  
Facsimile No.: (514) 873-7074

(h) to Her Majesty the Queen In Right of the Province of New Brunswick:

c/o Department of Justice  
Legal Services Branch  
Room 444, Centennial Building  
670 King Street  
P. O. Box 6000  
Fredericton, New Brunswick  
E3B 5H1

Attention: William A. Anderson  
Facsimile No.: (506) 453-3275

(i) to Her Majesty the Queen In Right of the Province of Nova Scotia:

Department of Health  
P. O. Box 488  
Halifax, Nova Scotia  
B3J 2R8

Attention: Deputy Minister of Health  
Facsimile No.: (902) 424-0559

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- (j) to Her Majesty the Queen In Right of the Province of Prince Edward Island:

Department of Community Affairs and Attorney General  
P. O. Box 2000  
11 Kent Street, 1st Floor  
Charlottetown, Prince Edward Island  
C1A 7N8

Attention: Adele MacLeod  
Facsimile No.: (902) 368-4563

- (k) to Her Majesty the Queen In Right of the Province of Newfoundland:

Department of Justice  
Confederation Building  
P. O. Box 8700  
St. John's, Newfoundland  
A1B 4J6

Attention: Mrs. Lynn Spracklin, Q.C.  
Deputy Attorney General  
Facsimile No.: (709) 729-2129

- (l) to The Government of the Northwest Territories:

Government of the Northwest Territories  
Legislative Assembly (2)  
P. O. Box 1320  
Yellowknife, Northwest Territories  
X1A 2L9

Attention: The Honourable Floyd Roland  
Minister of Health and Social Services  
Facsimile No.: (867) 873-0399

- (m) to The Government of Nunavut:

Department of Justice  
Government of Nunavut  
P. O. Box 800  
Iqaluit, NT  
X0A 0H0

Attention: Nora Sanders  
Deputy Minister of Justice  
Facsimile No.: (867) 979-5977

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(n) to The Government of the Yukon Territory:

c/o Yukon Justice  
Legal Services, 2nd Floor  
Andrew Philipsen Law Centre  
2130 Second Avenue  
Whitehorse, Yukon  
Y1A 5C3

Attention: Director of Legal Services  
Facsimile No.: (867) 393-6379

(o) to Anita Endean:

c/o Camp Church & Associates  
4th Floor, Randall Building  
555 West George Street  
Vancouver, British Columbia  
V6B 1Z5

Attention: J.J. Camp, Q.C.  
Facsimile No.: (604) 689-7554

(p) to Martin Henry Griffen and Anna Kardish:

c/o Gignac, Sutts  
600 Westcourt Place  
251 Goyeau Street  
Windsor, Ontario  
N9A 6V4

Attention: Harvey T. Strosberg, Q.C.  
Facsimile No.: (519) 258-9527

(q) to Dominique Honhon:

c/o Pierre R. Lavigne  
220-440 Laurier Avenue, West  
Ottawa, Ontario  
K1R 7X6

Facsimile No.: (613) 782-2445

and to:

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Marchand, Magnan, Melanson, Forget  
Ste. 1640  
600 rue de la Gauchetiere  
Montreal, Québec  
H3B 4L8

Attention: Michel Savonitto  
Facsimile No.: (514) 861-0727

(r) to Christopher Forrest Mitchell:

c/o Blake, Cassels & Graydon  
Three Bentall Centre, Suite 2600  
595 Burrard Street  
Vancouver, British Columbia  
V7X 1L3

Attention: Marvin R. V. Storrow  
Facsimile No.: (604) 631-3309

(s) to James Kreppner and Barry Isaac:

c/o Hodgson Tough Shields DesBrisay O'Donnell  
36 Toronto Street, Suite 550  
Toronto, Ontario  
M5C 2C5

Attention: Bonnie A. Tough  
Facsimile No.: (416) 304-6406

(t) to David Page:

c/o Petit Blaquièrre Dagenais  
5929, Transcanadienne, Suite 230  
Ville St-Laurent, Québec  
H4T 1Z6

Attention: Jean Blaquièrre  
Facsimile No.: (514) 744-8003

or to such other address, individual or electronic communication number as a Party may from time to time advise by notice given pursuant to this Section. Any notice or other communication will be exclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not so transmitted.

**11.02 Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

**11.03 Counterparts**

This Agreement may be executed in English or French in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

SIGNED, SEALED AND DELIVERED ) THE ATTORNEY GENERAL OF  
 ) CANADA  
 in the presence of: )  
 )  
 )  
 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )  
 )  
 ) HER MAJESTY THE QUEEN IN THE  
 ) RIGHT OF THE PROVINCE OF BRITISH  
 ) COLUMBIA  
 )  
 )  
 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )  
 )  
 ) HER MAJESTY THE QUEEN IN THE  
 ) RIGHT OF THE PROVINCE OF ALBERTA  
 )  
 )  
 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )  
 )  
 ) And: \_\_\_\_\_  
 ) Name:  
 ) Office:

- 29 -

) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF  
) SASKATCHEWAN

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF  
) MANITOBA

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) HER MAJESTY THE QUEEN IN  
) RIGHT OF ONTARIO

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) LE GOUVERNMENT DU QUÉBEC

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) And: \_\_\_\_\_  
) Name:  
) Office:

)  
)  
) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF NEW  
) BRUNSWICK

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

)

- 30 -

) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF NOVA  
) SCOTIA

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF PRINCE  
) EDWARD ISLAND

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF  
) NEWFOUNDLAND

)  
)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) And: \_\_\_\_\_  
) Name:  
) Office:

) THE GOVERNMENT OF  
) THE NORTHWEST TERRITORIES

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) THE GOVERNMENT OF NUNAVUT

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:



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) THE GOVERNMENT OF THE YUKON  
) TERRITORY

) By: \_\_\_\_\_

) Name:

) Office:

\_\_\_\_\_  
as to the signature of  
Anita Endean

) \_\_\_\_\_  
Anita Endean

\_\_\_\_\_  
as to the signature of  
Martin Henry Griffen

) \_\_\_\_\_  
Martin Henry Griffen

\_\_\_\_\_  
as to the signature of  
Anna Kardish

) \_\_\_\_\_  
Anna Kardish

\_\_\_\_\_  
as to the signature of  
Dominique Honhon

) \_\_\_\_\_  
Dominique Honhon

\_\_\_\_\_  
as to the signature of  
Christopher Forrest Mitchell

) \_\_\_\_\_  
Christopher Forrest Mitchell

\_\_\_\_\_  
as to the signature of  
James Kreppner

) \_\_\_\_\_  
James Kreppner

\_\_\_\_\_  
as to the signature of  
Barry Isaac

) \_\_\_\_\_  
Barry Isaac

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\_\_\_\_\_  
as to the signature of  
David Page

)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
David Page

**SCHEDULE E****SOCIAL BENEFITS LEGISLATION**

## Newfoundland:

*Social Assistance Act*, RSN 1990 cS-17 as amended

## Nova Scotia:

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

*Family Benefits Act*, R.S., c.158

*Disabled Persons' Allowance Act*, R.S. 1954, c.70

## Prince Edward Island:

*Welfare Assistance Act*

## New Brunswick:

*Family Income Security Act*

## Québec:

*Loi sur La Securite du Revenu*

(Act respecting income security) LRQ cS. 3.1.1.

## 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 Employment and Income Assistance Act*, CCSM, E-98

*The Municipal Act*, CCSM, M225

## Saskatchewan:

*Saskatchewan Assistance Act*

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## Alberta:

*Social Development Act*, R.S.A. 1980, cs-16

*Assured Income for the Severely Handicapped Act*, R.S.A. 1980 CA-48

*Widows Pension Act*, S.A. 1983, W-75

## British Columbia:

*B.C. Benefits (Income Assistance) Act*, R.S. c.27

*B.C. Benefits (Youth Works) Act*, R.S. c. 28

*Disability Benefits Program Act*, R.S. c.97

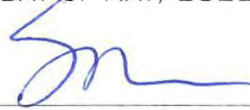
## Yukon:

*Social Assistance Act*

## North West Territories &amp; Nunavut:

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

THE ATTACHED IS EXHIBIT "B" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022



\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

**Shelley Lynn Woodrich, a Commissioner, etc.,**  
**Province of Ontario, for Strosberg Sasso Sutts LLP,**  
Barristers and Solicitors.  
Expires February 22, 2025.



No. C965349  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Anita Endean, as representative plaintiff

Plaintiff

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

**ORDER**

BEFORE THE HONOURABLE	)	THURSDAY, THE 28 <sup>TH</sup> DAY
	)	
MR. JUSTICE K. SMITH	)	OF OCTOBER, 1999

THE APPLICATION of the representative plaintiff coming on for hearing on August 18, 19, 20, 1999 and October 28, 1999 for an order pursuant to Section 35 of the *Class Proceedings Act*, R.S.B.C. 1996 c.50 (the "Act") and on hearing J.J. Camp, Q.C. and Sharon Matthews for the representative plaintiff, Paul Rosenberg, counsel for class members infected between January 1, 1986 and July 31, 1986, Marvin Storrow, Q.C., David Neave and David Gruber, counsel for the representative plaintiff in Supreme Court of British Columbia Action

No.A981187; John Haig, Q.C. for the defendant and third party The Attorney General of Canada/Her Majesty the Queen in Right of Canada; D. Clifton Prowse and Keith Johnston for the defendant and third party Her Majesty the Queen in Right of the Province of British Columbia; Christine Cunningham for the Public Trustee of British Columbia; Ward Branch for the defendant the Canadian Red Cross Society ("CRCS"); John Ankenman for the third party Prince George Regional Hospital and Peter Willcock for the third parties Dr. William Galliford, Dr. Robert Hart Dykes, Dr. Peter Houghton and Dr. John Doe AND ON READING

- (a) the affidavits of R. Douglas Elliott sworn July 10, 1999 and the affidavits of R. Douglas Elliott sworn August 16, 1999 and October 12, 1999 in Ontario Superior Court of Justice Action No. 18-CV-141369;
- (b) the affidavit of Bruce Lemer sworn July 13, 1999;
- (c) the affidavits of Margaret Woltz sworn July 7, 1999 and August 11, 1999 and the affidavit of Margaret Woltz sworn August 16, 1999 in Ontario Superior Court of Justice Action No. 98-CV-141369;
- (d) the affidavit of Sharon D. Matthews sworn July 9, 1999;
- (e) the affidavit of Dr. Frank H. Anderson sworn July 8, 1999;
- (f) the affidavit of Jacob Levi sworn July 9, 1999 and the transcript of the August 4, 1999 cross-examination of Jacob Levi and Murray Segal in Ontario Superior Court of Justice Action No. 98-CV-141369 and the exhibits marked on the cross-examination;
- (g) the affidavit of Andrew Wister sworn July 8, 1999;
- (h) the affidavit of Robert S. Hogg sworn July 8, 1999;
- (i) the affidavit of Dianna Parsons sworn July 8, 1999;

- (j) the affidavit of James Kreppner sworn July 8, 1999;
- (k) the affidavit of David Page sworn July 8, 1999;
- (l) the affidavit of Dr. Irwin Walker sworn July 9, 1999;
- (m) the affidavits of David L. Robins sworn July 9, 1999, August 12, 1999 and October 15, 1999 in Ontario Superior Court Action No. 98-CV-141369;
- (n) the affidavit of Ron Etherington sworn August 12, 1999;
- (o) the affidavit of John Dawson sworn August 6, 1999;
- (p) the affidavit of Ian V. Woodcock sworn August 17, 1999;
- (q) the affidavit of Nancy Oliveri sworn October 5, 1999 in Ontario Superior Court of Justice Court Action No. 98-CV-141369;
- (r) the affidavit of Bonnie A. Tough sworn October 26, 1999;
- (s) the reports of PricewaterhouseCoopers LLP dated August 6, 1999 and August 16, 1999;
- (t) the written undertakings of Peterson Worldwide LLC, Reed Consulting, Ltd. carrying on business as Peterson Worldwide LLC of Canada, Royal Trust Company and TD Asset Management Inc. to be bound by this Order;
- (u) the written undertaking of TD Asset Management Inc. agreeing to be bound by this order;
- (v) the judgment of Madame Justice Morneau of the Superior Court of Quebec dated September 21, 1999 and the English translation thereof;
- (w) the reasons of Mr. Justice Kenneth Smith of the Supreme Court of British Columbia dated October 1, 1999; and



- (x) the reasons of Mr. Justice Winkler of the Ontario Superior Court of Justice dated September 22, 1999;
- (y) the letter of Eckler Partners dated October 13, 1999;

AND ON BEING ADVISED:

- (z) that Harvey T. Strosberg, Q.C., counsel to the Ontario Transfused Class Action, has been appointed to the Joint Committee;
- (aa) that Bonnie A. Tough, counsel to the Ontario Hemophiliac Class Action, is prepared to accept an appointment to the Joint Committee and has been appointed by Mr. Justice Winkler of the Ontario Superior Court of Justice;
- (bb) that J.J. Camp, Q.C. is prepared to accept an appointment to the Joint Committee;
- (cc) that the parties agreed to this settlement on the basis that the PT Governments have the option to make periodic payments in accordance with Sections 4.02 and 4.04 of the Funding Agreement, in which event there will be no PT Government money or assets remaining in the Trust that are actuarially unallocated; and
- (dd) of the consent of the Class Action Plaintiffs and the FPT Governments to the modifications set forth in paragraph 5 of this Order;

AND ON HEARING oral presentations of the following persons:

- (ee) Peter Madsen,
- (ff) Theresa Innes, and
- (gg) Leslie Gibbenhuck;

AND THIS ACTION BEING STAYED against the defendant the Canadian Red Cross Society by the order of Mr. Justice Blair made on July 20, 1998 in Ontario Superior Court of Justice Action No. 98-CL-002970 (Toronto) and subsequently extended by further orders made on August 19, 1998, October 5, 1998, January 18, 1999, May 5, 1999 and July 28, 1999;

AND THIS ACTION BEING STAYED AGAINST the third parties Prince George Regional Hospital, Dr. William Galliford, Dr. Robert Hart Dykes, Dr. Peter Houghton and Dr. John Doe by order of Mr. Justice K. Smith made May 22, 1997;

AND WITHOUT any admission of liability on the part of the FPT Governments;

1. THIS COURT ORDERS AND DECLARES that for the purposes of this Order, the following definitions shall apply:

- (a) **Agreement** means the 1986-1990 Hepatitis C Settlement Agreement between the Parties made as of June 15, 1999;
- (b) **Administrator** has the meaning set out in Section 1.01 of the Agreement;
- (c) **Arbitrators** has the meaning set out in Section 1.01 of a Plan;
- (d) **Auditors** has the meaning set out in Section 1.01 of the Agreement;
- (e) **Approval Date** means the date when the last Approval Order becomes final, provided there are no material differences in the Approval Orders;
- (f) **Approval Orders** means the judgments or orders of the Courts to be granted approving the 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;

- (g) **B.C. Class Actions** means collectively the B.C. Transfused Class Action and the B.C. Hemophiliac Class Action;
- (h) **B.C. Class Members** means collectively the B.C. Transfused Class Members and the B.C. Hemophiliac Class Members;
- (i) **B.C. Family Members** means collectively the B.C. Transfused Family Members and the B.C. Hemophiliac Family Members;
- (j) **B.C. Hemophiliac Class Action** means *Mitchell v. CRCS*, Action No.A981187, Vancouver Registry;
- (k) **B.C. Hemophiliac Class Members**
  - (i) are hemophiliacs, and thus have had a blood clotting or factor defect or deficiency, including a defect or deficiency in factors V, VII, VIII, IX, I, XII, XIII and the von Willebrand factor;
  - (ii) received Blood (as defined in Section 1.01 of the Hemophiliac HCV Plan) which was collected, supplied or distributed by the CRCS during the Class Period; and
  - (iii) who became infected with Hepatitis C;
  - (iv) are the Spouses of the persons referred to in subparagraphs (i) to (iii) and who are or were infected with Hepatitis C by such persons;
  - (v) are the children of the persons referred to in subparagraphs (i) to (iii) and who are or were infected with Hepatitis C by such persons;
  - (vi) are the personal representatives of all persons referred to in subparagraphs (i) to (iii) and who have become deceased as a result of being infected with the Hepatitis C virus as a result of receiving Blood during the Class Period; and

- (vii) are the executors or administrators of all persons referred to in subparagraphs (i) to (iii) and who have become deceased subsequent to being infected with the Hepatitis C virus as a result of receiving Blood during the Class Period;
- (l) **B.C. Hemophiliac Family Members** means the Family Members of a B.C. Hemophiliac Class Member as the term Family Member is defined in Section 1.01 of the Hemophiliac HCV Plan;
- (m) **B.C. Thalassemic Class Members** means British Columbia residents who have or had thalassaemia major and received Blood in British Columbia during the Class Period and who have tested positive for the antibodies to the Hepatitis C virus;
- (n) **B.C. Transfused Class Action** means *Endean v. CRCS*, Action No.C965349, Vancouver Registry;
- (o) **B.C. Transfused Class Members** means the members of the B.C. Transfused Class as amended by this order as follows:
- British Columbia residents who:
- (i) received Hepatitis C positive Blood during the Class Period in British Columbia (the "Transfusion") and were infected with the Hepatitis C virus as a result of the Transfusion and have tested positive for the antibody to the Hepatitis C virus;
- (ii) have or had thalassaemia major and received Blood in British Columbia during the Class Period and who have tested positive for the antibody to the Hepatitis C virus ("**B.C. Thalassemic Class Members**")
- (iii) have been infected with the Hepatitis C virus by a spouse or parent who was infected with the Hepatitis C virus as a result of receiving Blood during the Class Period or by a spouse or parent who is a B.C. Thalassemic Class Member;

- (iv) are the personal representatives of all residents of British Columbia who have become deceased subsequent to becoming infected with the Hepatitis C virus as a result of receiving Blood during the Class Period or are the personal representatives of B.C. Thalassemic Class Members who have died subsequent to becoming infected with the Hepatitis C virus; and
- (v) are the executors or administrators of the estates of all residents of British Columbia who have become deceased subsequent to being infected with the Hepatitis C virus as a result of receiving Blood during the Class Period or are the executors or administrators of the estates of B.C. Thalassemic Class Members who have died subsequent to becoming infected with the Hepatitis C virus;
- (p) **B.C. Transfused Family Members** means the Family Member of a B.C. Transfused Class Member as the term Family Members is defined in Section 1.01 of the Transfused HCV Plan;
- (q) **Blood** has the same meaning as set out in Section 1.01 of the Agreement;
- (r) **CRCS** means The Canadian Red Cross Society;
- (s) **Claimants' Data** means all data, records, medical, personal and financial information, files, addresses, claims payment history, and all other information of any nature and kind whether in paper, recorded or electronic form or in any other medium including all individual personal identifying and non-personal identifying information and any compilation, selection, co-ordination or arrangement of individual information into an original, derivative or collective work or works capable of being reviewed, perceived, reproduced or otherwise communicated directly with the aid of a machine or device or

capable of being fixed in any tangible medium of expression now known or later developed or transmitted or displayed even for a transitory period;

- (t) **Class Actions** means collectively the Transfused Class Actions and the Hemophiliac Class Actions;
- (u) **Class Action Counsel** means the counsel for the representative plaintiff(s) in each of the respective Class Actions;
- (v) **Class Action Plaintiffs** means the representative plaintiffs in each of the respective Class Actions;
- (w) **Class Members** means collectively the Transfused Class Members and the Hemophiliac Class Members, and **Family Class Members** means collectively the Transfused Family Class Members and the Hemophiliac Family Class Members;
- (x) **Class Period** means the period from January 1, 1986 to July 1, 1990, inclusive;
- (y) **Court** means the Supreme Court of British Columbia and **Courts** has the meaning set out in Section 1.01 of the Agreement;
- (z) **Family Class Members** means collectively the Transfused Family Class Members and the Hemophiliac Family Class Members;
- (aa) **Federal Government** means the Government of Canada;
- (bb) **FPT Governments** means collectively the Federal Government and the Government of each Province and Territory in Canada;
- (cc) **Funding Agreement** means the Funding Agreement between the Parties made as of June 15, 1999;
- (dd) **HCV** means the Hepatitis C virus;

- (ee) **Hemophiliac Class Actions** means collectively the B.C. Hemophiliac Class Action, the **Ontario Hemophiliac Class Action** which means *Kreppner et al. v. Canada et al.* Action No.98-CV-146405 (Toronto) and the **Quebec Hemophiliac Class Action** which means *Page et al. v. Canada et al.* Action no. 500-06-000068-987 (Montreal);
- (ff) **Hemophiliac Class Members** means collectively the Ontario Hemophiliac Class Members, the class certified in the British Columbia Hemophiliac Class Action and the class certified in the Quebec Hemophiliac Class Action, and the **Hemophiliac Family Class Members** means collectively the Ontario Hemophiliac Family Class Members, and for the British Columbia Hemophiliac Class Action and the Quebec Hemophiliac Class Action, the Family Members as defined in Section 1.01 of the Hemophiliac HCV Plan;
- (gg) **Hemophiliac HCV Plan** means the plan which is Schedule B to the Agreement;
- (hh) **Investment Consultant** means the investment advisor appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Article 10 of the Agreement to consult on the investment and management of the assets of the Trust Fund;
- (ii) **Investment Manager** means the investment advisor appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Article 10 of the Agreement to manage the investment of the whole or any portion of the assets of the Trust Fund;
- (jj) **Joint Committee** has the meaning set out in Section 1.01 of the Agreement;
- (kk) **Ontario Transfused Class Members** means the members of the class certified in the Ontario Transfused Class Action;
- (ll) **Ontario Transfused Family Class Members** means the members of the family class certified in the Ontario Transfused Class Action;

- (mm) **Party** means any one of the Class Action Plaintiffs or any one of the FPT Governments;  
and **Parties** means collectively the Class Action Plaintiffs and the FPT Governments;
- (nn) **Personal Representative** has the meaning set out in Section 1.01 of the Plans
- (oo) **Plan** means either the Hemophiliac HCV Plan or the Transfused HCV Plan, and **Plans** means collectively the Hemophiliac HCV Plan and the Transfused HCV Plan;
- (pp) **Primarily Infected Hemophiliac** has the meaning set out in Section 1.01 of the Hemophiliac HCV Plan;
- (qq) **Primarily Infected Person** has the meaning set out in Section 1.01 of the Transfused HCV Plan;
- (rr) **Program** means the program devolved from the Federal/Provincial/Territorial Assistance Program for HIV Secondarily-Infected Persons announced by the FPT Governments on December 15, 1998 described in Schedule C to the Agreement;
- (ss) **PT Governments** means collectively the Government of each Province and Territory in Canada;
- (tt) **Referee** has the meaning set out in Section 1.01 of a Plan;
- (uu) **Releasees** means, individually and collectively
- (i) each of the FPT Governments,
  - (ii) each of the past, present and future ministers and employees of each FPT Government,
  - (iii) each of the past and present agents of each FPT Government,
  - (iv) the Canadian Blood Agency,
  - (v) the Canadian Blood Committee or its members,



- (vi) each operator of a hospital or health care facility at which a Primarily-Infected Person (as defined in Section 1.01 of the Transfused HCV Plan) or Primarily-Infected Hemophiliac (as defined in Section 1.01 of the Hemophiliac HCV Plan) received or took Blood, or a Transfused Class Member or a Hemophiliac Class Member received treatment, care or advice in any way relating to or arising from the infection of the Transfused Class Member or Hemophiliac Class Member with HCV,
- (vii) each health caregiver who treated or provided care or advice to a Transfused Class Member or Hemophiliac Class Member in any way relating to or arising from the infection of the Transfused Class Member or Hemophiliac Class Member with HCV, and
- (viii) 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, but the CRCS is not a Releasee;
- (ix) **Secondarily Infected Person** has the meaning set out in Section 1.01 of the Transfused HCV Plan of the Hemophiliac HCV Plan, as applicable;
- (x) **Spouse** has the meaning set out in Section 1.01 of either Plan;
- (vv) **Term** means the period from and including the Approval Date to the date when the Agreement is terminated;
- (ww) **Transfused Class Actions** means collectively the B.C. Transfused Class Action, the **Ontario Transfused Class Action** which means *Parsons et al. v. Canada et al.* Action

No.98-CV-141369 (Toronto) and the **Quebec Transfused Class Action** which means *Honhon et al. v. Canada et al.* Action no. 500-06-000016-900 (Montreal);

- (xx) **Transfused Class Members** means collectively the Ontario Transfused Class Members, the B.C. Transfused Class Members and the class certified in the Quebec Transfused Class Action, and **Transfused Family Class Members** means collectively the Ontario Transfused Family Class Members and for the British Columbia Transfused Class Action and the Quebec Transfused Class Action, the Family Members as the term Family Members is defined in Section 1.01 of the Transfused HCV Plan;
- (yy) **Transfused HCV Plan** means the plan which is Schedule A to the Agreement;
- (zz) **Trust** means the trust to be created pursuant to the Funding Agreement;
- (aaa) **Trustee** means the trustee appointed by the Courts pursuant to the provisions of the Agreement; and
- (bbb) **Trust Fund** means the trust fund to be established pursuant to this Order, the Agreement and the Funding Agreement.

2. THIS COURT FURTHER ORDERS AND DECLARES that in this Order, all other defined terms which are denoted with capital letters shall have the meanings ascribed to them in the Agreement and/or the Funding Agreement.

3. THIS COURT FURTHER ORDERS that the Fourth Further Amended Certification Order made May 22, 1997 and November 3, 1997 as amended by the orders of Smith, J. made February 27, 1998; June 24, 1998; July 10, 1998, Consent Order dated February 19, 1999 and the order of Smith, J. made May 18, 1999 be further amended as follows:

- (a) by adding a new subparagraph b. after subparagraph a. on page 4 which reads as follows:
- "b. have or had thalassemia major and received whole blood and blood products in British Columbia during the Expanded Material Time and who have tested positive for the antibody to the Hepatitis C virus ("B.C. Thalassemic Class Members")"
- (b) by renumbering subparagraphs b., c., d., as c., d., and e., respectively;
- (c) by adding the words "or by a spouse or a parent who is a B.C. Thalassemic Class Member" after the words "Expanded Material Time" in the re-numbered subparagraph c. on page 4;
- (d) by adding the words "or are the personal representatives of B.C. Thalassemic Class Members who have died subsequent to becoming infected with the Hepatitis C virus" after the words "Expanded Material Time" to the re-numbered subparagraph d. on page 4;
- (e) by substituting the words "subsequent to becoming" for "as a result of being" to the re-numbered subparagraph d. on page 4; and
- (f) by adding the words "or are the executors or administrators of the estates of B.C. Thalassemic Class Members who have died subsequent to becoming infected with the Hepatitis C virus" after the words "Expanded Material Time" to the re-numbered subparagraph e. on page 4.

4. AND THIS COURT FURTHER ORDERS THAT the amendments described in paragraph 3 be incorporated in a consolidated Fifth Further Amended Certification Order in the form annexed to this Order as Schedule 8.

5. THIS COURT FURTHER ORDERS AND ADJUDGES that the Agreement annexed as Schedule 1 to this Order and the Funding Agreement annexed as Schedule 2 to this Order are fair, reasonable, adequate and in the best interests of the B.C. Transfused Class Members and this good faith settlement of the B.C. Transfused Class Action is approved on the terms set out in the Agreement and the Funding Agreement, both of which form part of and are incorporated by reference into this Order, subject to the following modifications:

- (a) B.C. Thalassemic Class Members, British Columbia residents who have been infected by a spouse or parent who is a B.C. Thalassemic Class Member, the executors or administrators of the estates of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV and the personal representatives of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV shall be entitled to meet the required proof for compensation and to receive benefits under the Hemophiliac HCV Plan, *mutatis mutandis*, as if they were Hemophiliac Class Members except that the proviso in Section 4.01(5) of the Hemophiliac HCV Plan shall not apply to the persons described in this subparagraph receiving benefits under the Hemophiliac HCV Plan;
- (b) in their unfettered discretion, the Courts may order, from time to time, at the request of any Party or the Joint Committee, that all or any portion of the money and other assets that are held by the Trustee pursuant to the Agreement and are actuarially unallocated be:
  - (i) allocated for the benefit of the Class Members and/or the Family Class Members in the Class Actions;

(ii) allocated in any manner that may reasonably be expected to benefit 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 all of the circumstances provided that in distribution there shall be no discrimination based upon where the Class Member received Blood or based upon where the Class Member resides;

(c) in exercising their unfettered discretion under subparagraph 5(b), the Courts may consider, but are not bound to consider, among other things, the following:

(i) the number of Class Members and Family Class Members;

(ii) the experience of the Trust Fund;

(iii) the fact that the benefits provided under the Plans do not reflect the tort model;

(iv) section 34(5) of the Act;

(v) whether the integrity of the Agreement will be maintained and the benefits particularized in the Plans ensured;

- (vi) whether the progress of the disease is significantly different than the medical model used in the Eckler actuarial report appended as Exhibit "A" to the affidavit of Sharon D. Matthews sworn July 9, 1999;
  - (vii) the fact that the Class Members and Family Class Members bear the risk of insufficiency of the Trust Fund;
  - (viii) the fact that the FPT Governments' contributions under the Agreement are capped;
  - (ix) the source of the money and other assets which comprise the Trust Fund; and
  - (x) any other facts the Courts consider material;
- (d) the amount to be paid or payable by the FPT Governments, pursuant to the Agreement and the Funding Agreement, shall be reduced by \$10,533,000, as of September 30, 1999, being the \$10,000,000 representing the estimated present value of the excess costs to the Trust Fund of resolving any action or actions instituted or prosecuted by all persons who opt out of a Class Action or are deemed to opt out of a Class Action and all other persons who claim over or bring a third party claim or make any claim or demand or take any action or proceeding against any FPT Government in any way relating to or arising from (i) in the case of a Transfused Class Member or Transfused Family Class Member under the Transfused HCV Plan, the infection of a Primarily-Infected Person with HCV during the Class Period or, (ii) in the case of a Transfused Class Member, Transfused

Family Class Member, Hemophiliac Class Member or Hemophiliac Family Class Member under the Hemophiliac HCV Plan, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) (collectively the "**Opt Out Plaintiffs**") and the sum of \$533,000, representing the actuarially calculated present value of one-third of the costs of defending actions prosecuted by the Opt Out Plaintiffs. For greater certainty, any person who is a Class Member as presently defined may participate in the Plans created by the Agreement;

- (e) no person may opt out an infant or a person who is mentally incompetent from the B.C. Transfused Class Actions, without the leave of this Court after notice to the Public Trustee;
- (f) upon delivery to the Trustee of a copy of a final judgment (as defined in Section 1.07 of the Agreement) obtained by an Opt Out Plaintiff against the FPT Governments or some or one of them or minutes of settlement entered into by an Opt Out Plaintiff and FPT Governments or some or one of them and a copy of a final order of a Court approving the minutes of settlement, the FPT Governments or their designate shall be paid out of the Trust Fund:
  - (i) as at the date of judgment or settlement, an amount equal to the amount that the Opt Out Plaintiff would have been entitled to receive from the Trust Fund had he or she qualified under a Plan;

and

- (ii) a one-time lump sum amount, to be approved by one of the Courts, in satisfaction of the amount that the Opt Out Plaintiff may thereafter have become entitled to receive from the Trust Fund from time to time had he or she qualified under a Plan, calculated in accordance with a protocol to be approved by the Courts;

provided however that in no circumstances shall the amount to be paid from the Trust Fund to the FPT Governments or some or one of them exceed the amount of the judgment or settlement paid to the Opt Out Plaintiff by the FPT Governments or some or one of them plus interest thereon;

- (g) no other amount shall be paid out of the Trust Fund to settle any action prosecuted by any Opt Out Plaintiff or to pay any judgment in any action prosecuted by any Opt Out Plaintiff or to indemnify the FPT Governments or some or one of them from any judgment or settlement of any action instituted or prosecuted by any Opt Out Plaintiff; and
- (h) the provisions of Section 11.02 of the Agreement and Section 6.03 of the Funding Agreement are inoperative and superseded by the provisions of subparagraphs 5(d), (e), (f) and (g) of this order.



6. THIS COURT FURTHER ORDERS:

- (a) the B.C. Transfused Class Members and their Family Members who qualify pursuant to the provisions of the Transfused HCV Plan shall be paid in accordance with the provisions of the Transfused HCV Plan;
- (b) the B.C. Thalassemic Class Members, British Columbia residents who have been infected by a spouse or parent who is a B.C. Thalassemic Class Member and their Family Members, the executors or administrators of the estates of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV and the personal representatives of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV who qualify pursuant to the provisions of the Hemophiliac HCV Plan shall be paid in accordance with the provisions of the Hemophiliac HCV Plan as provided in subparagraph 5(a) of this Order.

7. THIS COURT FURTHER ORDERS AND DECLARES that:

- (a) if a B.C. Transfused Class Member or B.C. Transfused Family Member was receiving any medical, ancillary medical, health or drug benefits from any of the PT Governments on April 1, 1999, the receipt of payments pursuant to a Plan will not affect the quantity, nature or duration of any corresponding benefits that any B.C. Transfused Class Member or B.C. Transfused Family Member receives from any of the PT Governments after April 1, 1999 except to the extent that such benefits are related to the B.C. Transfused Class Member's infection with HCV in which case they are recoverable exclusively under Sections 4.06 and 4.07 of a Plan;

- (b) the receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a B.C. Transfused Class Member or a B.C. Transfused Family Member pursuant to any legislation of any PT Government referred to in Appendix A to a Plan, provided that the receipt of loss of income or loss of support payments pursuant to Sections 4.02 and 6.01 of a Plan may have such an effect; and
- (c) the receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a B.C. Transfused Class Member or B.C. Transfused Family Member pursuant to any social benefit programs of the Federal Government 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 of a Plan may have such an effect.

8. THIS COURT FURTHER ORDERS AND DECLARES that save and except any payment made under subparagraph 5(f) of this Order, no subrogation payment of any nature or kind shall be paid, directly or indirectly, under the Plans, 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 a Plan;
- (b) no municipality and no department of a municipality will be paid under a Plan;

- (c) no person exercising a right of subrogation will be paid under a Plan; and
- (d) no B.C. Transfused Class Member or B.C. Transfused Family Member will be paid compensation if the claim is being asserted as a subrogated claim or if the B.C. Transfused Class Member or B.C. Transfused Family Member will hold any money paid under a Plan in trust for any other party exercising a right of subrogation or, except as provided in Section 8.02 of a Plan, if a payment under a Plan will lead to a reduction in other payments for which the B.C. Transfused Class Member or B.C. Transfused Family Member would otherwise qualify.

9. THIS COURT FURTHER ORDERS that Peterson Worldwide LLC, a limited liability company incorporated under the laws of the State of Illinois and Reed Consulting, Ltd., an Ontario corporation, carrying on business as Peterson Worldwide LLC in Canada, be and are appointed, with joint and several liability, as the Administrator of the Plans until further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 3.

10. THIS COURT FURTHER ORDERS that Royal Trust Company be and is appointed as the Trustee of the Trust until further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 4 which are approved on an interim basis only.

11. THIS COURT FURTHER ORDERS that the Investment Manager shall manage the investment of the whole or any portion of the assets of the Trust Fund but only in accordance with the investment guidelines annexed as Schedule 5 which are approved on an interim basis only.

12. THIS COURT FURTHER ORDERS that TD Asset Management Inc. be and is appointed as the Investment Manager until further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 6 annexed to this Order which are approved on an interim basis only.

13. THIS COURT DECLARES that by further order the Courts will appoint an Investment Consultant on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 7 annexed to this Order which are approved on an interim basis only.

14. THIS COURT FURTHER ORDERS that the Joint Committee shall be comprised of four persons, one Class Action Counsel to the B.C. Transfused Class Action appointed by this Court, one Class Action Counsel to the Ontario Transfused Class Action appointed by the Ontario Superior Court of Justice, one Class Action Counsel to the Quebec Transfused Class Action appointed by the Superior Court of Quebec and one Class Action Counsel to the Hemophiliac Class Actions appointed by the Courts.

15. THIS COURT FURTHER ORDERS that J.J. Camp, Q.C. be and is appointed to the Joint Committee as the Class Action Counsel to the B.C. Transfused Class Action until further order of this Court and with the duties and responsibilities set out in the Agreement.
16. THIS COURT FURTHER ORDERS that Bonnie A. Tough be and is appointed to the Joint Committee as the Class Action Counsel to the Hemophiliac Class Actions until further order of the Courts and with the duties and responsibilities set out in the Agreement.
17. THIS COURT FURTHER ORDERS that William A. Ferguson be and is appointed as the Fund Counsel to the B.C. Class Actions until further order of this Court and with the duties and responsibilities set out in the Agreement.
18. THIS COURT FURTHER ORDERS that, as soon as practicable after their appointments, the Trustee, the Investment Manager, the Investment Consultant and Fund Counsel shall consult each with the other and review the terms and conditions of their appointments, the investment guidelines and their interim powers, rights, duties and responsibilities and shall report to the Courts with their recommendations, if any, as to amendments to the terms and conditions of their appointments and their interim powers, rights, duties and responsibilities.
19. THIS COURT FURTHER ORDERS AND DECLARE that the Joint Committee shall report to the Courts on or before June 30, 2000 and at least semi-annually thereafter until further order of the Courts.
20. THIS COURT DECLARES that, on September 30, 1999, the Contribution Amount as defined in the Funding Agreement was \$1,187,985,360.

21. THIS COURT DECLARES that, on the Approval Date, pursuant to Section 4.01(1) and 4.02(1) of the Funding Agreement, the Federal Government shall pay to the Trustee the amount due and owing as at September 30, 1999, being the sum of \$846,327,527, plus interest from and after September 30, 1999 to the date of payment in accordance with the Funding Agreement plus or minus any adjustment as provided in the Funding Agreement.

22. THIS COURT FURTHER DECLARES that:

- (a) if any income taxes under the *Income Tax Act*, R.S.C. 1985, Chap.1 (5<sup>th</sup> Supp.) As amended (the "*Income Tax Act (Canada)*") or the equivalent provisions of the income tax act of any Province or Territory are paid by the Trustee in respect of income of the Trust, the FPT Government to which the taxes were paid will pay an amount equivalent to the amount so paid to the Trustee and such amount will thereafter form part of the Trust Fund;
- (b) the amount of compensation paid to or received by a Class Member or Family Class Member pursuant to a Plan will not be required to be included in the taxable income of the recipient thereof under the *Income Tax Act (Canada)* or the equivalent provisions of the income tax act of any Province or Territory provided, however, that this provision will not apply in respect of any amount or compensation paid to or received by a person other than the person that, but for any assignment of any amount of compensation payable under a Plan, would be the person entitled to the compensation under the 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 Class Member or Family Class Member or any amount required to be withheld by the Trustee or the Administrator

on account of such tax in respect of any compensation paid or received under a Plan.

23. THIS COURT FURTHER ORDERS AND DECLARES that, pursuant to Section 33(4) of the Act and Section 10.01 of the Agreement, this Court shall supervise the execution of this Order and, without limiting the generality of the foregoing, this Court may issue judgments or orders, in such form as are necessary, to implement and enforce the provisions of the Agreement, the Plans, the Funding Agreement and this Order and may retain any advisor this Court in its discretion considers necessary and the costs of doing so shall be an expense of the Trust.

24. THIS COURT DECLARES that from time to time it may:

- (a) remove the Fund Counsel for the B.C. Class Actions and appoint a replacement;
- (b) remove its appointee of Class Action Counsel for the B.C. Transfused Class Action to the Joint Committee and appoint a replacement;
- (c) remove any Referee/Arbitrator for the B.C. Class Actions and appoint a replacement;
- (d) hear appeals of the Referee's reports for the B.C. Class Actions;
- (e) approve any fees, disbursements and other costs incurred or to be incurred by Fund Counsel appointed for the B.C. Class Actions and Class Action Counsel for the B.C. Transfused Class Action to the Joint Committee; and
- (f) award costs pertaining to any appeals of Referee's reports for the B.C. Class Actions.

25. THIS COURT FURTHER ORDERS that the British Columbia Public Trustee:
- (a) shall be given notice of any motions to this Court for approval, amendment or rescission of protocols; and
  - (b) may apply to this Court for advice and directions as he or she deems necessary.
26. THIS COURT FURTHER ORDERS AND DECLARES that this Order is binding on all B.C. Transfused Class Members, including infants and mentally incompetent persons, unless a B.C. Transfused Class Member opts out of the B.C. Transfused Class Action by filing a written notice with the Administrator on or before June 30, 2000.
27. THIS COURT FURTHER ORDERS that any opt out notices received by Camp Church & Associates prior to the date of this Order have no force and effect and Camp Church & Associates shall notify the makers of such opt out notices at their last known address of the terms of paragraphs 25 and 26 of this Order;
28. THIS COURT FURTHER ORDERS that the Administrator shall, on or before September 1, 2000, report to this Court and advise as to the names of those persons who have opted out of the B.C. Transfused Class Action.
29. THIS COURT FURTHER ORDERS AND DECLARES that each B.C. Transfused Class Member, unless the B.C. Transfused Class Member opts out in accordance with the provisions of this Order, has released each of the Releasees from any and all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages,



contribution, indemnity, costs, expenses and interest which any such B.C. Transfused Class Member ever had, now has or may hereafter have in any way relating to or arising from (i) in the case of each B.C. Transfused Class Member under the Transfused HCV Plan, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of each B.C. Thalassemic Class Member, British Columbia residents who have been infected by a spouse or parent who is a B.C. Thalassemic Class Member, the executors or administrators of the estates of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV and the personal representatives of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV under the Hemophiliac HCV Plan, including, in each case, the infection of a Secondarily-Infected Person, whether such claims were made or could have been made in any proceeding including the B.C. Class Actions.

30. THIS COURT FURTHER ORDERS AND DECLARES that the B.C. Transfused Class Members, unless the B.C. Transfused Class Member opts out in accordance with the provisions of this Order, separately and severally, have fully, finally and forever released each of the Releasees, separately and severally, and in each and every capacity and that no such actions, causes of actions, liabilities, claims or demands referred to in paragraph 28 of this Order may be asserted against any Releasee.

31. THIS COURT FURTHER ORDERS AND DECLARES that the B.C. Transfused Class Members, unless the B.C. Transfused Class Member opts out in accordance with the provisions of this Order, are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person 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*, R.S.B.C. 1996 c. 333 or its counterpart in other jurisdictions, the common law or any other statute of British Columbia or any other jurisdiction in any way relating to or arising from (i) in the case of each B.C. Transfused Class Member under the Transfused HCV Plan, the infection of a Primarily-Infected Person with HCV during the Class Period, or (ii) in the case of each B.C. Thalassemic Class Member, the infection of a Primarily-Infected Person with HCV, including in each case, the infection of a Secondarily-Infected Person provided that the foregoing excludes the CRCS.

32. THIS COURT FURTHER ORDERS AND DECLARES that at the option of the FPT Governments or their representatives, each B.C. Transfused Class Member receiving payment under one of the Plans will either:

- (a) pursue any claims as described in Section 11.01(c) of the Agreement that the B.C. Transfused Class Member has against the CRCS, and assign to the FPT Governments the proceeds received by the B.C. Transfused Class Member or from any such claim; or
- (b) within the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 proceedings relating to the CRCS, prove, vote and otherwise act to promote those claims as described in Section 11.01(c) of the Agreement that the B.C. Transfused Class Member has against the CRCS in accordance with directions given to the B.C. Transfused Class Member 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 B.C. Transfused Class Member, or

- (c) enter into a release of all of such claims against the CRCS substantially in the form of the releases attached as appendices to the Plans.

33. THIS COURT FURTHER DECLARES that the FPT Governments' obligations and liabilities pursuant to Article Four of the Agreement, the Funding Agreement and this Order constitute the consideration for the releases and other matters referred to in this Order and such consideration is in full and final settlement and satisfaction of any and all claims referred to and the B.C. Transfused Class Members, unless the B.C. Transfused Class Member opts out in accordance with the provisions in this Order, are limited to the compensation payable pursuant to the Plans, as funded, pursuant to the Funding Agreement and this Order, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands referred to in paragraph 28 of this Order.

34. THIS COURT FURTHER ORDERS AND DECLARES that, pursuant to Section 34(5) of the Act and Sections 10.01 (1)(o) and 12.03 of the Agreement and Section 10.02 of the Funding Agreement, but subject to the provisions of subparagraph 5(b) and (c) of this Order, once the Plans and the Program have been fully administered in accordance with the Agreement and all obligations under this Order have been satisfied, and the Courts have declared that the Plans and the Program have been fully administered in accordance with the Agreement, any assets remaining in the Trust Fund will be the sole property of the FPT Governments and shall be paid and transferred to the FPT Governments.

35. THIS COURT FURTHER ORDERS AND DECLARES that, unless the B.C. Transfused Class Member opts out in accordance with the provisions of this Order, this Order and

the Agreement are binding upon all B.C. Transfused Class Members who are infants or persons who are mentally incompetent.

36. THIS COURT FURTHER ORDERS AND DECLARES that all information in any form whatsoever received, obtained, compiled or created by the Administrator, Trustee, Investment Manager, Investment Consultant and Auditors as a result of his, her, their or its involvement with the Agreement, Funding Agreement, administration of the Plans and the implementation of this Order including the Claimants' Data is to be held in confidence and is to be used or disseminated solely for the purposes of administration of the Plans and the implementation of this Order and is not to be used or disseminated for any other purposes whatsoever without an order of the Courts.

37. THIS COURT FURTHER ORDERS AND DECLARES that the Administrator, Trustee, Investment Manager, Investment Consultant and Auditors do not have and shall not obtain any interest of any nature or kind in the Claimants' Data and in any information received, obtained, compiled or created by him, her, them or it in the course of the performance of his, her, their or its duties, in the course of administration of the Plans and in the implementation of this Order.

38. THIS COURT FURTHER ORDERS AND DECLARES that the Trustee shall hold in trust for the Class Members and Family Class Members legal title to the Claimants' Data received, obtained, compiled or created by the Administrator, Trustee, Investment Advisor, Investment Consultant and Auditors.

39. THIS COURT FURTHER ORDERS AND DECLARES that the Administrator, Investment Manager, Investment Consultant, Joint Committee and members of the Joint Committee have no right, authority or ability to pledge the credit of the Trust Fund or in any way to encumber the Trust Fund.

40. THIS COURT FURTHER ORDERS AND DECLARES that no person may bring any action or take any proceedings against the Administrator, Trustee, Investment Manager, Investment Consultant, Auditors, Fund Counsel, Joint Committee or members of the Joint Committee or their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Agreement, the Funding Agreement, the administration of the Plans or the implementation of this Order, except with the leave of the Courts.

41. THIS COURT FURTHER ORDERS AND DECLARES that the B.C. Transfused Class Members shall be given notice of settlement of this class proceeding and of this Order in a manner which shall be directed by this Court by further order.

42. THIS COURT DECLARES that by further order it shall:

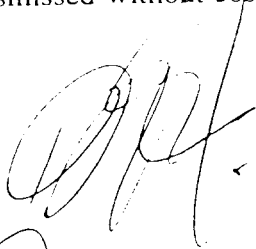
1. appoint Referees/Arbitrators for the B.C. Class Actions on the terms and conditions and with the powers, rights, duties and responsibilities to be particularized; and
2. make all other necessary and ancillary orders for the implementation of the Agreement, the Funding Agreement and this Order and the ongoing supervision thereof.

43. THIS COURT DECLARES that the Courts shall appoint a firm of Auditors on the terms and conditions and with the powers, rights, duties and responsibilities to be particularized and make all other necessary and ancillary orders for the implementation of the Agreement, the Funding Agreement and the Approval Orders and the ongoing supervision thereof.

44. THIS COURT FURTHER ORDERS that the fees and disbursements of the solicitors for the Class Action Plaintiffs in the B.C. Class Actions and all matters relating thereto shall be dealt with by this Court at a hearing on a date and time to be directed.

45. THIS COURT FURTHER ORDERS AND ADJUDGES that, save as aforesaid, this action be and is dismissed without costs.

BY THE COURT



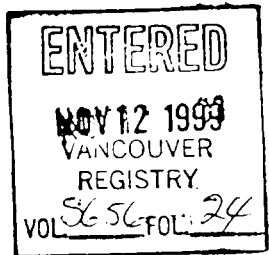
B. Messing  
DISTRICT REGISTRAR

CONSENTED TO AND APPROVED AS TO FORM:

[Signature]  
Counsel for the Plaintiff

[Signature]  
Counsel for the Defendant and Third Party  
Her Majesty The Queen In Right of the  
Province of British Columbia

John R. Klais  
Counsel for the Defendant and Third Party  
The Attorney General of Canada



*THE ATTACHED IS EXHIBIT "C" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts **LLP**,  
Barristers and Solicitors.  
Expires February 22, 2025.

CANADA

PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

NO: 500-06-000016-960

**COUR SUPÉRIEURE**

Le 19 novembre 1999

**SOUS LA PRÉSIDENCE DE  
L'HONORABLE NICOLE MORNEAU, J.C.S.**

**DOMINIQUE HONHON**, 3, Place Bretagne,  
Hull, Québec,

**Requérante**

**c.**

**PROCUREUR GÉNÉRAL DU CANADA**,  
Complexe Guy-Favreau, Tour est, 200,  
boul. René-Lévesque ouest, 9<sup>e</sup> étage,  
Montréal, Québec

**et**

**PROCUREUR GÉNÉRAL DU QUÉBEC**, 1,  
rue Notre-Dame est, 8<sup>e</sup> étage, Montréal,  
Québec

**et**

**SOCIÉTÉ CANADIENNE DE LA CROIX-  
ROUGE**, 2170, boul. René-Lévesque ouest,  
Montréal, Québec

**Intimés**

**et**

**FONDS D'AIDE AUX RECOURS  
COLLECTIFS**, 1, rue Notre-Dame est,  
bureau 10.31, Montréal, Québec

**et**

**LE CURATEUR PUBLIC DU QUÉBEC**,  
600, boul. René-Lévesque ouest, suite 500,  
Montréal, Québec

**Mis en cause**

J.M. 1242

**JUGEMENT**



**LE TRIBUNAL** est saisi d'une requête visant à obtenir une ordonnance additionnelle d'approbation d'une transaction présentée par la requérante, Dominique Honhon;

**CONSIDÉRANT** que le Tribunal a rendu un jugement le 21 septembre 1999 accueillant la requête en approbation d'une transaction présentée par la requérante, Dominique Honhon;

**CONSIDÉRANT** l'entente intervenue entre les parties modifiant la Convention relative à l'Hépatite C 1986-1990 et ses annexes datée du 15 juin 1999 (ci-après la « Convention de règlement »), contenue à l'Annexe F de la Convention de règlement:

**CONSIDÉRANT** que les parties ont convenu que les gouvernements PT possèdent l'option de verser des montants périodiques en conformité avec les articles 4.02 et 4.04 de l'Accord de financement de telle sorte que, dans cette éventualité, il ne restera dans le Fonds en Fiducie aucune somme d'argent ou actif des gouvernements PT qui ne serait alloué actuariellement;

**CONSIDÉRANT** la nature avantageuse des modifications contenues à l'Annexe F de la Convention de règlement;

**CONSIDÉRANT** que les modifications à la Convention de règlement prévues à l'Annexe F sont également soumises pour approbation dans les provinces de l'Ontario et de la Colombie-Britannique, avec les adaptations nécessaires pour respecter les spécificités de chacune des juridictions;

**CONSIDÉRANT** que le Tribunal a pris connaissance du projet de jugement à être rendu par l'honorable juge Warren K. Winkler sur une requête similaire présentable en Ontario;

**CONSIDÉRANT** que les modifications prévues à l'Annexe F tiennent compte de la spécificité du droit applicable dans la province de Québec;

**CONSIDÉRANT** qu'il est dans l'intérêt des membres et de la justice que le Tribunal entérine les modifications à la Convention de règlement contenues à l'Annexe F de la Convention de règlement, lesquelles sont à l'avantage des membres;

**CONSIDÉRANT** que la requérante demande d'être dispensée de donner l'avis prévu à l'article 1025 du Code de procédure civile compte tenu de la nature avantageuse des modifications pour les membres et afin d'éviter d'imposer à ceux-ci tout délai additionnel;

**PAR CES MOTIFS, LE TRIBUNAL :**

**ACCUEILLE** la requête en approbation additionnelle d'une transaction présentée par la requérante;

**PREND ACTE** du consentement des parties aux modifications à la Convention de règlement contenues à l'Annexe F;

**ENTÉRINE** les modifications à la Convention de règlement contenues à l'Annexe F;

**DISPENSE** la requérante de publier l'avis prévu à l'article 1025 du Code de procédure civile compte tenu de la nature avantageuse desdites modifications pour les membres du recours collectif;

**DÉCLARE** que le groupe, dont les membres seront liés par le jugement, est défini comme suit :

- « i des personnes ayant reçu, au Québec, une transfusion de sang, tel que ci-après défini, entre le 1er janvier 1986 et le 1er juillet 1990 inclusivement et qui sont ou ont été infectées par le virus de l'Hépatite C;

- ii d'un époux ou d'un conjoint infecté indirectement par le virus de l'Hépatite C par un époux ou un conjoint qui est une personne décrite au paragraphe (i);
- iii d'un enfant infecté indirectement par le virus de l'Hépatite C par un parent qui est une personne décrite aux paragraphes (i) et (ii); ou
- iv d'un membre de la famille d'une personne décrite aux paragraphes (i), (ii) ou (iii);

le sang étant défini comme suit :

le sang total et les produits sanguins suivants : les concentrés de globules rouges, les plaquettes, le plasma (frais congelé et stocké) et les globules blancs. Le sang ne comprend pas l'albumine à 5%, l'albumine à 25%, le facteur VIII, le facteur VIII porcin, le facteur IX, le facteur VII, l'immunoglobuline anti-cytomégalovirus, l'immunoglobuline anti-hépatitique B, l'immunoglobuline anti Rh, l'immunoglobuline antivarielleuse-antizostérienne, l'immunoglobuline sérique, (FEIBA) FEVIII inhibitor Bypassing Activity, Autoplex (complexe prothrombine), l'immunoglobuline antitétanique, l'immunoglobuline intraveineuse (IVIG) et l'antithrombine III (ATIII); »

**DÉCLARE** que la Convention de règlement relatif à l'Hépatite C 1986-1990, intervenue en date du 15 juin 1999 ainsi que ses annexes « A », « B », « C », « D », « E » et « F » ci-après décrites :

- Annexe « A » : Régime à l'intention des transfusés infectés par le VHC;
- Annexe « B » : Régime à l'intention des hémophiles infectés par le VHC;
- Annexe « C » : Programme d'aide financière fédéral/ provincial/ territorial pour les personnes indirectement infectées par le VIH;
- Annexe « D » : Accord de financement;

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- Annexe « E » Législation sur les prestations sociales;
- Annexe « F » : Modifications numéro 1 à la Convention de règlement ;

et l'Accord de financement (ci-après appelée « **Convention de règlement** ») sont justes, raisonnables et ont été conclus dans le meilleur intérêt des membres du recours collectif des transfusés infectés par le VHC;

**APPROUVE** la Convention de règlement et  
**ORDONNE** aux parties et aux membres liés par la Convention de règlement de s'y conformer;

**DÉCLARE** qu'à la date d'approbation, le gouvernement fédéral doit payer au fiduciaire, en vertu des paragraphes 4.01 (1) et 4.02 (1) de l'Accord de financement, le montant dû et échu en date du 30 septembre 1999, soit la somme de 846 327 527,00 \$, plus les intérêts courus entre cette date et la date de paiement, conformément à l'Accord de financement, plus ou moins de tout ajustement prévu par cet accord.

**ORDONNE ET DÉCLARE** que le présent jugement n'affectera en aucune façon la Société canadienne de la Croix-Rouge étant donné que les présentes procédures en recours collectif ont été suspendues contre celle-ci par un jugement de

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l'honorable juge Blair de la Cour supérieure de l'Ontario daté du 20 juillet 1998, rendu en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (S.R.C. 1985, ch. C-36) dans une action portant le numéro 98-CL-002970, pareille suspension ayant été prolongée par des ordonnances ultérieures de la même Cour et datées des 19 août 1998, 5 octobre 1998, 18 janvier 1999, 5 mai 1999 et du 28 juillet 1999;

**DÉCLARE** que les honoraires et déboursés des procureurs de la requérante seront déterminés à une date ultérieure;

**DÉCLARE** que la Cour procédera ultérieurement à la nomination des personnes appropriées aux postes décrits à la Convention de règlement ;

**NOMME** Me Pierre R. Lavigne au comité conjoint comme le conseiller aux recours collectifs des transfusés (Québec) et ce, jusqu'à ordre contraire d'un tribunal, selon les termes et conditions et avec les devoirs et responsabilités décrits à ladite Convention de règlement:

**DÉCLARE** que le mis en cause, le Curateur public du Québec, pourra, par requête pour directives et instructions, s'adresser à cette Cour, selon qu'il le juge approprié:

**DISPENSE** le mis en cause, le Curateur public du Québec, d'obtenir l'autorisation du tribunal requise pour transiger en faveur de chacune des personnes qu'il représente, pour quelque indemnisation que ce soit en vertu de la Convention de règlement, nonobstant l'article 36 de la *Loi sur le curateur public* (L.R.Q., c. C-81) et **DÉCLARE** que le présent jugement équivaut à l'autorisation requise en vertu de l'article 36 de la *Loi sur le curateur public*:

**DÉCLARE** que la Convention de règlement constitue une transaction au sens de l'article 2631 du *Code civil du Québec* liant toutes les parties et tous les membres liés par ce règlement;

**ORDONNE ET DÉCLARE** que soit donné aux membres des recours collectifs et aux membres de leur famille un avis du présent jugement, de la manière à être déterminée par la Cour à une date ultérieure;

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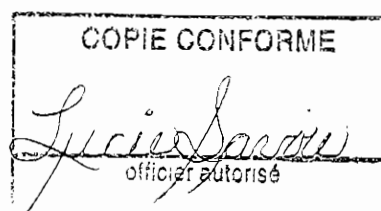
**DÉCLARE** que la date limite pour s'exclure du groupe visé par le règlement sera la date que fixera ultérieurement le Tribunal après avoir approuvé les avis à être publiés:

**DÉCLARE** que, sous réserve de l'article 1008 du *Code de procédure civile du Québec*, tout membre du groupe ci-avant décrit qui ne s'est pas exclu en présentant au gestionnaire des réclamations une formule d'exclusion dûment remplie dans le délai d'exclusion, sera lié par la présente Convention de règlement et le présent jugement d'approbation:

**ORDONNE ET DÉCLARE,**  
conditionnellement à l'approbation de la Convention de règlement par l'honorable juge Smith en Colombie-Britannique et le l'honorable juge Winkler en Ontario, qu'à l'exception de ce qui est prévu ci-avant, le recours collectif institué par madame Dominique Honhon est rejeté sans frais :

**DÉCLARE** que la soussignée demeurera saisie du présent dossier à moins de contrordre du Juge en chef:

*Nicole Morneau J.C.S.*  
NICOLE MORNEAU, J.C.S.





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Me Michel Savonitto  
Marchand, Magnan, Melançon, Forget  
Me Pierre R. Lavigne  
**Procureurs de la requérante**

Me André Lespérance  
Me Nathalie Drouin  
Côté & Ouellet  
**Procureurs du Procureur général du Canada**

Me Robert Monette  
Me Dany Leduc  
Bernard Roy & Ass.  
**Procureurs du Procureur général du Québec**

Me Robert E. Charbonneau  
McMaster, Gervais  
**Procureurs de la Société canadienne de la Croix-Rouge**

Me Louise Ducharme  
**Procureur du Fonds d'aide aux recours collectifs**

Me Hélène Laberge  
**Procureur du Curateur public du Québec.**



NO: 500-06-000016-960

COUR SUPÉRIEURE

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**DOMINIQUE HONHON**

**Requérante**

c.

**PROCUREUR GÉNÉRAL DU CANADA,  
et  
PROCUREUR GÉNÉRAL DU QUÉBEC  
et  
SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE**

**Intimés**

et

**FONDS D'AIDE AUX RECOURS COLLECTIFS  
et  
LE CURATEUR PUBLIC DU QUÉBEC,**

**Mis en cause**

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**ANNEXE F**

L.S.

## 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

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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 1036 du *Code de procédure civile du Québec*;
- (v) la question de savoir si l'intégrité de la Convention de règlement sera maintenue et si les versements des indemnités prévues dans les régimes seront assurés;

L.S.

- (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. »

2. Les paragraphes 11.02 de la Convention de règlement et 6.03 de l'Accord de financement sont abrogés et remplacés par ce qui suit:

« 11.02 (1) Le montant à payer ou payable par les gouvernements FPT en vertu de la Convention de règlement et de l'Accord de financement doit être réduit de 10,533,000\$, en date du 30 septembre 1999; soit la somme de 10,000,000 \$ représentant la valeur actualisée estimée du coût excédentaire pour le fonds en fiducie du règlement des actions intentées ou poursuivies par ceux qui s'excluent ou qui sont réputés s'exclure d'un recours collectif et par ceux qui intentent une action récursoire ou en garantie ou qui présentent une réclamation, une demande ou toute autre procédure contre un gouvernement FPT dont l'objet ou la cause est, de quelque manière

L.S.

que ce soit : (i) dans le cas d'un membre d'un recours collectif des transfusés ou d'un membre de la famille aux termes du Régime à l'intention des transfusés infectés par le VHC, l'infection d'une personne directement infectée par le VHC pendant la période visée par les recours collectifs; ou (ii) dans le cas d'un membre d'un recours collectif des transfusés ou des hémophiles ou d'un membre de la famille des transfusés ou des hémophiles aux termes du Régime à l'intention des hémophiles infectés par le VHC, l'infection d'un hémophile ou d'un transfusé directement infecté par le VHC provenant du sang (y compris, dans chaque cas, l'infection d'une personne indirectement infectée) (collectivement appelés les personnes qui s'excluent); et la somme de 533.000\$ représentant la valeur actualisée du tiers des coûts liés à la défense contre les actions poursuivies par les personnes qui s'excluent. Pour plus de certitude, toute personne qui est membre d'un recours collectif ci-avant défini peut participer aux régimes créés par la Convention de règlement.

- « 11.02 (2) Sur remise au fiduciaire d'une copie d'un jugement final (tel que défini au paragraphe 1.07 de la Convention de règlement) obtenu par une personne qui s'exclut contre les gouvernements FPT, certains ou un seul d'entre eux, ou d'une transaction conclue par une personne qui s'exclut et les gouvernements FPT, certains ou un seul d'entre eux, et d'une copie de l'ordonnance finale d'un

L.S.

tribunal homologuant une transaction, les gouvernements FPT ou leurs mandataires doivent recevoir à partir du fonds en fiducie :

- (i) suivant la date de ce jugement ou de ce règlement, un montant égal au montant que la personne qui s'exclut aurait eu droit de recevoir du fonds en fiducie s'il avait été admissible à un régime; et
- (ii) un versement forfaitaire, sur approbation de l'un des tribunaux, en vue de couvrir le montant que la personne qui s'exclut aurait pu être en droit de recevoir de temps à autre du fonds en fiducie s'il avait été admissible à un régime, ce montant devant être calculé conformément à un protocole devant être approuvé par les tribunaux;

pourvu, cependant, que dans aucun cas, le montant devant être versé à partir du fonds en fiducie aux gouvernements FPT, à certains ou à un seul d'entre eux n'excède le montant du jugement ou du règlement versé à la personne qui s'exclut par les gouvernements FPT, certains ou un seul d'entre eux, plus les intérêts courus sur ce montant.

« 11.02 (3) Aucun autre montant ne doit être payé à partir du fonds en fiducie pour régler une action poursuivie par une personne qui s'exclut, pour satisfaire à un jugement obtenu sur une action intentée par une personne qui s'exclut ou pour indemniser les gouvernements FPT, certains ou un seul d'entre eux de tout jugement ou de tout

L.S.

règlement intervenu par suite de toute action intentée ou poursuivie par une personne qui s'exclut.»

**Le Régime à l'intention des transfusés (Annexe A) est modifié comme suit :**

3. Le sous-paragraphe a) de la définition de « Personne directement infectée » au paragraphe 1.01 est modifié comme suit :

- remplacer le «;» par un «.» à la fin du sous-paragraphe a);
- et
- ajouter la phrase suivante à la fin dudit sous-paragraphe a) :  
« Une personne atteinte ou ayant été atteinte de thalassémie majeure n'est pas visée par le présent sous-paragraphe a); »

4. Par l'ajout d'un paragraphe 4.10 :

« Les personnes directement infectées atteintes de thalassémie majeure ont le droit de présenter les preuves requises à des fins d'indemnisation et de recevoir les indemnités prévues par le Régime à l'intention des hémophiles infectés par le VHC, *mutatis mutandis*, comme si elles étaient des hémophiles directement infectés, et elles sont réputées être, pour les fins de la Convention et du Régime à l'intention des hémophiles infectés par le VHC, des hémophiles directement infectés, sous réserve que la condition figurant au paragraphe 4.01(5) du Régime à l'intention des hémophiles infectés par le VHC ne

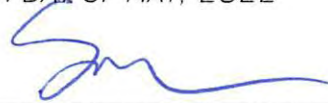


s'applique pas, et leur conjoint et leurs enfants qui sont des personnes indirectement infectées au sens du régime à l'intention des transfusés ainsi que les membres de la famille ont également le droit de présenter les preuves requises à des fins d'indemnisation et de recevoir les indemnités prévues par le Régime à l'intention des hémophiles infectés par le VHC, sous réserve que la condition figurant au paragraphe 4.01(5) du Régime à l'intention des hémophiles infectés par le VHC ne s'applique pas. »

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L.S.

*THE ATTACHED IS EXHIBIT "D" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



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*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE )

FRIDAY THE 15<sup>th</sup> DAY

PAUL M. PERELL )

OF JULY 18<sup>th</sup> 2015

BETWEEN:

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

and

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

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

Intervenor

Proceeding under the *Class Proceedings Act, 1992*

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE

LA PRESENT ATTESTE QUE CE DOCUMENT, CHACUNE DES PAGES EST REVÊTUE DU SCAU DE LA COUR SUPÉRIEURE DE JUSTICE À TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS CE BUREAU

DATED AT TORONTO THIS 15<sup>th</sup> DAY OF JULY 2015  
D'AIT À TORONTO LE 15<sup>th</sup> JOUR DE JUILLET 2015  
REGISTERAR  
GREFFIER  
Plaintiffs



Court File No. 98-CV-146405

BETWEEN:

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*

**ORDER**

THIS MOTION made by the Ontario Members of the Joint Committee by

Notice of Motion, dated March 16, 2015, was heard this day in writing.

AND ON READING the materials filed by the parties to the motion as follows:

- (a) "Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013";
- (b) Affidavit of Dr. Murray Krahn, sworn March 16, 2015 and attached report, "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990, The Fifth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort";
- (c) Affidavit of Richard Border, sworn March 11, 2015 and attached report, "Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013";
- (d) Affidavit of Dr. Vince Bain, sworn March 11, 2015;
- (e) Affidavit of Peter Gorham, sworn April 8, 2015 and attached report, "Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2013";

(collectively, the "Reports").

AND ON BEING ADVISED the Joint Committee and Canada consent to this order in respect of the 1986-1990 Hepatitis C Settlement Agreement 2013 Financial Sufficiency Review,

AND ON BEING ADVISED that neither Her Majesty the Queen in Right of the Province of Ontario nor the Intervenors take a position on this motion;

AND THIS ACTION BEING STAYED against the defendant the Canadian Red Cross Society by the order of Mr. Justice Blair made on July 20, 1998 in Ontario Superior Court of Justice Action No. 98-CL-002970 (Toronto) and subsequently extended by further orders made on August 18, 1998, October 5, 1998, January 18, 1999, May 5, 1999, July 28, 1999 and February 25, 2000;

1. THIS COURT DECLARES that the Reports are hereby filed with the Court pursuant to the provisions of section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement.
2. ~~THIS COURT ORDERS AND DECLARES~~ that the assets of the Trust exceed the liabilities and therefore the Trust Fund is financially sufficient as at December 31, 2013 pursuant to section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement.
3. THIS COURT ORDERS AND DECLARES that as at December 31, 2013, assets of the Trust exceed the liabilities, after taking into account an amount to protect the class members from major adverse experience or catastrophe, by an amount between \$236,341,000 to \$256,594,000.

4. THIS COURT ORDERS that this order not be effective until similar orders have been made by the Superior Court of Quebec and the Supreme Court of British Columbia.

---

JUSTICE

1294778

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 29 2015

PER / PAR:



PARSONS et al.  
KREPPNER et al.

Plaintiffs

vs. THE CANADIAN RED CROSS SOCIETY et al.

Defendants

Court File No. 98-CV-141369  
98-CV-146405

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDINGS COMMENCED AT TORONTO

**ORDER**

Podrebarac Barristers Professional Corporation  
701 – 151 Bloor Street West  
Toronto, ON M5S 1S4

Kathryn Podrebarac LSUC # 35640P  
Tel: 416.348.7502  
Fax: 416.348.7505

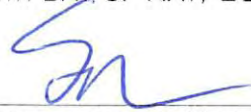
Sutts, Strosberg LLP  
Lawyers  
600 Westcourt Place  
251 Goyeau Street  
Windsor ON N9A 6V4

Heather Rumble Peterson LSUC#: 24671V  
Tel: 519.561.6216  
Fax: 519.561.6203

Lawyers representing the Joint Committee in Ontario

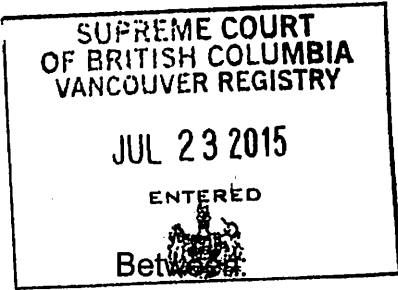


*THE ATTACHED IS EXHIBIT "E" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.



No. C965349  
Vancouver Registry

*In the Supreme Court of British Columbia*

**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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**ORDER MADE AFTER APPLICATION**

---

BEFORE	)	THE HONOURABLE	)	JUL 23 2015
	)	CHIEF JUSTICE HINKSON	)	_____

ON THE APPLICATION of the British Columbia Joint Committee Member (dated 16/March/2015) coming on before the Honourable Chief Justice Hinkson in writing;

AND ON British Columbia Fund Counsel, the defendant the Attorney General of Canada, and the defendant Her Majesty the Queen in Right of the Province of British Columbia, all having been served with the application;

AND ON READING the materials filed by the parties to the application as follows:

- (a) Notice of Application of the British Columbia Joint Committee Member, dated March 16, 2015;
- (b) "Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013";
- (c) Affidavit #4 of Dr. Murray Krahn, sworn March 16, 2015 and attached report, "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990, The Fifth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort";
- (d) Affidavit #4 of Richard Border, sworn March 11, 2015 and attached report, "Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013";
- (e) Affidavit #1 of Dr. Vince Bain, sworn March 11, 2015;
- (f) Affidavit #4 of Peter Gorham, sworn April 8, 2015 and attached report, "Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at December 31, 2013".

AND ON being advised that the Joint Committee and Canada consent to this order in respect of the 1986-1990 Hepatitis C Settlement Agreement 2013 Financial Sufficiency Review;

AND ON being advised that British Columbia Fund Counsel and Her Majesty the Queen in Right of the Province of British Columbia take no position;

AND THIS ACTION BEING STAYED AGAINST the defendant the Canadian Red Cross Society by the order of Mr. Justice Blair made on July 20, 1998 in Superior Court of Justice Action No. 98-CL-002970 (Toronto) and subsequently extended by further

orders made on August 18, 1998, October 5, 1998, January 18, 1999, May 5, 1999, July 28, 1999 and February 25, 2000;

AND THIS ACTION BEING STAYED AGAINST the third parties Prince George Regional Hospital, Dr. William Galliford, Dr. Robert Hart Dykes, Dr. Peter Houghton and Dr. John Doe by order of Mr. Justice K. Smith, made May 22, 1997;

THIS COURT ORDERS that:

1. The Reports listed below are hereby filed with the Court pursuant to the provisions of Clause 10.01(1)(i) of the January 1, 1986-July 1, 1990 Hepatitis C Settlement Agreement:

- (a) "Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013";
- (b) Affidavit #4 of Dr. Murray Krahn, sworn March 16, 2015 and attached report, "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990, The Fifth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort";
- (c) Affidavit #4 of Richard Border, sworn March 11, 2015 and attached report, "Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013";
- (d) Affidavit #1 of Dr. Vince Bain, sworn March 11, 2015;
- (e) Affidavit #4 of Peter Gorham, sworn April 8, 2015 and attached report, "Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2013";

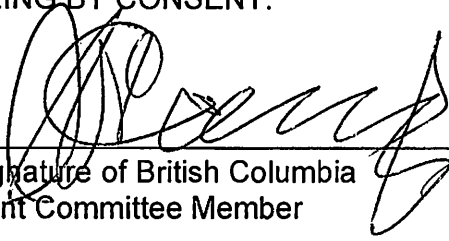
(collectively, the "Reports").

2. The assets of the Trust exceed the liabilities and therefore the Trust Fund is financially sufficient as at December 31, 2013 pursuant to section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement.

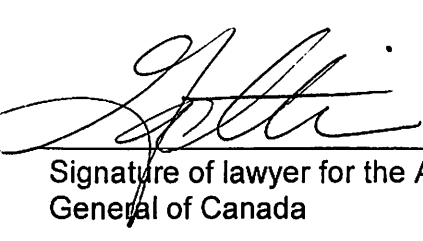
3. As at December 31, 2013, assets of the Trust exceed the liabilities, after taking into account an amount to protect the class members from major adverse experience or catastrophe, by an amount between \$236,341,000 to \$256,594,000.

4. This order not be effective until similar orders have been made by the Superior Court of Québec and the Ontario Superior Court of Justice.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

  
\_\_\_\_\_  
Signature of British Columbia  
Joint Committee Member

J.J. Camp, Q.C.

  
\_\_\_\_\_  
Signature of lawyer for the Attorney  
General of Canada

Andrea Gatti

SEE ATTACHED

\_\_\_\_\_  
Signature of lawyer for Her Majesty the  
Queen in Right of the Province of British  
Columbia

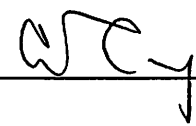
D. Clifton Prowse, Q.C.

SEE ATTACHED

\_\_\_\_\_  
Signature of British Columbia Fund  
Counsel

Gordon J. Kehler

  
By the Court

  
\_\_\_\_\_  
Registrar

2. The assets of the Trust exceed the liabilities and therefore the Trust Fund is financially sufficient as at December 31, 2013 pursuant to section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement.

3. As at December 31, 2013, assets of the Trust exceed the liabilities, after taking into account an amount to protect the class members from major adverse experience or catastrophe, by an amount between \$236,341,000 to \$256,594,000.

4. This order not be effective until similar orders have been made by the Superior Court of Québec and the Ontario Superior Court of Justice.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of British Columbia  
Joint Committee Member

J.J. Camp, Q.C.

\_\_\_\_\_  
Signature of lawyer for Her Majesty the  
Queen in Right of the Province of British  
Columbia

D. Clifton Prowse, Q.C.

\_\_\_\_\_  
Signature of lawyer for the Attorney  
General of Canada

Andrea Gatti

*SEE ATTACHED*

\_\_\_\_\_  
Signature of British Columbia Fund  
Counsel

Gordon J. Kehler

- 4 -

2. The assets of the Trust exceed the liabilities and therefore the Trust Fund is financially sufficient as at December 31, 2013 pursuant to section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement.

3. As at December 31, 2013, assets of the Trust exceed the liabilities, after taking into account an amount to protect the class members from major adverse experience or catastrophe, by an amount between \$236,341,000 to \$256,594,000.

4. This order not be effective until similar orders have been made by the Superior Court of Québec and the Ontario Superior Court of Justice.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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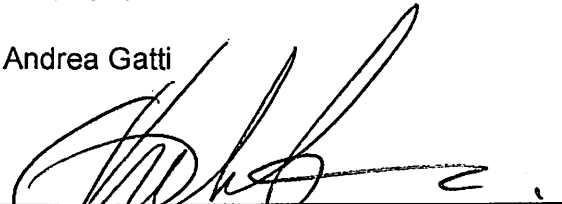
Signature of British Columbia  
Joint Committee Member

J.J. Camp, Q.C.

---

Signature of lawyer for the Attorney  
General of Canada

Andrea Gatti




---

Signature of lawyer for Her Majesty the  
Queen in Right of the Province of British  
Columbia

D. Clifton Prowse, Q.C.

---

Signature of British Columbia Fund  
Counsel

Gordon J. Kehler

No. C965349  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between:

**Anita Endean, as representative plaintiff**

Plaintiff

and:

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

Defendants

and:

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

Third Parties

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

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**ORDER MADE AFTER APPLICATION**

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CAMP FIORANTE MATTHEWS MOGERMAN  
Barristers & Solicitors  
#400 – 856 Homer Street  
Vancouver, BC V6B 2W5

Tel: (604) 689-7555  
Fax: (604) 689-7554  
Email: [service@cfmlawyers.ca](mailto:service@cfmlawyers.ca)

*Aj: MB:Ke*



*THE ATTACHED IS EXHIBIT "F" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

**COUR SUPÉRIEURE**

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE **MONTREAL**

No : 500-06-000016-960  
500-06-000068-987

DATE : 16 juillet 2015

---

**SOUS LA PRÉSIDENCE DE : L'HONORABLE CHANTAL CORRIVEAU, J.C.S.**

---

**500-06-000016-960**

**DOMINIQUE HONHON**

Requérante

c.

**PROCUREUR GÉNÉRAL DU CANADA**

Et

**PROCUREURE GÉNÉRALE DU QUÉBEC**

Et

**SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE**

Intimés

Et

**ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint**

**REQUÉRANT**

Et

**FONDS D'AIDE AUX RECOURS COLLECTIFS**

Et

**LE CURATEUR PUBLIC DU QUÉBEC**

Mis en cause

---

500-06-000016-960 - 500-06-000068-987

PAGE : 2

**500-06-000068-987****DAVID PAGE**

Requérant

c.

**PROCUREUR GÉNÉRAL DU CANADA**

et

**PROCUREURE GÉNÉRALE DU QUÉBEC**

et

**SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE**

Intimés

et

**FONDS D'AIDE AUX RECOURS COLLECTIFS**

et

**LE CURATEUR PUBLIC DU QUÉBEC**

Mis en cause

---

**JUGEMENT SUR LA REQUÊTE POUR DIRECTIVES PRÉSENTÉE PAR LE MEMBRE  
DU COMITÉ CONJOINT AUX FINS DE RÉÉVALUER LES ASPECTS FINANCIERS  
DU FONDS**

---

- [1] **ATTENDU QUE** le tribunal est saisi d'une *Requête pour directives présentée par le membre du comité conjoint aux fins de réévaluer les aspects financiers du fonds* présentée par Me Michel Savonitto, ès qualités de membre du Comité conjoint pour le Québec;
- [2] **CONSIDÉRANT** la requête et l'ensemble des pièces déposées devant le tribunal par les parties, notamment :

**DATE DU DOCUMENT**

- a) "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus through the Blood Supply 1986-1990, The Fifth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort, Septembre 2014" préparé par Wendon Chen, Wilong Yi, Murray Wong et Murray Krahn, (le « **Rapport MMWG** ») et joint à l'affidavit du Dr. Murray Krahn;

16 mars 2015

- |   |              |
|---|--------------|
| b) "Report of the Joint Committee Relating to the Financial Sufficiency of the 1986-1990 Hepatitis C Trust, as at December 31, 2010" préparé par le Comité conjoint;  | 16 mars 2015 |
| c) "Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013" préparé par Eckler Ltd (Richard Border et Wendy Harrison) et joint à l'affidavit de Richard Border; | 11 mars 2015 |
| d) Affidavit détaillé de Dr. Vincent Bain et ses annexes;   | 11 mars 2015 |
| e) « Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2013 » préparé par Morneau Shepell et joint à l'affidavit de Peter Gorham;  | 8 avril 2015 |

(collectivement, les « Rapports »);

- [3] **CONSIDÉRANT** que le Comité conjoint et le Procureur général du Canada consentent au présent jugement et que les autres intimés ne prennent pas position ni ne contestent la requête;
- [4] **PAR CES MOTIFS, LE TRIBUNAL :**
- [5] **ACCUEILLE** la requête;
- [6] **DÉCLARE** que les Rapports ont été déposés conformément aux dispositions prévues à l'article 10.01(1)(i) du Règlement Relatif à l'Hépatite C 1986-1990;
- [7] **DÉCLARE** que les éléments d'actifs de la fiducie excèdent les obligations financières estimées de sorte que le Fonds en fiducie est financièrement suffisant à la date d'évaluation du 31 décembre 2013, selon les dispositions prévues à l'article 10.01(1)(i) du Règlement Relatif à l'Hépatite C 1986-1990;
- [8] **DÉCLARE** qu'après avoir pris en compte un montant pour protéger les membres d'une expérience majeure défavorable ou d'une catastrophe, les éléments d'actifs de la fiducie excèdent les obligations financières estimées d'un montant évalué entre 236 341 000 \$ et 256 594 000 \$ à la date du 31 décembre 2013;
- [9] **DÉCLARE** que le présent jugement ne prendra effet qu'au moment où des ordonnances similaires auront été rendues par la Cour supérieure de l'Ontario et la Cour Suprême de la Colombie-Britannique;



500-06-000016-960 - 500-06-000068-987

PAGE : 4

[10] **LE TOUT** sans frais.

---

CHANTAL CORRIVEAU, j.c.s.

Me Martine Trudeau  
Savonitto & Ass. inc.  
Pour Me Michel Savonitto *ès qualités* de membre du Comité conjoint

Me Nathalie Drouin  
Me Pascale-Catherine Guay  
Procureur général du Canada/Attorney general of Canada  
Ministère de la Justice Canada  
Pour le Procureur général du Canada

Me Manon Des Ormeaux  
Bernard Roy (Justice-Québec)  
Pour la Procureure générale du Québec

Me Philippe Dufort-Langlois  
Me Mason Poplaw  
McCarthy, Tétrault  
Conseillers juridiques du Fonds

*THE ATTACHED IS EXHIBIT "G" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso **Sutts LLP**,  
Barristers and Solicitors.  
Expires February 22, 2025.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE ) MONDAY THE 15<sup>th</sup> DAY  
 )  
PAUL PERELL ) OF AUGUST, 2016

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**

### ORDER

THESE MOTIONS made by the Joint Committee by amended notice of motion dated April 1, 2016 and by the Attorney General of Canada by notice of motion dated January 29, 2016 in these actions and in *Endean v. The Canadian Red Cross Society et al.* Court File No. C965349 Vancouver Registry and in *Honhon v. The Attorney General of Canada et al.* Court File No. 500-06-000016-960 and *Page v. The Attorney General of Canada et al.* Court File No. 500-06-000068-987 District of Montreal for orders in respect of unallocated assets of the 1986-1990 Hepatitis C Trust Fund were heard on June 20<sup>th</sup> to June 22<sup>nd</sup>, 2016, at a special joint hearing of the Superior Court of Ontario, Supreme Court of British Columbia and Superior Court of Quebec (the “Courts”) at Toronto, Ontario,

ON READING the:

- (a) Affidavit of Heather Rumble Peterson sworn November 23, 1999, her Affidavit #5 sworn August 7, 2012, her Affidavit #9 sworn November 22, 2013 re-sworn May 3, 2016, her Affidavit #10 sworn November 25, 2013



- re-sworn May 3, 2016, her Affidavit sworn November 29, 2013, her Affidavit #13 sworn October 16, 2015, and her Affidavit #15 sworn April 1, 2016;
- (b) Affidavit of J.J. Camp made November 23, 1999, his Affidavit made June 28, 2007, and his Affidavit made May 12, 2014;
  - (c) Affidavit of R. Douglas Elliott sworn July 12, 1999;
  - (d) Affidavit of Bonnie A. Tough sworn November 25, 1999;
  - (e) Affidavit #23 of Sharon D. Matthews sworn January 14, 2010;
  - (f) Affidavit of Asvini Krishnamoorthy sworn May 10, 2016;
  - (g) Affidavit #4 of Richard Border made March 11, 2015 re-sworn May 9, 2016, his Affidavit #5 made October 14, 2015 re-sworn May 9, 2016, and his Affidavit #6 made March 31, 2016 re-sworn May 9, 2016;
  - (h) Affidavit #4 of Peter Gorham sworn April 8, 2015, and his Affidavits sworn January 29, 2016, and April 19, 2016;
  - (i) Affidavits #1 and 2 of Dr. Vince Bain sworn March 11, 2015, and March 31, 2016;
  - (j) Affidavit #4 of Dr. Murray Krahn sworn March 16, 2015 re-sworn May 4, 2016, and his Affidavit #5 sworn April 1, 2016 re-sworn May 4, 2016;
  - (k) Affidavits of Dr. Samuel S. Lee sworn January 26, 2016, and April 20, 2016;
  - (l) Affidavits #7, 8, 10 and 13 of Lise Carmichael-Yanish made November 22, 2013, November 26, 2013, December 9, 2013, and April 1, 2016;
  - (m) Affidavit #1 of Alan Melamud sworn October 15, 2015;

- (n) Affidavits #1 and 2 of Arnaud Sauvé-Dagenais sworn October 15, 2015, and April 1, 2016;
- (o) Affidavits #1, 2 and 3 of Shelley Woodrich affirmed October 16, 2015, April 1, 2016, and June 16, 2016;
- (p) Affidavit #1 of Chya R. Mogerman sworn October 16, 2015;
- (q) Affidavit #1 of Julie-Lynn Davis sworn April 1, 2016;
- (r) Factum/Submissions/Written Argument of the Joint Committee, and Appendix A thereto, and the Joint Committee's Book of Authorities,
- (s) Factum and Book of Authorities of the Attorney General of Canada for the motion to Allocate Excess Capital,
- (t) Submissions and Book of Authorities of the Defendant Her Majesty of the Queen in Right of the Province of British Columbia;
- (u) Factum and Book of Authorities of the Responding Party, Her Majesty the Queen in Right of Ontario;
- (v) Argumentation Écrite de L'intimée et Cahier des Autorités de la Procureure Générale du Québec;
- (w) Factum and Brief of Authorities of the Intervenors/Respondents;
- (x) Factum and Book of Authorities of the Objecting Class Member;
- (y) Factum/Submissions/Written Argument of Class Member 2213; and
- (z) Factum/Submissions/Written Argument of Class Member 7438

AND ON HEARING the submissions of the Joint Committee on behalf of the Class Members, counsel for the Attorney General of Canada, counsel for Her Majesty the Queen in Right of Ontario, counsel for the Intervenors, Ontario Fund

Counsel, counsel for Class Members 2213 and 7438, counsel for the objecting Class Member, and several Class Members in person and by video-link,

1. THIS COURT ORDERS AND DECLARES that additional assets of the 1986-1990 Hepatitis C Settlement Agreement Trust Fund are required to be allocated to meet ongoing liabilities and therefore the order of this Court, dated July 10, 2015, is varied such that the actuarially unallocated assets of the 1986-1990 Hepatitis C Settlement Agreement Trust Fund as at December 31, 2013 are restated to be in the amount of \$206,920,000 (the “**Excess Capital**”).

2. THIS COURT DECLARES that the restrictions on payments of amounts for loss of income payable under section 4.02(2)(b)(i) of the Transfused HCV Plan and the Hemophiliac HCV Plan (the “**Plans**”) and for loss of support under section 6.01(1) of the Plans, as previously varied by the Courts, are not varied or removed, in whole or in part, at this time.

3. THIS COURT ORDERS that the motion made by the Attorney General of Canada dated January 29, 2016 is dismissed.

4. THIS COURT ORDERS AND DECLARES that none of the payments allowed by this Order shall in any way modify or affect the financial obligations and the monthly payments of any of the Provincial and Territorial Governments under the 1986-

1990 Hepatitis C Settlement Agreement. Nothing in this Order shall amend the 1986-1990 Hepatitis C Settlement Agreement.

5. THIS COURT ORDERS AND DECLARES that a discrete HCV Late Claims Benefit Plan funded from 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 Court, be established for the benefit of Class Members (as that term is defined in section 1.01 of the Plans) unable to claim under the Plans because they did not apply prior to June 30, 2010 and are not eligible for the exceptions provided in the Plans and the existing court approved protocols pertaining thereto to provide benefits that are not better or different than the benefits provided to other Class Members who claim under the Plans, in accordance with terms which shall be prepared by the Joint Committee for approval by the Courts.

6. THIS COURT ORDERS that the sum of \$130,970,000 plus related administrative costs of \$61,000 and required capital in an amount to be agreed upon by the Joint Committee and the Attorney General of Canada or as directed by the Court is allocated for the following “**HCV Special Distribution Benefits**,” which shall be indexed to the 1<sup>st</sup> day of January of the year in which they are paid (using the Pension Index in the manner provided in section 7.02 of the Plans, except that for the purpose of these HCV Special Distribution Benefits the reference in the section to the year 1999 be

replaced with the year 2014) and paid as special distributions solely from the Excess Capital:

- (a) \$1,143.91 (8.5% of \$10,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(a) of the Plans;
- (b) \$2,287.82 (8.5% of \$20,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(b) of the Plans;
- (c) \$3,431.72 (8.5% of \$30,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(c) of the Plans;
- (d) \$7,435.40 (8.5% of \$65,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(d) of the Plans;
- (e) \$11,439.08 (8.5% of \$100,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(e) of the Plans;
- (f) \$5,719.54 (8.5% of \$50,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.08(2) of the Hemophiliac HCV Plan;
- (g) \$5,719.54 (8.5% of \$50,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(1) of the Plans;

- (h) \$13,726.89 (8.5% of \$120,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(2) of the Plans;
- (i) \$8,236.14 (8.5% of \$72,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(4) of the Hemophiliac HCV Plan;
- (j) \$6,190.56 (\$4,600 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment to a Child 21 years or older under section 6.02(c) of the Plans;
- (k) \$6,190.56 (\$4,600 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment to a Parent under section 6.02(d) of the Plans;
- (l) an amount equivalent to 10% of loss of income payments made to any Class Member who has qualified or who hereafter qualifies under section 4.02(2) of the Plans, subject to a cap of \$20,000 per year for those years prior to 2014 and \$20,000 per year indexed for the years 2014 and following;
- (m) \$32.30 per week (2 hours per week at \$12 per hour in 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for loss of services payments based on the maximum hours permitted per week under sections 4.03(2) and 6.01(2) of the Plans;
- (n) up to an additional \$13,457.74 per year (\$10,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for costs of care compensation under section 4.04 of the Plans

for any costs of care incurred in excess of \$67,288.69 (\$50,000 per year in 1999 dollars adjusted to 2014 dollars);

- (o) \$200 (2014 dollars) for each occasion, after August 16, 2016, that a Family Member (as that term is defined in section 1.01 of the Plans) accompanies an HCV Infected Person to his or her medical appointment(s) seeking medical advice or treatment due to his or her HCV infection. For greater certainty, the payment shall be limited to \$200 per occasion irrespective of whether more than one Family Member is in attendance and irrespective of whether the attendance requires more than a single day.

7. THIS COURT ORDERS that each payment of HCV Special Distribution Benefits that is based upon a prior payment having been made to a Class Member be made by way of lump sum to the Class Member or such other legal representative as may be provided for by the standard operating procedures in place for the administration of the Plans, without the necessity of a further claim or request from the Class Member.

8. THIS COURT DECLARES that the recommendations made by the Joint Committee for payment of additional uninsured funeral expenses and for the elimination of certain deductions on loss of income calculations under the Plans are not approved.

9. THIS COURT DECLARES that the request for removal of the cap recommended by the Joint Committee on maximum income loss to be used to calculate

a pension loss benefit made by the objecting Class Member at the joint hearing is not approved.

10. THIS COURT DECLARES that the Joint Committee may apply to the Courts for consideration of special distribution benefits which address the circumstances of Class Members such as Class Members 2213 and 7438.

11. THIS COURT ORDERS that the costs associated with establishing and administering the payments allowed by this Order be paid solely from the Excess Capital allocated for HCV Special Distribution Benefits in accordance with paragraph 6 of this Order.

12. THIS COURT ORDERS that any Excess Capital not utilized to establish and administer the HCV Late Claims Benefit Plan provided for in paragraph 5 of this Order or not paid out as HCV Special Distribution Benefits and/or related administrative costs as provided for by paragraph 6 of this Order shall be retained in the Trust Fund, subject to the motions contemplated in paragraphs 5 and 10 of this Order or future motions made pursuant to the 1986-1990 Hepatitis C Settlement Agreement and/or the settlement approval orders of the Courts.

13. THIS COURT ORDERS that there shall be no costs of the motions, provided however that the \$60,562.22 expense for translation services and webcast video-conferencing of the joint hearings and the \$29,539.29 expense for the joint motion



record be paid one half by the Trust Fund and one half by the Attorney General of Canada.

14. THIS COURT ORDERS that the Joint Committee and counsel for the Attorney General of Canada shall discuss such changes as may be required to give effect to this Order. In the absence of agreement, any one of them may apply to the Court for directions. In the event a change is subsequently approved by the Court, any payment made or expense paid pursuant to this Order which is recorded in a manner inconsistent with the approved change shall be rectified so that it is accounted for in accordance with the approved change.

15. THIS COURT DECLARES that this Order shall take effect upon the date when the last judgment of the Quebec Superior Court or order of the Supreme Court of British Columbia, with no material differences, becomes final.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JAN 23 2017

  
PERELL J.

1441865

PER / PAR: CD.

PARSONS et al.  
KREPPNER et al.

vs. THE CANADIAN RED CROSS SOCIETY et al.

Plaintiffs

Defendants

Court File No. 98-CV-141369  
98-CV-146405

ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDINGS COMMENCED AT TORONTO

ORDER

SUTTS, STROSBERG LLP  
Lawyers  
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251 Goyeau Street  
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KATHRYN PODREBARAC  
LSUC#: 35640P  
Tel: 416.348.7502  
Fax: 416.348.7505

Lawyers for the Joint Committee

FILE: 44.901.002  
REF: HRP/sw

*THE ATTACHED IS EXHIBIT "H" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.



No. C965349  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

**Anita Endean, as representative plaintiff**

Plaintiff

and

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

Defendants

and

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

Third Parties

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**ORDER MADE AFTER APPLICATION**

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BEFORE	)	THE HONOURABLE	)	16/Aug/2016
	)	CHIEF JUSTICE HINKSON	)	
	)		)	
	)		)	

THE APPLICATION of the Joint Committee (dated 16/October/2015 and amended 1/April/2016) and the Application of the Attorney General of Canada (dated 29/January/2015) coming on for hearing by video conference at the Courthouse, 800 Smithe Street, Vancouver, British Columbia on 20/June/2016 through 22/June/2016, before the Honourable Chief Justice Hinkson, who

presided over the hearing from Toronto, Ontario at a special joint hearing of the Superior Court of Ontario, Supreme Court of British Columbia, and Superior Court of Quebec (the "Courts").

AND ON hearing J.J. Camp, Q.C. Sharon D. Matthews, Q.C., Harvey Strosberg, Q.C., Heather Rumble Peterson, Kathryn Podrebarac, Michel Savonitto and Martine Trudeau, counsel for the Joint Committee; Mark Polley, counsel for the Objecting Class Member; William P. Dermody, counsel for Claimants 2213 and 7438; John Callaghan, Fund Counsel for Ontario, Gordon J. Kehler, Fund Counsel for British Columbia; Philippe Dufort-Langlois, Fund Counsel for Québec; Paul B. Vickery, John Spencer, William Knights, Nathalie Drouin, Stéphane Arcelin, Sarah-Dawn Norris, Matthew Sullivan and Nathalie Haman, counsel for the Attorney General of Canada; D. Clifton Prowse, Q.C. and Keith Johnston, counsel for Her Majesty the Queen in Right of the Province of British Columbia; Lise Favreau and Erin Rizok, counsel for Her Majesty the Queen in Right of Ontario; Manon Des Ormeaux, counsel for la Procureure générale du Québec; and Caroline Zayid and J. Michael Rosenberg, counsel for the provinces and territories other than British Columbia, Ontario and Québec;

AND ON READING the:

- (a) Affidavit of Heather Rumble Peterson sworn November 23, 1999, her Affidavit #5 sworn August 7, 2012, her Affidavit #9 sworn November 22, 2013 re-sworn May 3, 2016, her Affidavit #10 sworn November 25, 2013 re-sworn May 3, 2016, her Affidavit sworn November 29, 2013, her Affidavit #13 sworn October 16, 2015, and her Affidavit #15 sworn April 1, 2016;
- (b) Affidavit of J.J. Camp made November 23, 1999, his Affidavit made June 28, 2007, and his Affidavit made May 12, 2014;

- (c) Affidavit of R. Douglas Elliott sworn July 12, 1999;
- (d) Affidavit of Bonnie A. Tough sworn November 25, 1999;
- (e) Affidavit #23 of Sharon D. Matthews sworn January 14, 2010;
- (f) Affidavit of Asvini Krishnamoorthy sworn May 10, 2016;
- (g) Affidavit #4 of Richard Border made March 11, 2015 re-sworn May 9, 2016, his Affidavit #5 made October 14, 2015 re-sworn May 9, 2016, and his Affidavit #6 made March 31, 2016 re-sworn May 9, 2016;
- (h) Affidavit #4 of Peter Gorham sworn April 8, 2015, and his Affidavits sworn January 29, 2016, and April 19, 2016;
- (i) Affidavits #1 and 2 of Dr. Vince Bain sworn March 11, 2015, and March 31, 2016;
- (j) Affidavit #4 of Dr. Murray Krahn sworn March 16, 2015 re-sworn May 4, 2016, and his Affidavit #5 sworn April 1, 2016 re-sworn May 4, 2016;
- (k) Affidavits of Dr. Samuel S. Lee sworn January 26, 2016, and April 20, 2016;
- (l) Affidavits #7, 8, 10 and 13 of Lise Carmichael-Yanish made November 22, 2013, November 26, 2013, December 9, 2013, and April 1, 2016;
- (m) Affidavit #1 of Alan Melamud sworn October 15, 2015;
- (n) Affidavits #1 and 2 of Arnaud Sauvé-Dagenais sworn October 15, 2015, and April 1, 2016;
- (o) Affidavits #1, 2 and 3 of Shelley Woodrich affirmed October 16, 2015, April 1, 2016, and June 16, 2016;
- (p) Affidavit #1 of Chya R. Mogerma sworn October 16, 2015; and
- (q) Affidavit #1 of Julie-Lynn Davis sworn April 1, 2016;

AND THIS ACTION BEING STAYED AGAINST the defendant, the Canadian Red Cross Society by the order of Mr. Justice Blair, made July 20, 1998 in Ontario Superior Court of Justice Action no. 98-CL-002970 (Toronto) and subsequently extended by further orders made on August 18, 1998, October 5, 1998, January 18, 1999, May 5, 1999, July 28, 1999 and February 25, 2000;

AND THIS ACTION BEING STAYED AGAINST the third parties Prince George Regional Hospital, Dr. William Galliford, Dr. Robert Hart Dykes, Dr. Peter Houghton and Dr. John Doe by order of Mr. Justice K. Smith, made May 22, 1997;

THIS COURT ORDERS THAT:

1. Additional assets of the 1986-1990 Hepatitis C Settlement Agreement Trust Fund are required to be allocated to meet ongoing liabilities and therefore the order of this Court, dated July 23, 2015, is varied such that the actuarially unallocated assets of the 1986-1990 Hepatitis C Settlement Agreement Trust Fund as at December 31, 2013 are restated to be in the amount of \$206,920,000 (the "Excess Capital").
2. The restrictions on payments of amounts for loss of income payable under section 4.02(2)(b)(i) of the Transfused HCV Plan and the Hemophiliac HCV Plan (the "Plans") and for loss of support under section 6.01(1) of the Plans, as previously varied by the Courts, are not varied or removed, in whole or in part, at this time.
3. The application of the Attorney General of Canada (dated 29/January/2016) is dismissed.

4. None of the payments allowed by this Order shall in any way modify or affect the financial obligations and the monthly payments of any of the Provincial and Territorial Governments under the 1986-1990 Hepatitis C Settlement Agreement. Nothing in this Order shall amend the 1986-1990 Hepatitis C Settlement Agreement.
5. A discrete HCV Late Claims Benefit Plan funded from 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 court, be established for the benefit of Class Members (as that term is defined in section 1.01 of the Plans) unable to claim under the Plans because they did not apply prior to June 30, 2010 and are not eligible for the exceptions provided in the Plans and the existing court approved protocols pertaining thereto to provide benefits that are not better or different than the benefits provided to other Class Members, the terms of which shall be prepared by the Joint Committee for approval by the Courts.
6. The sum of \$130,970,000 plus related administrative costs of \$61,000 and required capital in an amount to be agreed upon by the Joint Committee and the Attorney General of Canada or as directed by the Court is allocated for "**HCV Special Distribution Benefits,**" which shall be indexed to the 1st day of January of the year in which they are paid (using the Pension Index in the manner provided in section 7.02 of the Plans, except that for the purpose of these HCV Special Distribution Benefits the reference in the section to the year 1999 be replaced with the year 2014) and paid as special distributions solely from the Excess Capital:



- (a) \$1,143.91 (8.5% of \$10,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(a) of the Plans;
- (b) \$2,287.82 (8.5% of \$20,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(b) of the Plans;
- (c) \$3,431.72 (8.5% of \$30,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(c) of the Plans;
- (d) \$7,435.40 (8.5% of \$65,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(d) of the Plans;
- (e) \$11,439.08 (8.5% of \$100,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(e) of the Plans;
- (f) \$5,719.54 (8.5% of \$50,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.08(2) of the Hemophiliac HCV Plan;
- (g) \$5,719.54 (8.5% of \$50,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(1) of the Plans;

- (h) \$13,726.89 (8.5% of \$120,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(2) of the Plans;
- (i) \$8,236.14 (8.5% of \$72,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(4) of the Hemophiliac HCV Plan;
- (j) \$6,190.56 (\$4,600 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment to a Child 21 years or older under section 6.02(c) of the Plans;
- (k) \$6,190.56 (\$4,600 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment to a Parent under section 6.02(d) of the Plans;
- (l) an amount equivalent to 10% of loss of income payments made to any Class Member who has qualified or who hereafter qualifies under section 4.02(2) of the Plans, subject to a cap of \$20,000 per year for those years prior to 2014 and \$20,000 per year indexed for the years 2014 and following;
- (m) \$32.30 per week (2 hours per week at \$12 per hour in 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for loss of services payments based on the maximum hours permitted per week under sections 4.03(2) and 6.01(2) of the Plans;

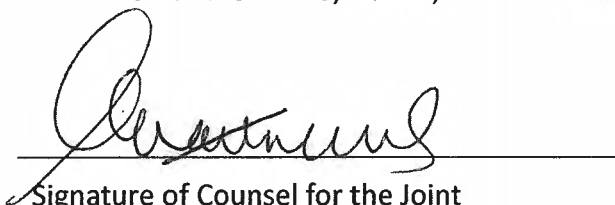
- (n) up to an additional \$13,457.74 per year (\$10,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for costs of care compensation under section 4.04 of the Plans for any costs of care incurred in excess of \$67,288.69 per year (\$50,000 per year in 2014 dollars);
  - (o) \$200 (2014 dollars) for each occasion, after August 16, 2016, that a Family Member (as that term is defined in section 1.01 of the Plans) accompanies an HCV Infected Person to his or her medical appointment(s) seeking medical advice or treatment due to his or her HCV infection. For greater certainty, the payment shall be limited to \$200 per occasion irrespective of whether more than one Family Member is in attendance and irrespective of whether the attendance requires more than a single day.
7. Each payment of HCV Special Distribution Benefits that is based upon a prior payment having been made to a Class Member be made by way of lump sum to the Class Member or such other legal representative as may be provided for by the standard operating procedures in place for the administration of the Plans, without the necessity of a further claim or request from the Class Member.
8. The recommendations made by the Joint Committee for payment of additional uninsured funeral expenses and for the elimination of certain deductions on loss of income calculations under the Plans are not approved.

9. The request for removal of the cap recommended by the Joint Committee on maximum income loss to be used to calculate a pension loss benefit made by the objecting Class Member at the joint hearing is not approved.
10. The Joint Committee may apply to the Courts for consideration of special distribution benefits which address the circumstances of Class Members such as Class Members 2213 and 7438.
11. The costs associated with establishing and administering the payments allowed by this Order shall be paid solely from the Excess Capital allocated for HCV Special Distribution Benefits in accordance with paragraph 6 of this Order.
12. Any Excess Capital not utilized to establish and administer the HCV Late Claims Benefit Plan provided for in paragraph 5 of this Order or not paid out as HCV Special Distribution Benefits and/or related administrative costs as provided for by paragraph 6 of this Order shall be retained in the Trust Fund, subject to the motions contemplated in paragraphs 5 and 10 of this Order or future motions made pursuant to the 1986-1990 Hepatitis C Settlement Agreement and/or the settlement approval orders of the Courts.
13. There shall be no costs of the applications, provided however that the \$60,562.22 expense for translation services and webcast video-conferencing of the joint hearing and the \$29,539.29 expense for the joint motion record shall be paid one half by the Trust Fund and one half by the Attorney General of Canada.
14. The Joint Committee and counsel for the Attorney General of Canada shall discuss such changes as may be required to give effect to this Order. In the absence of agreement,

any one of them may apply to the Court for directions. In the event a change is subsequently approved by the Court, any payment made or expense paid pursuant to this Order which is recorded in a manner inconsistent with the approved change shall be rectified so that it is accounted for in accordance with the approved change.

- 15. This Order shall take effect upon the date when the last judgment of the Quebec Superior Court or order of the Ontario Superior Court of Justice, with no material differences, becomes final.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT.



Signature of Counsel for the Joint Committee

SHARON MATTHEWS, Q.C.



Signature of lawyer for the Attorney General of Canada

SARAH-DAWN NORRIS

Signature of British Columbia Fund Counsel

GORDON J. KEHLER

Signature of lawyer for Her Majesty the Queen in Right of the Province of British Columbia

KEITH JOHNSTON

  
By the Court  
Registrar

ENDORSEMENTS ATTACHED



any one of them may apply to the Court for directions. In the event a change is subsequently approved by the Court, any payment made or expense paid pursuant to this Order which is recorded in a manner inconsistent with the approved change shall be rectified so that it is accounted for in accordance with the approved change.

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THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT.

\_\_\_\_\_  
Signature of Counsel for the Joint Committee

SHARON MATTHEWS, Q.C.

\_\_\_\_\_  
Signature of lawyer for the Attorney General of Canada

SARAH-DAWN NORRIS

\_\_\_\_\_  
Signature of British Columbia Fund Counsel

*for* GORDON J. KEHLER

\_\_\_\_\_  
Signature of lawyer for Her Majesty the Queen in Right of the Province of British Columbia

KEITH JOHNSTON

By the Court

\_\_\_\_\_  
Registrar

any one of them may apply to the Court for directions. In the event a change is subsequently approved by the Court, any payment made or expense paid pursuant to this Order which is recorded in a manner inconsistent with the approved change shall be rectified so that it is accounted for in accordance with the approved change.

- 15. This Order shall take effect upon the date when the last judgment of the Quebec Superior Court or order of the Ontario Superior Court of Justice, with no material differences, becomes final.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT.

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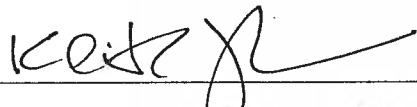
Signature of Counsel for the Joint Committee  
SHARON MATTHEWS, Q.C.

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Signature of lawyer for the Attorney General of Canada  
SARAH-DAWN NORRIS

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Signature of British Columbia Fund Counsel  
GORDON J. KEHLER



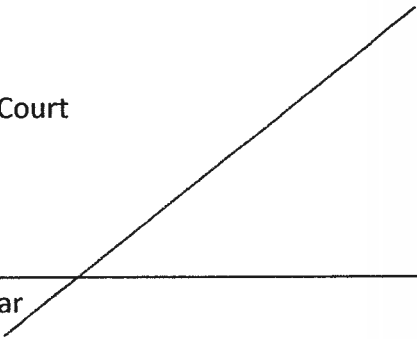

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Signature of lawyer for Her Majesty the Queen in Right of the Province of British Columbia  
KEITH JOHNSTON

By the Court

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Registrar



*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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**ORDER MADE AFTER APPLICATION**

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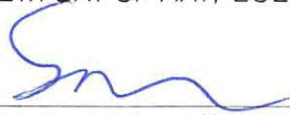
Fax: (604) 689-7554

Email: [service@cfmlawyers.ca](mailto:service@cfmlawyers.ca)

*Ag. McB. Ke*



*THE ATTACHED IS EXHIBIT "1" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Suttis **LLP**,  
Barristers and Solicitors.  
Expires February 22, 2025.

## SUPERIOR COURT

CANADA  
 PROVINCE OF QUÉBEC  
 DISTRICT OF MONTRÉAL

No.        500-06-000016-960  
              500-06-000068-987

DATE:    August 15, 2016

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**PRESENT:    THE HONOURABLE CHANTAL CORRIVEAU J.S.C.**

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500-06-000016-960

**DOMINIQUE HONHON**  
 Petitioner

v.

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

And

**MTRE. MICHEL SAVONITTO, in his capacity as member of the Joint Committee**  
 Petitioner

And

**FONDS D'AIDE AUX RECOURS COLLECTIFS  
 PUBLIC CURATOR OF QUÉBEC**  
 Impleaded parties

500-06-000068-987

**DAVID PAGE**  
 Petitioner

v.

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

And

**FONDS D'AIDE AUX RECOURS COLLECTIFS  
 PUBLIC CURATOR OF QUÉBEC**  
 Impleaded parties

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## JUDGMENT

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[1] In 1999, the Court approved agreements settling the class actions commenced by the victims of blood tainted with the Hepatitis C virus between 1986 and 1990.<sup>1</sup> Compensation plans were established for the Class Members, one for transfused persons and one for persons with hemophilia.

[2] The Joint Committee, representing the Class Members, is asking the Court to allocate the excess capital to it; the federal government is also asking to benefit from the allocation. Large sums are involved, considered as excess capital by the parties' actuaries and thus not required for the payments anticipated under the compensation plans.

[3] The sum concerned is at least \$206 920 000.

[4] This file was a unique opportunity to bring together in one courtroom in Toronto the three judges responsible for these class actions, namely, Chief Justice Christopher Hinkson of the Supreme Court of British Columbia; Justice Paul Perell of the Ontario Superior Court of Justice, and the undersigned. The hearing took place over three days.<sup>2</sup>

[5] Though many attorneys made submissions before the bench of three judges, the hearing was video-linked and audio-linked<sup>3</sup> to Montréal and Vancouver.

[6] The Court must decide:

- 1) What is the amount of excess capital?
- 2) If this amount is to be allocated, what amounts will go to which party?

[7] The Joint Committee asks the Court to allocate, under nine items of compensation, the amounts concerned by the excess capital, for a total of \$206 920 000.

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<sup>1</sup> *Honhon c. Canada (Procureur général)*, 1999 CanLII 11813 (QC CS), [1999] J.Q. no 4370 (C.S.); *Page c. Canada (Procureur général)*, 1999 CanLII 11906 (QC CS); *Honhon c. Canada (Procureur général)*, 1999 CanLII 11242 (QC CS); *Page c. Canada (Procureur général)*, 1999 CanLII 12145 (QC CS); *Honhon c. Canada (Procureur général)* and *Page c. Canada (Procureur général)*, November 21, 2000, Judge Nicole Morneau, J.S.C.

<sup>2</sup> From June 20 to 23, 2016 at the Toronto Courthouse, the three judges discussed their views concerning this file prior to, during and following the hearing.

<sup>3</sup> At the end of the afternoon of June 20, 2016, the video link to courtroom 15.04 in Montréal was not functional, but the audio link remained operational.

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[8] The federal government opposes any distribution, being of the opinion that the total amount of excess capital must be returned to it since the Fund is publicly funded. Alternatively, the federal government submitted that only certain types of claims may be allocated to the Class Members in so far as it is a matter of improving certain compensation provided for in the settlement agreements and not to create new items of compensation.

[9] In fact, according to the federal government, the courts do not have the power to rewrite or substantially amend the agreements negotiated by the parties and approved by the Court.

[10] The provincial and territorial representatives are not claiming any reimbursement or allocation of additional funds, in whole or in part, of the excess capital.

[11] Their contribution to the victim compensation fund follows a model distinct from that of the federal government. In fact, the provinces and territories did not contribute to the amounts being addressed herein.

[12] In addition, the provinces and territories are asking the Court to state that they will not be called upon to pay any additional contribution in connection with the claims of the members being addressed herein.

[13] Moreover, the provinces and territories support the federal government's arguments.

**(1) What is the amount of the excess capital?**

[14] Both parties are working in collaboration with actuaries: the Joint Committee with the firm Eckler Ltd. and the federal government with Morneau Shepell Inc.

[15] According to Eckler, the excess capital was \$236 341 000 on December 31, 2013.

[16] According to Morneau Shepell, the excess capital was, instead, \$256 549 000 on the same date.

[17] These calculations were made by evaluating all the amounts to be paid to the benefit of the Class Members as well as all the ensuing administrative costs (accountant, attorneys, managers, advisors, etc.) up until the end of the Plan, that is, 80 years following implementation of the agreements.

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[18] In the summer of 2015,<sup>4</sup> the three courts rendered orders according to which the amount of excess capital on December 31, 2013 had a value of between \$236 341 000 and \$256 594 000.

[19] At the hearing, a number of parties present pleaded in favour of a conservative approach in order to not jeopardize the sufficiency of funds so as to be able to respect the agreements and compensate the members.

[20] Shortly before the hearing, the Joint Committee re-evaluated the amount of the excess capital and lowered it to \$206 920 000.

[21] This re-evaluation was in connection with a disagreement concerning the reclassification of persons. We will now address it.

- Reclassification of certain victims from level 2 to level 3

[22] According to the medical protocol adopted by the courts in the framework of the settlement agreements, the program Administrator uses a table for the purpose of determining a claimant's level of qualification. There are six levels, based on the progression of the illness, going from a person infected with the virus at level 1, up to level 6 for a person requiring a liver transplant.

[23] This means that for a person to reach level 3, he or she must be qualified to receive a compensable drug therapy for HCV. According to the agreements concluded in 1999, compensable drug therapy means Interferon or Ribavirin alone or in combination or any other treatment causing undesirable side effects and that had been approved by the courts for reimbursement purposes.

[24] Section 4.01(1)(c) of the agreements provides that a lump sum of \$30 000 is payable to Level 3 Class Members should any of the following situations arise:

. . . 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;

[Emphasis added.]

[25] A protocol was developed by the Joint Committee in consultation with medical experts and approved by the courts. It contains rules for the Administrator to follow

<sup>4</sup> *Jugement sur la requête pour directives présentée par le membre du comité conjoint aux fins de réévaluer les aspects financiers du Fonds* dated July 16, 2015 of the undersigned. The decision of Ontario Superior Court Justice Paul Perrell bears the date July 10, 2015 and that of Chief Justice of the Supreme Court of British Columbia, July 23, 2015.

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concerning the evidence required to establish the different levels of illness for the approval of a claim, including level 3.

[26] The court-approved protocol provides for three situations where HCV drug therapy satisfies the eligibility criteria at level 3 of the disease:

(1) have received Compensable HCV Drug Therapy;

(2) by meeting the conditions of a protocol for Compensable HCV Drug Therapy founded on medical criteria;

(3) by obtaining a medical confirmation that the person meets the conditions of a protocol for Compensable HCV Drug Therapy. The person does not have to have received the drug nor does the treatment have to have been recommended. This complies with the terms of the Settlement Agreement.

[27] However, a new generation of medications designated as DAA appeared first in 2011 then in 2014. We will be returning to that matter. For the subject at hand, it is of note that these new drugs contain neither Interferon nor Ribavirin. Certain patients can receive DAA without having to also take Interferon or Ribavirin.

[28] The Joint Committee is seeking a declaration to the effect that a recommendation to take this new drug must be recognized by the courts. The consequence of this would be to see some patients reclassified to level 2 or 3.

[29] The Court holds the opinion that the evolution of medical treatments as a result of the availability of new drugs whose composition is different than what was anticipated in 1999, taking into account the scientific data of that time, cannot be an obstacle to integrating this new reality into a model of chosen compensation. It is not a matter of changing the agreements but of evaluating them in light of the new medical discoveries.

[30] The Court concludes that there is a need to confirm that the sum of \$30 M must be excluded from the allocation of the excess capital being addressed here. In addition, the Arbitrator must consequently compensate the victims who are eligible for this new medication by reclassifying them from level 2 to level 3.

[31] The Court therefore declares that the excess capital amount be established at \$206 920 000.

**(2) Must there be a distribution of the excess capital and, if so, what amounts will go to which party?**

[32] Before answering the question, the agreements and the judgments must be reviewed, then the different criteria examined. The Court will then re-examine each claim for which the Joint Committee has made a recommendation and dispose of it accordingly. To conclude, certain specific questions were raised concerning Class Members.

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## OVERVIEW OF PREVIOUS JUDGMENTS

[33] In 1998, the FTP<sup>5</sup> (federal, provincial and territorial) Governments publicly announced their intention to compensate victims of Hepatitis C from 1986 to 1990 in an effort to settle the different class actions.

[34] They offered victims a maximum of \$1 118 000 000.

[35] The counsel of all the parties succeeded in developing a complex distribution model for compensating the primarily-infected and secondarily-infected (family members, spouses, children, parents) victims under a number of items of compensation and according to the level of evolution of the illness of the infected person.

[36] Central to the negotiations is the matter of knowing which party must bear the consequences of an insufficiency of funds before the end of the implementation of the agreements, specifically, at the end of 80 years.

[37] The sufficiency of funds is a major concern for the Joint Committee. As well, the FPT Governments do not want to be called on to contribute more, should there be insufficient funds.

[38] The federal government undertook, from the outset, to isolate under its control 8/11ths of the amount of \$1 118 000 000. The amount offered in settlement was to guarantee a return on investment equivalent to that of long-term bonds of the Government of Canada.

[39] In concluding the discussions, the parties instead agreed that the federal government's portion of the monies be put into a Trust Fund ("**the Fund**") to be invested and managed by professionals independent of the parties.

[40] The agreements also provide that the provincial and territorial governments must pay their share as the need arises.

[41] Lastly, according to Section 12.03, it is anticipated that at the end of the agreements, 80 years later, any residue will be remitted to the governments in proportion to their contribution. It is expressly mentioned that the Fund is set up for the benefit of the members, but that it does not belong to them.

[42] On September 21, 1999, Nicole Morneau J. was the first of the three judges to give effect to the agreements submitted in Québec.<sup>6</sup> Her judgment, according to the terms of the agreements, became effective once the judgments of the judges of Ontario and British Columbia were rendered, provided that they incorporated essentially the same terms.

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<sup>5</sup> It may be recalled that this announcement was made in the context of the defendant, the Canadian Red Cross Society, being placed under the protection of the courts under the *Companies' Creditors Arrangement Act*, RSC (1985) c. C-36.

<sup>6</sup> 1999 CanLII 11813 (QC CS).



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[43] On September 22, 1999, Warren K. Winkler J. of the Ontario Superior Court of Justice<sup>7</sup> approved the agreements on a temporary basis, provided that three questions be addressed to his satisfaction before pronouncing the final approval order.

[44] In paragraphs 115 and following, Winkler J. summarizes the objection raised by the Hepatitis C Society of Canada concerning the reversion of a surplus to the defendants. According to the objector, it appears unfair for any surplus to revert in its entirety to the governments.

[45] In addition, at that time, there was no thought given to a surplus, as the most probable scenario was that of fund insufficiency, with the deficit evaluated at \$58 M.<sup>8</sup>

[46] Given the fear of deficit, holdbacks with regard to certain items of compensation were planned in order to optimize the payment of minimum compensation. Certain awards were thus partially compensated, with the remainder to be paid later, if the sufficiency of funds so allowed.

[47] Also, there was the possibility of eventually raising the income cap of \$75,000, if the Fund's resources proved sufficient.

[48] Winkler J. then asks whether, in the context of the Agreement, it was appropriate for the full amount of an eventual residue be paid to the defendants.<sup>9</sup>

[49] The judge recognizes that a settlement is never perfect, despite the variable compensation provided for according to the different levels of recipients:

122 (...) It is therefore in keeping with the nature of the settlement and in the interests of consistency and fairness that some portion of a surplus may be applied to benefit class members.

[50] In the case of a surplus, the Administrator of the Fund must make a recommendation to be approved by the courts.<sup>10</sup>

[51] Winkler J. concludes in saying that three elements of the agreements must be modified for the latter to be approved:

- (1) the benefits provided from the Fund for an opt-out claimant cannot exceed those available to a similarly injured class member who remains in the class;
- (2) the surplus provision must be altered [TRANSLATION] to permit an allocation to the parties or to the benefit of the victims;

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<sup>7</sup> *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572.

<sup>8</sup> *Idem.* at paras.117 and 131.

<sup>9</sup> *Idem.* at para. 121.

<sup>10</sup> *Idem.* at para. 124.



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(3) [. . .] a sub-class must be created.<sup>11</sup>

[52] Lastly, his paragraph 133 deserves to be cited in full in order to understand the parameters of the agreements to be approved:

133 The victims of the blood tragedy in Canada cannot be made whole by this settlement. No one can undo what has been done. This court is constrained in these settlement approval proceedings by its jurisdiction and the legal framework in which these proceedings are conducted. Thus, the settlement must be reviewed from the standpoint of its fairness, reasonableness and whether it is in the best interests of the class as a whole. The global settlement, its framework and the distribution of money within it, as well the adequacy of the funding to produce the specified benefits, with the modifications suggested in these reasons, are fair and reasonable. There are no absolutes for purposes of comparison, nor are there any assurances that the scheme will produce a perfect solution for each individual. However, perfection is not the legal standard to be applied nor could it be achieved in crafting a settlement of this nature. All of these points considered, the settlement, with the required modifications, is in the best interests of the class as a whole.

[53] Shortly afterward, Smith J. of British Columbia echoed the comments of Winkler J., with which he agrees<sup>12</sup> and integrates into his judgment the amendments requested by Winkler J.

[54] For Smith J., the parties had agreed to distribute among the Class Members the possible awards for damages, based on the availability of the predetermined funds, and not the opposite. In addition, he pointed out that it is the members who bear the risk of fund insufficiency.

[55] The negotiations then resumed between the parties and the agreements were amended through additions.

[56] The counsel for the parties and intervenors together prepared draft judgments to respond to the courts' concerns, which specifically amend the Settlement Agreement as follows:

9. THIS COURT ORDERS AND ADJUDGES that the Agreement, annexed hereto as Schedule 1, and the Funding Agreement, annexed hereto as Schedule 2, both made as of June 15, 1999 are fair, reasonable, adequate, and in the best interests of the Ontario Class members and the Ontario Family Class members in the Ontario Class Actions and this good faith settlement of the Ontario Class Actions is hereby approved on the terms set out in the Agreement and the Funding Agreement, both of which form part of and are incorporated by reference into this judgment, subject to the following modifications, namely:

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<sup>11</sup> *Idem*, at para. 129.

<sup>12</sup> *Endean v. Canadian Red Cross Society*, 1999 CanLII 6357 (BC SC), [1999] B.C.J. No. 2180.

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

(i) allocated for the benefit of the Class Members and/or the Family Class Members in the Class Actions;

(ii) allocated in any manner that may reasonably be expected to benefit 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 all of the circumstances provided that in distribution there shall be no discrimination based upon where the Class Member received Blood or based upon where the Class Member resides;

[57] Winkler J. approved the amended agreements and signed the approval order for Ontario and the other intervening provinces and territories. His judgment is dated October 22, 1999.

[58] On October 28, 1999, Smith J. of British Columbia approved a similar agreement, the above-cited provision of which is found in paragraph 5(b).

[59] Morneau J. rendered a similar order in her text and its effects while approving, through her judgment of November 19, 1999, Schedule F, Amendment No. 1 of the Agreement, approved earlier on September 21, 1999. Below is the addition to her initial judgment cited in full:

10. Paragraph p.1) of Section 10.01 (1) provides the following:

"10.01 (1) The Courts will issue judgments or orders in such form as is necessary to implement and enforce the provisions of this Agreement and will supervise the ongoing performance of this Agreement including the Plans and the Funding Agreement. Without limiting the generality of the foregoing, the Courts will:

[. . .]

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:

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(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;

[TRANSLATION]

According to the aforementioned approval orders, the courts may consider in their unfettered discretion certain factors.

[60] The orders in Ontario and in British Columbia as well as Schedule F added to the Settlement Agreement in Québec ("**the Approval Orders**") lists 10 factors that the courts may consider in exercising the unfettered discretion conferred on them, but are not bound to consider: in the unfettered discretion conferred to them under paragraph 9(b) [5(b) in the approval judgment of British Columbia and Schedule F, para. 1, p. 2) in Québec], the courts may consider, in particular and without being bound by any of them, the following factors:

(i) the number of Class Members and Family Class Members;

(ii) the experience of the Trust Fund;

(iii) the fact that the compensation provided under the Plans may not reflect, in certain cases, extra-contractual liability models;

(iv) [TRANSLATION] section 26 (10) of the Act [s. 35(5) of the British Columbia *Class Proceedings Act*, and art. 1036 of the *Code of Civil Procedure of Québec*];

(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;

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(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.

## **ANALYSIS**

[61] Do the courts have the authority or the power to assign to the Class Members, in whole or in part, excess capital allocations?

[62] According to the Joint Committee, the judgments having approved the agreements that are effective and bind the parties are those rendered at the conclusion of the second round of agreement negotiations.

[63] The power of the Court stems from the agreements and amendments to them approved by judgments. The latter are the initial judgments combined with the final judgments and they form a whole.

[64] These judgments give the courts authority to allocate the capital surplus to the victims.

[65] The federal government, supported by the provincial and territorial governments PTG, is opposed to any such allocation.

[66] In the first place, the governments point out that when the first agreement was approved, at a time when no thought was given to allocating excess capital, the Joint Committee contended that the agreements were fair, reasonable and benefited Class Members. In addition, although the compensation model was not based on the classic compensation approach, the proposed sums are beneficial and similar to what the victims would have received had the compensation plan been followed.

[67] The FPT Governments also argue that the requests of the Joint Committee result in over compensation<sup>13</sup> of the Class Members with respect to what the parties had negotiated.

[68] Consequently, they advocate that all the surplus amounts be reimbursed to the federal government, which is the party that provided the funds.

[69] The model retained divided into items of compensation is not a compensation model given that it is based on a classification of compensation according to the level of

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<sup>13</sup> In English, counsel uses the expression "overcompensation".

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disease afflicting the members. As the disease progresses, the model makes it possible to receive additional compensation. It enables members infected from 1986-1990 whose symptoms appeared after the conclusion of agreements, to make a claim from the compensation plan provided that the claim is made within three years of the diagnosis.

[70] Within the framework of the motion for approval of the agreements and applications for approval of counsel fees, counsel found that the agreements presented are fair and reasonable. It was thus emphasized that Class Members did not have to demonstrate the fault of the governments, which were reproached for the lack of rigour in requiring that the societies administrating blood banks conduct screening tests, despite the scientific knowledge and what had taken place in United States.

[71] One of the major unknowns during the negotiations, when the agreements were approved and even now, is the number of persons to compensate. The initial estimate was that the class would have 22 000 Members. Then, when the agreements were concluded it appears that a total of about 8000 Class Members better reflected the reality.

[72] With the number of victims being a very important variable, the compensation model was established by dividing up the amounts available among the potential victims.

[73] Initially, there were fears of a deficit that would make it impossible to compensate the Class Members by paying the full amount of the compensation permitted (which would have penalized the youngest victims and the more recent claimants joining the class later, as the funds would be depleted). Winkler J. was the first to realize, followed by Smith J., then Morneau J., that should there be a surplus of funds, that is, funds not required for the full compensation of the Class Members, a review would have to be conducted, based on past experience, to determine to whom and in what portion the surplus may be allocated.

[74] The agreements provide, in compliance with the jurisprudence, that in weighing a series of criteria to resolve this matter (and, consequently, any other criterion that the Court deems must apply), the courts must refrain from substantially modifying the terms of the agreements, despite exercising their unfettered discretion.

[75] The Court must therefore exercise its discretion in a manner that is fair to and reasonable for all the parties involved. This may require that it weigh different criteria. Indeed, the Court is not bound by the criteria set out in the agreements and may even eliminate or add criteria. The onus is on the Court to assess the weight of the criteria set out.

[76] Needless to say, this assessment must take into account the agreements, the context, the parties' intentions and the reality as illustrated by the application of the agreements from 1999 to 2013 as well as the reasonably foreseeable prospects with regard to the future, up to the end of the agreements.



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[77] In the opinion of the Court, the analysis of the factors to consider and the specifics of the requests made may lead to an additional distribution of benefits being awarded to the Class Members.

[78] Is it nonetheless possible to speak of overcompensation? In listening to the tragic accounts of the Class Members who wanted to speak before the Court and in reading the numerous testimonies of the Class Members who put their stories into writing or those whose statements were reported in the affidavits made following the country-wide consultation meetings of the Class Members in the summer of 2015, it is questionable or difficult to speak of overcompensation.

[79] As Winkler J. notes in his decision,<sup>14</sup> no compensation will ever be adequate for the victims of Hepatitis C who, it should be remembered, are all innocent victims. Similarly, after an infected family member dies, the secondarily-infected victims continue to suffer.

[80] Nonetheless, the Court understands that it must not be driven by compassion, but must take into account all the circumstances of this sad affair in deciding what is fair and reasonable, so as to abide by the legal principles.

[81] We will now analyze the criteria offered to the Court for its consideration, and will then review the Joint Committee's requests, evaluating them one by one.

### **Criterion (1) The number of Class Members and Family Class Members**

[82] According to the information compiled in the file, on December 31, 2013, 5283 Class Members infected with HCV had either been approved, had transmitted a claim or were considered approved.<sup>15</sup> Of them, 1585 had already died (959 because of HCV); 240 of infected persons who were still living had already developed cirrhosis and 121 of the persons deceased had progressed to the cirrhosis stage when they died; and 137 of the infected persons still living had already progressed to level 6 of the disease. Among the deceased persons, 467 had reached level 6 of the disease when they died.<sup>16</sup>

[83] Some 390 claims were also being processed on September 30, 2015 including 265 claims from persons infected, that is, 207 primarily-infected and transfused persons, 29 primarily-infected hemophiliacs and 29 secondarily-infected persons, in addition to 125 claims from family members. Among the claims being processed from infected persons, 23 persons died before January 1, 1999, 87 died after January 1, 1999, and 155 were still living on September 2015.<sup>17</sup>

<sup>14</sup> *Supra* (Winkler), note 7, at para. 133.

<sup>15</sup> According to the original estimate, there should be 9825 victims, that is, 8180 transfused victims and 1645 hemophiliacs.

<sup>16</sup> *Mémoire du comité conjoint*, at para. 61.

<sup>17</sup> *Idem*, at para. 62.

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[84] The ultimate size of the entire group of primarily-infected and secondarily-infected victims remains unknown. Though the risk of under-evaluating the number of Class Members to come is low, it still remains, since there is no way of being certain. The actuaries take it into account by applying, for that purpose, a reserve of the capital required. If the number of victims is wrong, the financial impact is \$5 300 000 for every 25 persons who are added to the Class Members.

[85] The FPT Governments rely heavily on a lower than anticipated number of recognized members, to argue that the contribution of \$1 118 000 000 was too high from the outset.

[86] The FPT Governments believe that the lower number of claimants substantiates their request for reimbursement in their favour. In examining the compensation model based on a distribution among the members according to the level of severity of affliction with the virus, they conclude that fewer claimants means that the surplus must be returned to them.

[87] The Court sees the lower number of claimants as pointing to significant excess capital.

[88] Furthermore, the phenomenon of late claims, which will be addressed below, must certainly not be overlooked. There are 246 persons who made a claim after the deadline and who could perhaps have been included in the Class Members. Since December 31, 2013, the Joint Committee has evaluated an average of 24 persons per year submitting a claim for the first time.

[89] One of the explanations given by the claimants in their oral, written or reported statements has to do with the complexity of the process.

[90] Persons afflicted with the Hepatitis C virus all suffer varying degrees of fatigue and lack of concentration depending on the stage of the disease. A number of people also express great difficulty completing the claims process. For some, the many questionnaires and the medical proof required represent an insurmountable obstacle.

[91] That is one factor among others that can explain the fewer than anticipated number of claims.

### **Criterion (2) The experience of the Fund**

[92] The Fund is administered by independent managers. The sums paid by the federal government are invested in order to make the Fund grow for the benefit of the Class Members. The monies do not belong to the latter. The program administration costs are taken from the Fund itself.

[93] The costs that have accumulated since the beginning are close to \$39 M.<sup>18</sup>

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<sup>18</sup> Affidavit of Heather Rumble Peterson sworn April 1, 2016.

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[94] Each party claims that the Fund surplus is to be allocated to it alone. The Joint Committee contends that the Class members are financing the aforementioned supervision costs since they are taken from the Fund.

[95] The Fund is an autonomous entity established for the benefit of the Class Members. Administration costs are inherent. Indeed, without a manager or supervision, the Fund would run the risk of going into deficit.

[96] Lastly, the federal government claims that the surplus is the result of its initial contribution. That is perhaps part of the answer. However, it must be remembered that had the Fund invested its assets in Treasury bills, as the governments had intended, instead of having a surplus on December 31, 2013, it would have had, according to the actuaries, an actuarial deficit of \$348 M.<sup>19</sup>

[97] What is more, the fact that the governments agreed not to collect taxes on the sums invested in the Fund needs to be taken into account. That element adds a value of \$357 953 000 to the Fund's profitability<sup>20</sup> because that sum would otherwise have been deducted.

[98] Based on these elements, the Court finds that this criterion is not decisive to the position of any of the parties.

### **Criterion (3) The progression of the disease**

[99] In evaluating this criterion, the Court is invited to compare the medical model considered in 1999 to establish the method of compensation with the information known today. This involves taking into account the Class Members' levels of the disease and the anticipated and actual progression of the disease.

[100] The initial model was based on the medical knowledge of the time. There is no way of accurately predicting how the illness would have progressed for individual Class Members.

[101] Over time and through triennial actuarial reviews, it was possible to evaluate the data relative to the Class Members. These analyses, in light of the Class Members' experiences and advances in science, provided a means by which to re-evaluate financial needs to ensure payment of compensation in accordance with the agreements.

[102] According to the summary table prepared by the actuarial firm Eckler, it can be seen that the variances between deficits and surpluses varied greatly.

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<sup>19</sup> Affidavit of Peter Gorham, sworn January 29, 2016, vol. 6, Tab 26, Exhibit B, at paras. 83-87, at 2324-2325.

<sup>20</sup> Factum AG Canada at para. 35; Affidavit of Peter Gorham, sworn January 29, 2016, Exhibit A, at para. 77, vol. 6, Tab. 26, at 2323.



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[103] The medical model used gradually became based on Class Member data. One of the consequences of incorporating this information was the variance in the actuarial results according to which:<sup>21</sup>

[TRANSLATION]

- (a) from the settlement approval date to 2001, the actuarial results deteriorated by \$84 M (the financial obligations having increased);<sup>22</sup>
- (b) from 2001 to 2004, the actuarial results improved by \$5 M;
- (c) from 2004 to 2007, the actuarial results deteriorated by \$44 M;
- (d) from 2007 to 2010, the actuarial results deteriorated by \$62 M;
- (e) from 2010 to 2013, the actuarial results improved by \$305 M, reduced by \$146 M in processing costs.

[104] Returning to the matter of disease progression in connection with the level of excess capital, paragraphs 94 and following of the Joint Committee's factum describe in detail the extent of the damage caused by the Hepatitis C virus, the treatments developed and the consequences and side effects.

[105] In short and without doing justice to the disease's impact on its victims, we concur with the following.

[106] Hepatitis C is an inflammation of the liver. In 75% of cases, it is a chronic, progressive disease that is life-threatening, with or without treatment.

[107] 25% of victims may clear Hepatitis C spontaneously in the first 12 months from its appearance. Beyond that period, it very rarely disappears.

[108] In the case of a chronic infection, the inflammation of the liver can lead to cirrhosis of the liver, for which a transplant may be required. Nonetheless, some persons do not survive. Hepatocellular carcinoma is one of the known consequences.

[109] As regards the disease's effects, even at its most benign stage, Hepatitis C results in present and lasting fatigue, concentration difficulties, depression and anxiety.

[110] Hepatitis C is treated using an anti-viral treatment.

<sup>21</sup> *Mémoire du comité conjoint*, at para. 73.

<sup>22</sup> Following changes to the medical model combined with other experiences of gains and losses.

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[111] Up until 2011, the principle forms of anti-viral treatments were monotherapy using Interferon by injection or a combination of Interferon and Ribarivin, either by injection and/or tablets. The latter is associated with very significant side effects.<sup>23</sup>

[112] In 2011, a new medication, DAA, which could be taken with Interferon and Ribavirin, appeared. Its side effects, which were very serious, persisted and the trials of the new drug were stopped.

[113] In 2014, a new generation of the DAA medication was introduced, being markedly more promising both with respect to the real possibility of it leading to the disease disappearing (or at least stopping it from progressing) and to a significant reduction in side effects.

[114] According to the federal government's expert, the new medication can lead to a full recovery.

[115] The Joint Committee medical expert has indicated that the symptoms of fatigue, headache, insomnia, etc. continue to be experienced. It also contends that while the 2014 DAA is very promising, the suffering that persons afflicted with the disease for 20 or 25 years have endured remains significant.

[116] Lastly, it should be noted that, in evaluating the surplus at December 31, 2013, the two expert actuaries took into consideration the DAA medications that had been approved up to 2014.

[117] With the new generation of DAA having fewer side effects, there is growing hope for an improved quality of life for the victims of Hepatitis C.

[118] However, in the opinion of the two medical experts, despite a recovery from the disease for some, the victims remain at risk.

[119] Where the progression of the disease and the treatments offered are concerned, the Court finds that the development of new medications has given patients access to promising therapies. This finding constitutes significant dissimilarities from the medical model contemplated in 1999.

[120] Note that the most recent generation of DAA has not yet been approved by Health Canada; however, the experts consulted are of the opinion that it should be approved before the end of the current year.

[121] The progress made with respect to the medication offered is certainly favourable for the victims. That said, it must be acknowledged that these new medications do not erase all the consequences of having lived with the disease for a number of decades.

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<sup>23</sup> The duration of the treatment is 48 weeks. A number of victims described in their oral and written testimony their state of complete incapacitation during the entire period. Some victims abandoned the treatment before completing it, as the side effects were too hard on them.

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[122] Inflammation of the liver, a major organ of the human body, is a serious condition that leaves its mark, despite the prospect of recovery.

**Criterion (4) The fact that the compensation provided for in the Plans may not, in some cases, reflect the rules of indemnification in extra-contractual matters**

[123] The federal government contends that according to the terms of the agreements and given the structure of the Plans, victims must not be over-compensated. The categories have been established so as to be able to address the progression of the disease when the infected person sees his or her medical condition deteriorate.

[124] If a single payment had been attributed by judgment, it would not have been possible to make adjustments thereafter.

[125] One characteristic of Hepatitis C is its ability to progress after a long period of latency.

[126] Morneau J. recognized in her judgment approving the agreements that, in comparison with the application of article 1615 C.C.Q., the provision enables a victim to claim increased compensation in the three years following an award for damages for bodily injury paid in accordance with a judgment.

[127] The compensation model based on the six levels of progression of the disease that enables victims to make a claim in relation with the stage presented, throughout the term of the agreements, is clearly favourable to the victims.

[128] We are thus moving away from the compensation model stemming from the extra-contractual compensation plan.

[129] The federal government therefore finds that it would be inappropriate to reopen the terms of the agreements, as doing so would result in overcompensation if the Court followed the Joint Committee's recommendations.

[130] The federal government holds the opinion that when the Class Members agreed to sign releases in exchange for their participation in the plans, they forfeited their right to again claim compensation.

[131] We already addressed this point in a previous section and given the full text of the agreements, such a reconsideration is possible where there is a surplus, despite the releases. The latter cannot nullify an allocation of the excess capital to a party who so requests.

[132] The Court, in its analysis of the claims of the Joint Committee, is aware that no new agreement or overcompensation must result from it.

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**Criterion (5) Article 1036 C.C.P.**

[133] This article applies where the distribution of compensation under a class action was effected and a balance remains. The parties hold the opinion, as does the Court, that this is not such a situation, since this is not a balance as provided for in article 597 C.C.P. currently in force.<sup>24</sup>

**Criterion (6) Maintaining the integrity of the Agreement and the payment of the compensation provided for under the insured plan**

[134] Maintaining the integrity of the Agreement is central to the present judgment.

[135] The Court's power is limited to deciding what is to become of the excess capital, established after taking into account the payment of the total compensation provided for in the Plans, to which is added a contingency reserve based on estimated catastrophic scenarios to be remedied in the future.

**Criteria (7) and (8) The fact that the FPT Governments' contributions are limited and that the Class Members and Family Class Members bear the risk of the Fund being insufficient**

[136] These elements are central to the agreements concluded. Both parties have acknowledged in their factum and arguments that these are essential conditions of the settlement. The FPT Governments refuse to be forced to pay more to the victims if the funds should be insufficient. Initially, it had been anticipated that the Fund would be insufficient. The victims were aware of the fact and nonetheless accepted the agreements.

[137] It is precisely by measuring the impact of the contribution limit and Section 12.03 of the Settlement Agreement, by which any remaining assets of the Fund upon termination of the agreements (after 80 years) would be returned to the FPT Governments, that the agreements were amended.

[138] It was in analyzing the vision of a surplus, which was unlikely in 1999, that Winkler J. responded favourably to the argument of the Hepatitis C Society of Canada in order to invite the parties to renegotiate this element. It resulted in the remedy that now affords the Court the authority to undertake this exercise.

**Criterion (9) The source of the Fund and other elements of assets**

[139] The federal government states that the excess capital is proof that its contribution to the Fund was excessive.

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<sup>24</sup> The new article 597 C.C.P. replacing former article 1036 C.C.P. is to the same effect.

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[140] For the Court, just as the Class Members bore the risk of the funds being insufficient, the FPT Governments, in deciding that the total compensation was \$1 118 000 000, took the risk of excess contributions.

[141] The provision states that at the end of the implementation of the agreements, any surplus is to be reverted to the governments having contributed. The judgment that approved the amended agreements provides for the possibility of remitting excess capital in whole or in part to the Class Members and FPT Governments during the implementation of the agreements.

[142] Therefore, had there been no amendment, the governments would have been required to wait until the agreements expired, after 80 years, before recovering a portion of the amounts invested.

[143] The FPT Governments negotiated and agreed to this possibility. The said amounts and terms and conditions are to be determined by the courts.

[144] Undoubtedly, the fact that the federal contribution was advanced at the beginning of the Plan and that the amount would not be taxed contributed to the Fund's growth.

[145] Good management by competent professionals whose fees are paid directly from the Fund also generated excess capital.

[146] For the Court, these elements contributed to the accumulation of a capital surplus and ensured that the Class Members would be paid the compensation promised.

#### **Criterion (10) All other facts**

[147] The Court does not deem it necessary to include other criteria of analysis.

#### **ANALYSIS OF THE ITEMS OF COMPENSATION CLAIMED BY THE JOINT COMMITTEE**

[148] The claims made by the Joint Committee will be analyzed taking into account the above comments.

#### **(1) Late claims**

[149] According to the agreements, the Class Members were to have submitted their claim before the June 30, 2010 deadline.<sup>25</sup>

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<sup>25</sup> Certain exceptions apply to the deadline.

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[150] Between June 30, 2010 and September 30, 2015, 246 persons (without the benefit of exceptions) submitted claims. They were rejected on grounds of tardiness, but the claims were not examined as to their merit.

[151] The Joint Committee is asking the Court to authorize the Arbitrator to admit the late claims in order to examine them. The Arbitrator could decide whether the ground of tardiness is serious and reasonable. Then, if the Arbitrator is satisfied, the claim could be evaluated to determine whether the claimant meets the terms of the agreements to qualify as a Class Member.

[152] The cost of this measure is valued at \$32 450 000 by the actuaries with administration costs of \$51 000.

[153] The FPT Governments are strongly opposed to this measure. They believe that the allocation would result in allowing the courts to rewrite the terms of the agreements, which is not in keeping with judicial decisions and is contrary to the agreements.

[154] Failing the agreement of all parties, the amendment cannot be made.

[155] The federal government's arguments are based on a cryptic distinction between compensation to benefit the Class Members, which is permissible under the agreements, and an allocation of funds to benefit the Class Members that is not permissible.

[156] The federal government adds that no direct payment may be made to the Class Members, only the implementation of a program to benefit the Class Members may be contemplated.

[157] The Court does not agree.

[158] The agreements explicitly allow the Court, in exercising its unfettered discretion, to dispose of excess capital either to benefit Class Members or governments. It is also possible for the Court to allocate funds for a program to be set up to benefit Class Members. No party submitted an application to that effect.

[159] The Joint Committee's request to reconsider the late claims may be allowed if the payments are strictly derived from the surplus capital. There can be no withdrawal of funds from the initial capital invested, fiscally permissible.

[160] According to the many testimonies collected from Class Members, a recurrent problem they all seem to face, even in the most benign form of the illness, is a lack of concentration and fatigue. Victims find it difficult to force themselves to read, understand and complete the steps required under the agreements to qualify for and claim compensation.

[161] It is therefore in this very specific context that the issue of late claims must be considered.



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[162] Given that the Joint Committee proposes to give the Arbitrator the authority to evaluate the reasonableness of the tardiness prior to evaluating the merit of the claim, the Court believes that the claim should be granted.

[163] Only the claims showing valid reasons would then be examined as to the merits. The compensation would then be paid solely from the separate funds of the excess capital. Once the Arbitrator has evaluated the late claims, the Court invites the Joint Committee to make recommendations to the courts in order to propose a compensation plan for approval.

[164] The Fund manager would then create separately managed accounts for the excess capital of \$32 450 000 plus the administration costs so that the required allocations derive therefrom, if applicable.

[165] There would therefore be no additional financial costs for the provincial and territorial governments.

## **(2) The claim concerning fixed payments**

[166] The Joint Committee requests an increase in the amount payable to Class Members as fixed-sum payments. These are lump sums payable to living Class Members or Class Members who died after January 1, 1999, as non-pecuniary general damages at different levels of illness. The options of fixed-sum payments of \$50 000 and \$120 000 concern Class Members who died of HCV before January 1, 1999 and the options of \$50 000 and \$72 000 concern hemophiliac Class Members who were co-infected with HIV.

[167] According to the modified recommendation of the Joint Committee, the requested increase in payments is 8.5%, indexed to January 1, 2014. The measure would compensate 5320 Class Members and 1650 successions, valued at \$51 320 000.

[168] The federal government is opposed to the measure on the same grounds as those previously discussed. However, as an alternative, the government accepts the compensation to the extent that it believes that the claim does not involve a substantial amendment to the agreements.

[169] The Court wished to ascertain that the claim to increase the non-pecuniary damages does not result in departing from the jurisprudential framework recognized and complied with in Canada since the 1978 trilogy.<sup>26</sup> The Court wished to ensure that the cap is upheld, in particular for Level 6 victims, who are most affected.

[170] The Joint Committee's recommendation to increase the lump sums by 8.5%, indexed to 2014, equals compensation valued at \$329 569.<sup>27</sup>

<sup>26</sup> *Andrews v. Grand & Toy Alberta Ltd.* [1978] 2 SCR 229; *Arnold v. Teno*, [1978] 2 SCR 287; *Thornton v. School Dist. No. 57 (Prince George) et al.*, [1978] 2 SCR 267.

<sup>27</sup> *Mémoire du comité conjoint* at para. 243.

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[171] For the Court, the increase is not only justified, but also reasonable. It respects the parameters of the judicial decisions and may bring increased relief to the victims and their families.

**(3) Increase in compensation from \$5000 to \$9600 for children over 21 years and for parents of victims**

[172] The Joint Committee recommends an additional increase in compensation of \$4600 to be indexed, for children over 21 years of age and for the parents of victims. The total cost of the measure is \$22 449 000.

[173] Once again, although the government is opposed at the outset to the request, as an alternative, it agrees to this item of compensation.

[174] The Court considers the request reasonable for the victims. It is understood that no amount can adequately compensate the loss of a loved one, but in a context of allocation of excess capital, the request is fair and reasonable.

**(4) Retroactive payment to compensate for deductions made under the programs**

[175] The Joint Committee requests that the Court eliminate the deduction with respect to collateral benefits when calculating the loss of income and support.

[176] According to the Joint Committee expert, the cost of the measure is \$27 530 000 plus \$143 000 in administration costs. According to the federal government actuary, it is valued at \$36 094 000.

[177] According to the Joint Committee, the Class Members are faced with significant reductions when their loss of income is calculated. The deductions relate to the disability benefits from the Canada Pension Plan and the Québec Pension Plan, employment insurance, health insurance benefits, accident insurance or disability insurance as well as compensation paid by the Extraordinary Assistance Plan (EAP), the Multi-Provincial/Territorial Assistance Program (MPTAP) and the Nova Scotia compensation program, which were all established with respect to HIV.

[178] According to the federal government, the measure would result in double compensation. It would mean overcompensation (with compensation) for a majority of claimants (2/3) and under-compensation for the balance (1/3).

[179] For the provincial and territorial representatives, the measure would entail an important change to the terms of the agreements negotiated. Moreover, it would result in significant discrepancies between them and the residents of the various territories and provinces.



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[180] All the parties refer to *Cunningham v. Wheeler*<sup>28</sup> to support their position.

[181] In the decision, the victim of a wrongful act could receive compensation for injury, but would not be entitled to double compensation. The Court recognizes two exceptions, in the case of charitable donations and where insurance benefits are received in consideration of payment by the victim.

[182] In this specific case, the Court accepts that despite the specific plan pursuant to article 1608 C.C.Q. in Québec and the judicial decisions rendered since the above-cited *Cunningham* decision, the parties to the agreements had full knowledge of the situation when they negotiated this aspect.

[183] The deductions derive from significant concessions made by the Class Members following requests to that effect from all the FPT Governments.

[184] If the Court agrees to the Joint Committee's claim, it would entail a fundamental change that the defendants oppose.

[185] Moreover, the allocation of a surplus cannot be adopted if it has discriminatory effects on the Class Members. Given the multiple different programs throughout Canada and the varying results of such an important compensation, the Court's view is that the Joint Committee's claim should not be granted.

[186] The Court thus exercises its judicial discretion taking into account all the interests in question and declines this item of claim.

**(5) Claim of an increase in loss of remuneration to take into account the loss tied to pension funds**

[187] The Joint Committee is claiming an increase of 10% in loss of salary due to the disease in order to compensate the victims who have also lost the possibility of accumulating a pension fund.

[188] The past and future value of this measure is \$19 787 000 according to Eckler.<sup>29</sup>

[189] The federal government is opposed to the request arguing that it constitutes a new claim and therefore does not fall within the established framework respecting the allocation of excess capital.

[190] The Joint Committee believes that this claim is the extension of an under-compensated item of compensation.

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<sup>28</sup> [1994] 1 SCR 359.

<sup>29</sup> *Eckler Report*, R-5 at 11, Schedule B at 29.

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[191] With respect to compensation for income of which victims were deprived because of Hepatitis C, the agreements provided for a maximum income of \$75 000 for the purposes of calculation.

[192] Over time, the cap was eventually increased to compensate for loss of income of up to a maximum of \$200 000.

[193] The Court's view is that the present request for compensation stems from compensation for loss of income. It is not an entirely new claim having no link with the terms of the negotiated agreements.

[194] In the context of allocation of excess capital, the claim limited to increases of 10% for loss of income remains subject to the \$200 000 cap established in 2014. The Court concludes that the claim is founded and reasonable.

- Claim presented by Mr. Polley representing a hemophiliac victim

[195] A Class Member intervened to request that the cap be increased with respect to himself, despite the lack of support for his request by the Joint Committee.

[196] Mr. Polley's client is a unique case.

[197] Hemophiliac from birth, his life's path was sown with obstacles that seemed insurmountable.

[198] As a young adult living not only with hemophilia, he battled two cancers. He pursued his studies and obtained a doctorate in physics and in administration. He made a career in the field of finance.

[199] He has had tremendous success in his profession, earning an annual salary in the millions of dollars.

[200] He contracted Hepatitis C and continued to fight the disease, all the while raising his family, being subjected to debilitating treatments and continuing to work until he was no longer able to do so.

[201] He is claiming the removal of all salary caps. In 2013, the Arbitrator awarded him \$2 300 000 in retroactive compensation, when the salary cap was raised to \$200 000. He considers the compensation insufficient.

[202] He indicated that four other Class Members established having an income higher than \$200 000. One of them has died and two others had an income between \$200 000 and \$300 000. He was the only Member to be earning over a million dollars at the time the disease rendered him unable to work. He considers himself a victim of discrimination.

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[203] The Joint Committee maintains its recommendations as currently stated, thereby maintaining the cap.

[204] The Court feels compassion, but especially a great deal of admiration for Mr. Polley's client. How can a person have the strength to keep fighting after having experienced all of these dramatic situations?

[205] However, by agreeing to the terms of the agreements, that person relinquished a higher amount than that negotiated. At the time, compensation for loss of income was limited to \$75 000, with a holdback of 25% in order to verify whether, in time, at the end of the triennial reviews, the funds were sufficient. Afterwards, once the holdbacks were lifted and paid to the Class Members, the 1999 salary cap of \$75 000 was increased in 2014 to \$200 000.

[206] By participating in the settlements, Mr. Polley's client agreed to an important compromise. The Court's view is that this specific claim should not be granted.

#### **(6) Claim for loss of home services**

[207] The Joint Committee requests compensation for loss of home services payable to Class Members and to dependants of deceased Class Members whose death was caused by HCV. According to the agreements, the claims for loss of home services are limited to a maximum of 20 hours per week, at a rate of \$12 an hour and may not be claimed in addition to the loss of income and support.

[208] Many written and verbal representations made by Class Members and Family Class Members describe how vital for their survival and insufficient the compensation for loss of home services is (the current rate is \$16.50 per hour) to cover the cost of a replacement for effecting household duties.

[209] The Joint Committee recommends an increase of two hours per week in compensation paid to Class Members and their dependants for the loss of home services, given the illness afflicting the Class Members.

[210] The measure is valued at \$34 364 000 plus \$196 000 in administration costs according to the *Eckler Report*. According to Morneau Shepell, the value is \$37 384 000.

[211] The government is opposed by virtue of the same arguments discussed above. It agrees to the measure as an alternative, since the compensation does not substantially modify the agreements.

[212] The Court's view, in exercising its unfettered discretion, is that it is fair and reasonable to allocate the excess capital for the compensation of Class Members in this regard.

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[213] The testimonies of the victims are very eloquent with respect to their inability to carry out their personal activities as much as they would like and given their dependence on their entourage.

[214] Moreover, the salaries that the victims must pay are often higher than the amounts provided for in the agreements. The request for compensation is therefore most reasonable.

#### **(7) Recommendations concerning compensation for costs of care**

[215] This Joint Committee's request concerns the increase in costs related to the care required at disease level 6. The costs in question are those that are not covered by a public or private health insurance plan or included in the compensation for loss of home services.

[216] The recommendation aims to increase the maximum payable for Level 6 victims from \$50 000 to \$60 000 including administration costs. This measure is valued at \$627 000 plus \$2000 in administration costs.

[217] As in the preceding case, the government is opposed to the request, but agrees to it as an alternative.

[218] The Court is of the opinion that the compensation is reasonable, since the victims must document their claim.

[219] In conclusion, in exercising its unfettered discretion, the Court is of the opinion that the compensation is fair and reasonable.

#### **(8) Claim to compensate Family Class Members accompanying victims to medical appointments**

[220] This compensation request aims to reimburse a maximum amount of \$200 for costs or expenses by Family Class Members who accompany victims to medical appointments, since there is no such compensation under the agreements.

[221] The Joint Committee's recommendation is to compensate the Family Class Members prospectively, that is, only for the future. The testimonies collected during consultations quite often reported the difficulties inherent to the Hepatitis C victims' need for assistance when they have medical appointments. Those requiring accompaniment depend on persons close to them, who very often have to take unpaid leave of absence from work and take on alone the expenses incurred as a result.

[222] This measure is valued by Eckler at \$1 957 000, whereas Morneau Shepell values it at \$8 370 000. The federal government is opposed to this request for compensation.

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[223] The difference between the two valuations lies in the federal government experts' fear that the compensation will result in a significant increase in the number of persons who, in future, will want to be accompanied for medical visits.

[224] In reality, however, a high number of Hepatitis C victims rely on family members, given the victims' fragile condition.

[225] The Court's view is that this item results indirectly from the very limited claim for loss of home services.

[226] This claim is a somewhat different application, but of the same type as the latter compensation whose objective is to address the significant limitations to the self-sufficiency of persons affected by the disease.

### **(9) Funeral expenses**

[227] The Joint Committee recommends increasing the reimbursement of uninsured funeral expenses to raise the limit from \$5000 to \$10 000.

[228] On presentation of invoices, the Joint Committee recommends an increase in that amount, because in several cases, the costs are higher than the maximum currently allocated.

[229] The Eckler actuaries value this measure at \$2 050 000, whereas for the federal government actuaries Morneau Shepell, the value is rather \$2 025 000.

[230] The federal government is opposed to this measure, but agrees to it as an alternative measure.

[231] The Court is unable to grant the request, despite the position of the federal government.

[232] Funeral expenses are an unavoidable expense which will vary with individual choices. The claims submitted show that for some, the \$5000 allowance is reasonable, whereas for others, it may be insufficient. There are too many variables involving personal choices made by the families.

[233] Therefore, the Court is of the opinion that this item of compensation should not be granted.

### **SPECIFIC CLAIMS**

[234] During the hearings, different victims of Hepatitis C present in Toronto, Vancouver and Montréal wished to address a few words to the courts about their specific situation.

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[235] Many wanted to express in person to the courts their support for the recommendations of the Joint Committee. Some wish to shed light on their daily problems, given their status as carriers of Hepatitis C, as they are all, it should be recalled, innocent victims.

[236] Three Class Members intervened through attorneys. The Court has already dealt with the case of Mr. Polley's client.

[237] Others, as the member from Québec, emphasized the feeling of injustice of which he is a victim.

[238] The Court will deal with these specific cases below.

**(i) Mr. Dermody's client No. 1, Member No. 2213**

[239] This Hepatitis C victim represented by Mr. Dermody came to argue his specific situation by addressing the courts.

[240] Under the agreements, Hepatitis C victims who also contracted HIV could choose to receive, since 1999 or 2000, a single lump-sum payment of \$50 000.

[241] This mechanism was set up to allow these victims, whose chances for survival were extremely limited, to rapidly receive a single lump-sum payment in exchange for a release.

[242] This client came to explain that at the time he signed the agreements, he was very ill, confused and angry. As the father of two young children, he is very worried about his family's future.

[243] This Class Member supports the Joint Committee's recommendations. He wishes however, that he could review his choice, since the agreements would have allowed him to obtain a much more generous compensation.

[244] For the Court, it is desirable that the Joint Committee take into consideration this situation in order to meet the needs of such victims and to present the appropriate recommendations.

**(ii) Mr. Dermody's client No. 2, Member No. 7438**

[245] The second client represented by Mr. Dermody is an indirect victim of this tragedy.

[246] This person is handicapped and has always been dependent on his parent who died from Hepatitis C.



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[247] He received compensation for loss of a parent for a certain time. The payment was terminated at the time the parent would have died according to the life expectancy index for Canadians.

[248] This handicapped person remains dependent on the compensation. Terminating payment is extremely prejudicial for him.

[249] He is asking the courts to continue the payment, without identifying the period for which the compensation should continue to be paid.

[250] Again in this case, it is the Joint Committee's task to take this situation into account and make a recommendation if deemed necessary.

**(iii) Québec Class Member**

[251] A Hepatitis C victim spoke from the courtroom in Montréal.

[252] He declared that before receiving compensation provided by the agreements and before being infected with Hepatitis C, he was already receiving compensation benefits. They were not linked to Hepatitis C.

[253] But, when his income was analysed in order to determine his entitlement to compensation, his other benefits were deducted from his earning capacity to determine the amount of lost income.

[254] It seems that this person has been unfairly penalized. Benefits without any link to Hepatitis C should not be deducted in order to calculate the loss in earning capacity.

[255] This is another case that should be submitted to the Joint Committee and a recommendation could potentially be presented.

[256] In conclusion, the Court's view is that the residual amounts of excess capital –amounts that are not due to Class Members for future disbursements– should not be remitted to the federal government. Despite the refusal to grant certain claims made by the Joint Committee, a portion of the amounts known as excess capital will not be allocated to any of the parties.

**THEREFORE, THE COURT:**

[257] **DECLARES that:**

- (a) the amounts from which the "benefits" claimed are payable are solely and exclusively payable from the assets of the Trust that correspond to the amounts paid at the outset by the Government of Canada and invested under the terms of the Settlement Agreement and Funding Agreement,

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(b) no request for additional funds will be made of the Québec government with respect to these “benefits” and that the financial obligations of that government provided for in the Agreement will not be amended or affected in any way whatsoever;

(c) the monthly payments that are made and will continue to be made by the Québec government will in no way be amended or affected by the allocation of “benefits”.

[258] **DECLARES** that the Trustee of the 1986-1990 Hepatitis C Settlement Agreement (“Settlement Agreement”) holds \$206 920 000 in assets that were actuarially unallocated at December 31, 2013 (“Excess capital”);

[259] **ORDERS** that the restrictions on the payment of amounts with respect to claims for loss of income provided for in Section 4.02(2)(b)(i) of the Transfused HCV Plan and in Section 4.02(2)(b)(i) of the Hemophiliac HCV Plan and for loss of support provided for in Section 6.01(1) of the Transfused HCV Plan and Section 6.01(1) of the Hemophiliac HCV Plan, as previously amended, not be otherwise amended or deleted in whole or in part at this stage;

[260] **ORDERS** the allocation of excess assets to benefit Class Members including Family Class Members by approving the following:

(a) the proposed protocol for late claims made after the deadline of June 30, 2010, in order to allow Class Members who omitted to make their first claim before the June 30, 2010 deadline to obtain the initial claim forms and to have their claim submitted in the context of a new application by the Joint Committee, to the extent that they will have convinced an Arbitrator that their tardiness was due to reasons beyond their control or that there is a reasonable explanation for the delay, the amounts being withdrawn from a separate fund of \$32 450 000 plus administration costs, the whole having to be submitted to the courts for approval;

(b) an increase of 8.5%, indexed on January 1, 2014, with respect to the fixed amounts payable under Section 4.01(1) of the Transfused HCV Plan and the lump sum of \$50 000 (in 1999 dollars) and of \$120 000 (in 1999 dollars) payable under Sections 5.01(1) and 5.01(2) of the said Plan; the fixed amounts payable under Section 4.01 of the Hemophiliac HCV Plan and the lump sum of \$50 000 (in 1999 dollars) payable under Section 4.08(2) of the said Plan; the lump sum of \$50 000 (in 1999 dollars) payable under Section 5.01(1) of the Hemophiliac HCV Plan, the lump sum of \$120 000 (in 1999 dollars) payable under Section 5.01(2) of the said Plan as well as the lump sum of \$72 000 (in 1999 dollars) payable under Section 5.01(4) of the Hemophiliac HCV Plan; to be paid retroactively and prospectively;

(c) an increase in the fixed amount awarded to a Child aged 21 or older on the date of death of a HCV Infected Person under Section 6.02(c) of the Transfused HCV Plan and Section 6.02(c) of the Hemophiliac HCV Plan, raising the



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compensation from \$5000 (in 1999 dollars) to \$9600 (in 1999 dollars), indexed on January 1, 2014, to be paid retroactively and prospectively;

(d) an increase in the fixed amount awarded to a Parent under Section 6.02(d) of the Transfused HCV Plan and Section 6.02(d) of the Hemophiliac HCV Plan, raising the compensation from \$5000 (in 1999 dollars) to \$9600 (in 1999 dollars), indexed on January 1, 2014, to be paid retroactively and prospectively;

(e) an increase of 10% in the amounts paid for loss of income and loss of support under Section 4.02 of the Transfused HCV Plan and Section 4.02 of the Hemophiliac HCV Plan, calculated on a maximum loss of income of \$200 000 for the years before 2014 and calculated on a maximum loss of income of \$200 000 with indexation for the years 2014 and following, as compensation for the reduced pension benefits due to disability; to be paid retroactively and prospectively;

(f) an increase with respect to the maximum hours eligible in claiming loss of services under Sections 4.03(2) and 6.01(2) of the Transfused HCV Plan and Sections 4.03(2) and 6.01(2) of the Hemophiliac HCV Plan, raising the number of hours per week from 20 to 22; to be paid retroactively and prospectively;

(g) an increase in the maximum amount of compensation payable for costs of care under Section 4.04 of the Transfused HCV Plan and Section 4.04 of the Hemophiliac HCV Plan, raising the amount from \$50 000 per year (in 1999 dollars) to \$60 000 per year (in 1999 dollars); to be paid retroactively and prospectively;

(h) the payment of an allowance of \$200 (in 2014 dollars) payable to a Family Class Member (as defined in Section 1.01 of the Plans) accompanying a HCV Infected Person to a medical appointment required due to the HCV infection, in addition to the reimbursable costs pursuant to Section 4.07(a) of the Plans; to be paid prospectively;

(i) the payment of costs associated with administration costs relative to the recommendations described above in paragraphs (a) to (h).

[261] **ORDERS** that all retroactive payments be effected as a global amount to Class Members and/or Family Class Members or to their Personal Representative as defined in Section 1.01 of the Plans;

[262] **ORDERS** that all the amounts payable to the Class Members and Family Class Members be paid from the Trust Fund;

[263] **ORDERS** that the balance of the excess capital be kept in the Trust Fund, with the exception of the amount stipulated in paragraph 260(a), subject to any other Court order;

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[264] **ORDERS** that this judgment will take effect only at the time similar orders have been rendered by the Ontario Superior Court of Justice and the Supreme Court of British Columbia;

[265] **DISPOSES** concurrently of the application of the Attorney General of Canada for the allocation of assets that are actuarially unallocated dated January 29, 2016;

[266] **THE WHOLE**, without legal costs.

(s)

---

CHANTAL CORRIVEAU J.S.C.

Kathryn Podrebarac, Sharon D. Matthews, Q.C., Harvey Strosberg, Q.C., Heather Rumble Peterson, J.J. Camp, Q.C., Mtre. Michel Savonitto, Mtre. Martine Trudeau and Mtre. Arnaud Sauv -Dagenais  
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Counsel for Her Majesty the Queen in the Right of the Province of British Columbia

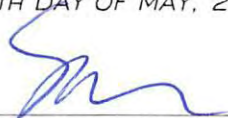
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Lise Favreau and Erin Rizok  
Counsel for Her Majesty the Queen in Right of Ontario

Caroline Zayid and H. Michael Rosenberg  
Counsel for the Intervenors representing the Provinces and Territories

*THE ATTACHED IS EXHIBIT "J" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE )

PAUL PERELL )

Tuesday THE 28<sup>th</sup> DAY  
OF November 2017

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

BETWEEN:

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*

**ORDER**

(HCV Late Claims Benefit Plan, Notice Plan, Late Claims Referees & Administration Budget)



THIS MOTION made by the Joint Committee members for Ontario for the relief granted herein was heard in writing this day.

ON READING the affidavits of Heather Rumble Peterson, sworn October 13, 2017 and Patrick Gervais sworn October 11, 2017,

ON BEING ADVISED that the Public Guardian and Trustee for Ontario and the Children's Lawyer for Ontario were served with the motion and each has advised that they take no position,

ON BEING ADVISED that implementation of the Late Claim Benefits Plan may require the Intervenors to promulgate regulatory amendments or take other measures to give effect to the social benefits exclusion found in Section 8.02 of the HCV Late Claims Benefit Plan,

AND ON BEING ADVISED that the Parties consent to the making of this Order, save and except to the extent that Section 8.02 of the HCV Late Claims Benefit Plan attached hereto as **Schedule "A"** conflicts with the laws, regulations, or directives of any of the Intervenors, in which case that Intervenor will make good faith efforts, as necessary, to address the conflict by promulgating regulatory amendments or taking other measures.

1. THIS COURT ORDERS that the HCV Late Claims Benefit Plan in the form attached hereto as **Schedule "A"** is hereby approved

2. THIS COURT ORDERS that for the purposes of implementing, administering, monitoring and supervising the HCV Late Claims Benefit Plan and the HCV Late Claims Benefit 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 and in the HCV Late Claims Benefit Plan with all the necessary adaptations, modifications and powers as may be required to do so.

3. THIS COURT ORDERS that Reva Devins and Christian Leblanc are hereby appointed Late Claims Referees under the HCV Late Claims Benefit Plan, and that the Joint Committee may propose for this Court's approval the appointment of other persons to serve as Late Claims Referees.

4. THIS COURT DECLARES 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. THIS COURT ORDERS that:

- (a) the Notice Plan in respect of the HCV Late Claims Benefit Plan in the form attached hereto as **Schedule "B"** is hereby approved and directs that the active notice campaign proposed in Budget C therein, at a cost of \$987,400 (plus applicable taxes), together with the proposed post-campaign notice program for two years following the completion of the

active notice campaign, budgeted at \$37,000 per year (plus applicable taxes), be implemented; and

- (b) the expenditure of funds from the HCV Late Claims Benefit Account is hereby approved to implement the notice option.

6. THIS COURT ORDERS that the Administrator's 2017 Late Claim Administration Proposal dated November 15, 2016, attached hereto as **Schedule "C"**, is hereby approved and directs that all costs relating thereto (plus applicable taxes) be paid from the HCV Late Claims Benefit Account.

7. THIS COURT ORDERS that the terms of this Order shall not be effective unless and until they are also approved by the Superior Court of Québec and the Supreme Court of British Columbia with no material differences.



JUSTICE

1557340 ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 7 2017

PER / PAR: 



**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 30 June 2010.

C. In August 2016, the 2016 Allocation Orders directed, and in November 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 30 June 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 15 August 2016, 16 August 2016 and 15 February 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 Benefit 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 Secondarily-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 Benefit Account”** means the amount of \$39,912,000 ordered by the Courts to be set aside from 2013 Excess Capital of the Trust Fund. plus interest to 31 December 2016 and investment gains or losses from 1 January 2017 onward as calculated in accordance with paragraphs 8(c) and 11 of the 2016 Allocation Implementation Orders, 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 including the HCV Late Claims notice campaign 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 30 June 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 Secondarily-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, Secondarily-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, Secondarily-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 Benefit 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 Benefit 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.

## **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 Section 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, Secondarily-Infected Person or Opted-Out Primarily-Infected Person or Opted-Out Secondarily-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 Secondarily-Infected Persons, HCV Personal Representatives, Dependents 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 Secondarily-Infected Person or Secondarily-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 Section 3.01Hemo or 3.01Tran, and Section 3.03, as applicable; or
  - (ii) if the deceased was a Secondarily-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 Section 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 Section 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 Secondarily-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 Secondarily-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 Secondarily-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 Secondarily-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.

(4) Except as provided in this Section, no person may make a Late Claim for the first time under this HCV Late Claims Benefit Plan unless he or she has made a late claim request to the Administrator in accordance with the provisions of Appendix E on or before 31 March 2025.



**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 angiomata, 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 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 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 16 August 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 Dependents 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 Dependents**

(1) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Late Claim Dependents 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 Section 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 Section 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 Dependants 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 Dependants 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 Dependants 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 Benefit 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 Benefit 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 Benefit 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 Benefit 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.

### **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 30 June 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 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 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.

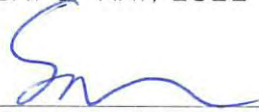
10. Where the Administrator receives a completed Late Claim application form in accordance with the provisions of the HCV Late Claims Benefit Plan, it shall process the Late Claim application form and determine eligibility for compensation by applying the terms of the HCV Late Claims Benefit Plan in 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**

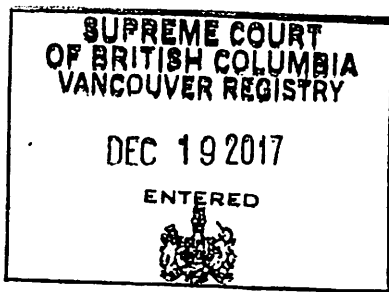
12. Where the Administrator denies a Late Claim application, the Administrator shall notify the person making the Late Claim application in writing that the appeal routes at Section 10.01 of the HCV Late Claims Benefit Plan and the appropriate Appendices apply.

THE ATTACHED IS EXHIBIT "K" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022



\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso ~~Suits~~ **LLP**,  
Barristers and Solicitors.  
Expires February 22, 2025.



No. C965349  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

**Anita Endean, as representative plaintiff**

Plaintiff

and

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

Defendants

and

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

Third Parties

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

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**ORDER MADE AFTER APPLICATION  
(HCV LATE CLAIMS BENEFIT PLAN, NOTICE PLAN, LATE CLAIMS REFEREES &  
ADMINISTRATION BUDGET)**

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*The Honourable*  
 BEFORE Chief Justice Hinkson

) *Tuesday the 19<sup>th</sup> day*  
) *of December 2017*

ON THE APPLICATION of the British Columbia Joint Committee member dated November 9, 2017 before the Honourable Chief Justice Hinkson in writing, and the Attorney General of Canada, Her Majesty the Queen in Right of the Province of British Columbia and British Columbia Fund Counsel all having been served with the application materials;

ON BEING ADVISED that the Public Guardian and Trustee for British Columbia was served with the application and did not respond;

AND ON BEING ADVISED that the British Columbia Joint Committee and the Attorney General of Canada consent to the making of this order and the remaining Parties do not oppose to it;

UPON READING the materials filed, including Affidavit #18 of Heather Rumble Peterson made October 13, 2017 and Affidavit #1 of Patrick Gervais made October 11, 2017;

AND THIS ACTION BEING STAYED AGAINST the defendant the Canadian Red Cross Society by the Order of Mr. Justice Blair made on July 20, 1998 in Ontario Superior Court of Justice Action No. 98-CL-002970 (Toronto) and subsequently extended by further orders made on August 18, 1998, October 5, 1998, January 18, 1999, May 5, 1999, July 28, 1999 and February 25, 2000;

AND THIS ACTION BEING STAYED AGAINST the third parties Prince George Regional Hospital, Dr. William Galliford, Dr. Robert Hart Dykes, Dr. Peter Houghton and Dr. John Doe by order of Justice K. Smith, made May 22, 1997.

THIS COURT ORDERS that:

1. The HCV Late Claims Benefit Plan in the form attached hereto as **"Schedule A"** is hereby approved.
2. that for the purposes of implementing, administering, monitoring and supervising the HCV Late Claims Benefit Plan and the HCV Late Claims Benefit 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 and in the HCV Late Claims Benefit Plan with all the necessary adaptations, modifications and powers as may be required to do so.
3. Reva Devins and Christian Leblanc are hereby appointed Late Claims Referees under the HCV Late Claims Benefit Plan and that the Joint Committee may propose for this Court's approval the appointment of other persons to serve as Late Claims Referees.
4. 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. (a) The Notice Plan in respect of the HCV Late Claims Benefit Plan in the form attached hereto as **Schedule "B"** is hereby approved and directs that the active notice campaign proposed in Budget C therein, at a cost of \$987,400 (plus applicable taxes), together with the proposed post-campaign notice program for two years following the completion of the active notice campaign, budgeted at \$37,000 per year (plus applicable taxes), be implemented; and




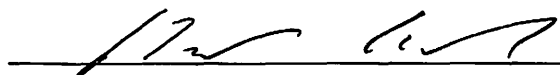
(b) The expenditure of funds from the HCV Late Claims Benefit Account is hereby approved to implement the notice option.

6. The Administrator's 2017 Late Claim Administration Proposal dated November 15, 2016, attached hereto as **Schedule "C"**, is hereby approved and directs that all costs relating thereto (plus applicable taxes) be paid from the HCV Late Claims Benefit Account.

7. The terms of this Order shall not be effective unless and until they are also approved by the Superior Court of Quebec and the Ontario Superior Court of Justice with no material differences.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

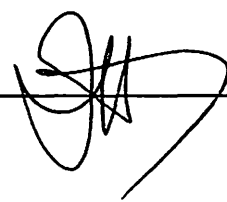
  
\_\_\_\_\_  
Signature of British Columbia  
Joint Committee Member  
  
Sharon Matthews, Q.C.

  
\_\_\_\_\_  
Signature of lawyer for the Attorney  
General of Canada  
*for*  
Craig Cameron

*See attached*  
\_\_\_\_\_  
Signature of lawyer for Her Majesty the  
Queen in Right of the Province of British  
Columbia  
  
Keith L. Johnston

*see attached*  
\_\_\_\_\_  
Signature of British Columbia Fund  
Counsel  
  
Gordon J. Kehler

  
\_\_\_\_\_  
By the Court

  
\_\_\_\_\_  
Registrar

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Joint Committee Member

Sharon Matthews, Q.C.

\_\_\_\_\_  
Signature of lawyer for the Attorney  
General of Canada

Craig Cameron

  
\_\_\_\_\_  
Signature of lawyer for Her Majesty the  
Queen in Right of the Province of British  
Columbia

*Fr*  
Keith L. Johnston

\_\_\_\_\_  
Signature of British Columbia Fund  
Counsel

Gordon J. Kehler

By the Court

\_\_\_\_\_  
Registrar

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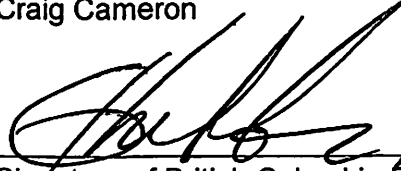
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\_\_\_\_\_  
Signature of British Columbia  
Joint Committee Member

Sharon Matthews, Q.C.

\_\_\_\_\_  
Signature of lawyer for the Attorney  
General of Canada

Craig Cameron



\_\_\_\_\_  
Signature of lawyer for Her Majesty the  
Queen in Right of the Province of British  
Columbia

Keith L. Johnston

\_\_\_\_\_  
Signature of British Columbia Fund  
Counsel

Gordon J. Kehler

By the Court

\_\_\_\_\_  
Registrar

*THE ATTACHED IS EXHIBIT "L" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

**COUR SUPÉRIEURE**

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

No : 500-06-000016-960  
500-06-000068-987

DATE : 29 novembre 2017

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**SOUS LA PRÉSIDENTE DE : L'HONORABLE CHANTAL CORRIVEAU, J.C.S.**

---

**500-06-000016-960**

**DOMINIQUE HONHON**

Requérante

c.

**PROCUREUR GÉNÉRAL DU CANADA**  
Et  
**PROCUREUR GÉNÉRAL DU QUÉBEC**  
Et  
**SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE**

Intimés

Et

**ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint**

**REQUÉRANT**

Et  
**FONDS D'AIDE AUX RECOURS COLLECTIFS**  
Et  
**LE CURATEUR PUBLIC DU QUÉBEC**

Mis en cause

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500-06-000016-960 - 500-06-000068-987

PAGE : 2

500-06-000068-987**DAVID PAGE**

Requérant

c.

**PROCUREUR GÉNÉRAL DU CANADA**

et

**PROCUREUR GÉNÉRAL DU QUÉBEC**

et

**SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE**

Intimés

et

**FONDS D'AIDE AUX RECOURS COLLECTIFS**

et

**LE CURATEUR PUBLIC DU QUÉBEC**

Mis en cause

---

**JUGEMENT SUR LA DEMANDE DU COMITÉ CONJOINT POUR APPROBATION DU RÉGIME D'INDEMNISATION POUR LES RÉCLAMATIONS TARDIVES, DE LA CAMPAGNE DE NOTIFICATION, DU BUDGET D'ADMINISTRATION ET POUR LA NOMINATION DES ARBITRES POUR ENTENDRE LES DEMANDES DE RÉCLAMATIONS TARDIVES**

---

- [1] **ATTENDU QUE** le tribunal est saisi d'une *Demande du comité conjoint pour approbation du régime d'indemnisation pour les réclamations tardives, de la campagne de notification, du budget d'administration et pour la nomination des arbitres pour entendre les demandes de réclamations tardives (Application from the Joint Committee for the approval of the HCV late claims benefit plan, notice campaign, administration budget and appointment of late claims referees)* présentée par Me Michel Savonitto, *ès qualités* de membre du Comité conjoint pour le Québec;
- [2] **CONSIDÉRANT** les allégations à la demande et les pièces déposées à l'appui de celle-ci;
- [3] **CONSIDÉRANT** la preuve au dossier;
- [4] **CONSIDÉRANT** que le Procureur Général du Canada et la Procureure Générale du Québec consentent à la présente demande suite à certaines modifications apportées à la Pièce R-1;

- [5] **PAR CES MOTIFS, LE TRIBUNAL :**
- [6] **ACCUEILLE** la demande;
- [7] **APPROUVE** le Régime d'indemnisation pour les réclamations tardives et ses annexes dans leur version anglaise jointe au présent jugement (Annexe A), la version française devant être préparée et rendue disponible dans les meilleurs délais;
- [8] **DÉCLARE** que pour la mise en œuvre, l'administration, la surveillance et la supervision du Régime d'indemnisation pour les réclamations tardives et du Compte des réclamations tardives, l'Administrateur, le Fiduciaire, les Conseillers juridiques du Fonds, les Vérificateurs, le Comité conjoint, les Conseillers financiers, les Arbitres et Juges-Arbitres, le « Court Monitor », les Arbitres des demandes de réclamations tardives et les Tribunaux auront les rôles et devront s'acquitter de leurs devoirs et responsabilités prévus à la Convention de Règlement (telle que modifiée par l'Annexe F) avec toutes les adaptations, modifications et pouvoirs nécessaires le cas échéant, et tel que prévus en vertu du présent jugement approuvant le Régime d'indemnisation des réclamations tardives, en vertu du Régime d'indemnisation des réclamations tardives incluant ses annexes et en vertu des protocoles approuvés par les Tribunaux;
- [9] **NOMME** Me Christian Leblanc pour agir comme Arbitre pour entendre les demandes de réclamations tardives pour la province de Québec et toute autre personne qui pourra être proposée par le Comité conjoint pour agir à ce titre également, au besoin;
- [10] **DÉCLARE** que les tarifs établis par les Tribunaux pour la rémunération des arbitres, juges-arbitres et procureurs représentant les membres en appel soient applicables au Régime d'indemnisation pour les réclamations tardives avec les adaptations et/ou modifications nécessaires requises, le cas échéant;
- [11] **APPROUVE** la campagne de notification jointe au présent jugement (Annexe B) à l'égard du Régime d'indemnisation pour les réclamations tardives dans la forme décrite sous le Budget C au coût de 987,400 \$ (taxes en sus) ainsi que le programme de suivi post-campagne évalué à 37,000 \$ par année (taxes en sus) pour une période de deux ans suivant la campagne de notification ;
- [12] **ORDONNE** que la campagne de notification et le programme de suivi post-campagne approuvés au paragraphe précédent soient mis en œuvre tel que proposé;
- [13] **AUTORISE** l'utilisation des montants du Capital Excédentaire alloués par les Tribunaux pour le Régime d'indemnisation des réclamations tardives pour

500-06-000016-960 - 500-06-000068-987

PAGE : 4

assurer la mise en œuvre de la campagne de notification et le programme de suivi post-campagne ci-devant approuvés;

- [14] **APPROUVE** le budget proposé par l'Administrateur et joint au présent jugement (Annexe C) pour l'administration du Régime d'indemnisation pour les réclamations tardives ;
- [15] **ORDONNE** que les frais d'administration du Régime d'indemnisation pour les réclamations tardives (et les taxes en sus) soient payés à même le montant de Capital Excédentaire alloué par les Tribunaux pour le Régime d'indemnisation des réclamations tardives;
- [16] **DÉCLARE** le jugement à intervenir exécutoire sans que les tribunaux de l'Ontario et de la Colombie-Britannique n'aient à rendre de tels jugements;
- [17] **LE TOUT** sans frais.

  
 CHANTAL CORRIVEAU, j.c.s.

Me Martine Trudeau  
 Me Michel Savonitto  
 Savonitto & Ass. inc.  
 Pour Me Michel Savonitto *ès qualités* de membre du Comité conjoint

Me Nathalie Drouin  
 Me Stéphane Arcelin  
 Procureure générale du Canada/Attorney general of Canada  
 Ministère de la Justice Canada  
 Pour la Procureure générale du Canada

Me Serge Ghorayeb  
 Bernard Roy (Justice-Québec)  
 Pour la Procureure générale du Québec

Me Mason Poplaw  
 Me Kim Nguyen  
 McCarthy, Tétrault  
 Conseillers juridiques du Fonds



THE ATTACHED IS EXHIBIT "M" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022



\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Suits LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE

)

Tuesday THE 12<sup>th</sup> DAY

)

PAUL PERELL

)

OF Dec. , 2017

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

BETWEEN:

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*

**ORDER**  
(Implementation of 2016 Allocation Order)



THIS MOTION, made by the Joint Committee members for Ontario, for the relief granted herein, was heard in writing this day.

ON READING the affidavits of Heather Rumble Peterson, sworn October 13, 2017, Richard Border made October 12, 2017 and October 14, 2015, and the Written Arguments of Class Member 2213 and 7438,

ON BEING ADVISED that the Public Guardian and Trustee for Ontario and the Children's Lawyer for Ontario were served with the motion and each has advised that they take no position,

AND ON BEING ADVISED that the Plaintiffs and the Attorney General of Canada consent to the making of this Order and the remaining Parties do not oppose it,

1. THIS COURT ORDERS that the following three separate accounts of the Trust Fund be established as at December 31, 2013, to be held, invested and administered by the Trustee:

- (a) the HCV Late Claims Benefit Account, for the payment of compensation under the HCV Late Claims Benefit Plan, the administrative costs thereof, and the HCV Late Claims Notice Campaign costs;
- (b) the HCV Special Distribution Benefit Account, for the payment of Special Distribution Benefits ordered in:
  - (i) paragraph 6 of the 2016 Allocation Orders and the administrative costs thereof; and

(ii) paragraphs 4 to 7 below.

- (c) the HCV Regular Benefit Account, for the payment of compensation under the Transfused HCV Plan and the Hemophiliac HCV Plan and the administrative costs thereof.

2. THIS COURT ORDERS that \$7,411,000 of the 2013 Excess Capital be allocated to the HCV Late Claims Benefit Account as required capital for the HCV Late Claims Benefit Plan.

3. THIS COURT ORDERS that \$12,199,000 of the 2013 Excess Capital be allocated to the HCV Special Distribution Benefit Account as required capital for HCV Special Distribution Benefits for Approved Class Members under the HCV Transfused Plan and the HCV Hemophiliac Plan.

4. THIS COURT ORDERS AND DIRECTS that:

- (a) Claimant 2213; and
- (b) all other alive Primarily-Infected Hemophiliacs who are Approved HCV Infected Persons co-infected with HIV and who received a lump sum payment under Section 4.08(2) of the Hemophiliac HCV Plan,

may apply to the Administrator and receive by way of Special Distribution Benefits all compensation and benefits to which they would be entitled under the Settlement Agreement as amended by the 1999 Approval Orders, the 2016 Allocation Orders and any future orders, provided that the amount they received prior to their special distribution application is indexed to the date of that application in accordance with

section 7.02 of the Hemophiliac HCV Plan and deducted from the compensation to which they are entitled as a result of their Special Distribution Benefits application.

5. THIS COURT ORDERS that \$4,600,000 of the 2013 Excess Capital plus required capital of \$500,000 be allocated to the HCV Special Distribution Benefit Account to fund the Special Distribution Benefits payments to be made pursuant to paragraph 4.

6. THIS COURT ORDERS AND DIRECTS that:

- (a) Claimant 7438; and
- (b) all other alive permanently disabled Approved Dependents of a deceased HCV Infected Person, who receive or have received compensation for loss of the deceased HCV Infected Person's services in the home, may apply to the Administrator and receive by way of Special Distribution Benefits compensation for loss of services after the actuarially calculated notional life expectancy of the deceased HCV Infected Person up to the Approved Dependant's death.

7. THIS COURT ORDERS that \$3,900,000 of the 2013 Excess Capital plus required capital of \$400,000 be allocated to the HCV Special Distribution Benefit Account to fund the Special Distribution Benefits payments to be made pursuant to paragraph 6.

8. THIS COURT DIRECTS that the value of the HCV Late Claims Benefit Account as at December 31, 2016 shall be comprised of the following allocated from the 2013 Excess Capital:

- (a) the amount of \$32,450,000 plus administrative costs of \$51,000, as ordered in paragraph 5 of the 2016 Allocation Orders;
- (b) the required capital ordered in paragraph 2 above; and
- (c) the amount of interest earned on the sum of 8(a) and 8(b), from January 1, 2014 to December 31, 2016, by applying the annual rate of return for the invested assets of the Trust Fund net of investment expenses.

9. THIS COURT DIRECTS that the value of the HCV Special Distribution Benefit Account as at December 31, 2016, shall be comprised of the following allocated from the 2013 Excess Capital:

- (a) the amount of \$130,970,000 plus related administrative costs of \$61,000, as ordered in paragraph 6 of the 2016 Allocation Orders;
- (b) the required capital ordered in paragraph 3 above;
- (c) the amount for Special Distribution Benefits for co-infected Primarily-Infected Hemophiliacs plus required capital ordered in paragraph 5 above;
- (d) the amount for Special Distribution Benefits for permanently disabled Approved Dependents plus required capital ordered in paragraph 7 above; and
- (e) the amount of interest earned on the sum of 9(a), 9(b), 9(c) and 9(d), from January 1, 2014 to December 31, 2016, by applying the annual rate of return for the invested assets of the Trust Fund net of investment expenses.

10. THIS COURT DIRECTS that the value of the HCV Regular Benefit Account as at December 31, 2016 shall be comprised of the total amount of the Trust Fund minus:

- (a) the value of the HCV Late Claims Benefit Account as at December 31, 2016 calculated in accordance with paragraph 8 above; and
- (b) the value of the HCV Special Distribution Benefit Account as at December 31, 2016 calculated in accordance with paragraph 9 above.

11. THIS COURT ORDERS that from December 31, 2016 onward, the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account shall be updated monthly as follows:

- (a) the monthly rate of investment return on the total invested assets net of investment fees will be calculated;
- (b) each account balance will then be reduced by the payments (benefits and expenses) out of the account; and
- (c) then interest at the monthly investment return rate will be added to each account balance.

12. THIS COURT DECLARES that each of the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account include:

- (a) any investments in which such assets may from time to time be invested;
- (b) any proceeds of disposition of any investments; and
- (c) 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.

13. THIS COURT DECLARES that for the purposes of implementing, administering, monitoring and supervising:

- (a) the payments to be made pursuant to the 2016 Allocation Orders and this Order; and
- (b) the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account,

the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor and Courts shall perform the role and have the duties and responsibilities provided for in the Settlement Agreement and the HCV Late Claims Benefit Plan, with all the necessary adaptations, modifications and powers as may be required to do so.

14. THIS COURT ORDERS that the terms of this Order shall not be effective unless and until they are also approved by the Superior Court of Québec and the Supreme Court of British Columbia with no material differences.

*Perell J*

JUSTICE

1557345  
ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

DEC 21 2017

PER / PAR: *[Signature]*



PARSONS et al.  
KREPPNER et al.

Plaintiffs

vs. THE CANADIAN RED CROSS  
SOCIETY et al.  
vs. THE CANADIAN RED CROSS  
SOCIETY et al.

Defendants

Court File No. 98-CV-141369  
Court File No. 98-CV-146405

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDINGS COMMENCED AT TORONTO

**ORDER**  
(Implementation of 2016 Allocation Order)

PODREBARAC BARRISTERS PROFESSIONAL  
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5600-100 King Street West  
Toronto, ON M5X 1C9

KATHRYN PODREBARAC  
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Lawyers  
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Windsor, ON N8X 1K5

HARVEY T. STROSBERG, Q.C.  
LSUC#: 126400

Tel: 519.561.6228  
Fax: 866.316.5308

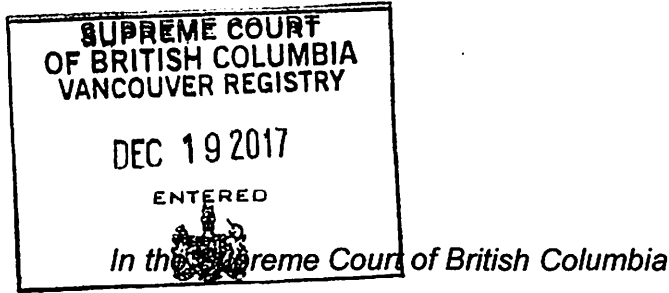
Members of the Joint Committee in Ontario

THE ATTACHED IS EXHIBIT "N" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022



\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.



No. C965349  
Vancouver Registry

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

---

**ORDER MADE AFTER APPLICATION  
(IMPLEMENTATION OF 2016 ALLOCATION ORDER)**

---

*The Honourable*  
BEFORE Chief Justice Hinkson

*) Tuesday the 19<sup>th</sup> day  
) of December 2017*

ON THE APPLICATION of the British Columbia Joint Committee member dated November 9, 2017 before the Honourable Chief Justice Hinkson in writing, and the Attorney General of Canada, Her Majesty the Queen in Right of the Province of British Columbia and British Columbia Fund Counsel all having been served with the application materials;

ON BEING ADVISED that the Public Guardian and Trustee for British Columbia was served with the application and did not respond;

AND ON BEING ADVISED that the British Columbia Joint Committee and the Attorney General of Canada consent to the making of this order and the remaining Parties do not oppose to it;

UPON READING the materials filed, including Affidavit #18 of Heather Rumble Peterson made October 13, 2017, Affidavit #7 of Richard Border made October 12, 2017, and the Written Arguments of Class Member 2213 and 7438;

AND THIS ACTION BEING STAYED AGAINST the defendant the Canadian Red Cross Society by the Order of Mr. Justice Blair made on July 20, 1998 in Ontario Superior Court of Justice Action No. 98-CL-002970 (Toronto) and subsequently extended by further orders made on August 18, 1998, October 5, 1998, January 18, 1999, May 5, 1999, July 28, 1999 and February 25, 2000;

AND THIS ACTION BEING STAYED AGAINST the third parties Prince George Regional Hospital, Dr. William Galliford, Dr. Robert Hart Dykes, Dr. Peter Houghton and Dr. John Doe by order of Justice K. Smith, made May 22, 1997.

THIS COURT ORDERS that:

1. The following three separate accounts of the Trust Fund be established as at December 31, 2013, to be held, invested and administered by the Trustee:
  - (a) the HCV Late Claims Benefit Account, for the payment of compensation under the HCV Late Claims Benefit Plan, the administrative costs thereof, and the HCV Late Claims Notice Campaign costs;
  - (b) the HCV Special Distribution Benefit Account, for the payment of Special Distribution Benefits ordered in:
    - (i) paragraph 6 of the 2016 Allocation Orders and the administrative costs thereof; and
    - (ii) paragraphs 4 to 7 below.
  - (c) the HCV Regular Benefit Account, for the payment of compensation under the Transfused HCV Plan and the Hemophiliac HCV Plan and the administrative costs thereof.
2. \$7,411,000 of the 2013 Excess Capital be allocated to the HCV Late Claims Benefit Account as required capital for the HCV Late Claims Benefit Plan.
3. \$12,199,000 of the 2013 Excess Capital be allocated to the HCV Special Distribution Benefit Account as required capital for HCV Special Distribution Benefits for Approved Class Members under the HCV Transfused Plan and the HCV Hemophiliac Plan.
4. (a) Claimant 2213; and

- (b) all other alive Primarily-Infected Hemophiliacs who are Approved HCV Infected Persons co-infected with HIV and who received a lump sum payment under Section 4.08(2) of the Hemophiliac HCV Plan,

may apply to the Administrator and receive by way of Special Distribution Benefits all compensation and benefits to which they would be entitled under the Settlement Agreement as amended by the 1999 Approval Orders, the 2016 Allocation Orders and any future orders, provided that the amount they received prior to their special distribution application is indexed to the date of that application in accordance with section 7.02 of the Hemophiliac HCV Plan and deducted from the compensation to which they are entitled as a result of their Special Distribution Benefits application.

5. \$4,600,000 of the 2013 Excess Capital plus required capital of \$500,000 be allocated to the HCV Special Distribution Benefit Account to fund the Special Distribution Benefits payments to be made pursuant to paragraph 4.

6. (a) Claimant 7438; and

- (b) all other alive permanently disabled Approved Dependants of a deceased HCV Infected Person, who receive or have received compensation for loss of the deceased HCV Infected Person's services in the home,

may apply to the Administrator and receive by way of Special Distribution Benefits compensation for loss of services after the actuarially calculated notional life expectancy of the deceased HCV Infected Person up to the Approved Dependant's death.

7. \$3,900,000 of the 2013 Excess Capital plus required capital of \$400,000 be allocated to the HCV Special Distribution Benefit Account to fund the Special Distribution Benefits payments to be made pursuant to paragraph 6.

8. The value of the HCV Late Claims Benefit Account as at December 31, 2016 shall be comprised of the following allocated from the 2013 Excess Capital:

- (a) the amount of \$32,450,000 plus administrative costs of \$51,000, as ordered in paragraph 5 of the 2016 Allocation Orders;
- (b) the required capital ordered in paragraph 2 above; and
- (c) the amount of interest earned on the sum of 8(a) and 8(b), from January 1, 2014 to December 31, 2016, by applying the annual rate of return for the invested assets of the Trust Fund net of investment expenses.

9. The value of the HCV Special Distribution Benefit Account as at December 31, 2016, shall be comprised of the following allocated from the 2013 Excess Capital:

- (a) the amount of \$130,970,000 plus related administrative costs of \$61,000, as ordered in paragraph 6 of the 2016 Allocation Orders;

- (b) the required capital ordered in paragraph 3 above;
- (c) the amount for Special Distribution Benefits for co-infected Primarily-Infected Hemophiliacs plus required capital ordered in paragraph 5 above;
- (d) the amount for Special Distribution Benefits for permanently disabled Approved Dependants plus required capital ordered in paragraph 7 above; and
- (e) the amount of interest earned on the sum of 9(a), 9(b), 9(c) and 9(d), from January 1, 2014 to December 31, 2016, by applying the annual rate of return for the invested assets of the Trust Fund net of investment expenses.

10. The value of the HCV Regular Benefit Account as at December 31, 2016 shall be comprised of the total amount of the Trust Fund minus:

- (a) the value of the HCV Late Claims Benefit Account as at December 31, 2016 calculated in accordance with paragraph 8 above; and
- (b) the value of the HCV Special Distribution Benefit Account as at December 31, 2016 calculated in accordance with paragraph 9 above.

11. From December 31, 2016 onward, the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account shall be updated monthly as follows:

- (a) the monthly rate of investment return on the total invested assets net of investment fees will be calculated;
- (b) each account balance will then be reduced by the payments (benefits and expenses) out of the account; and
- (c) then interest at the monthly investment return rate will be added to each account balance.

12. Each of the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account include:

- (a) any investments in which such assets may from time to time be invested;
- (b) any proceeds of disposition of any investments; and
- (c) 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.


13. For the purposes of implementing, administering, monitoring and supervising:

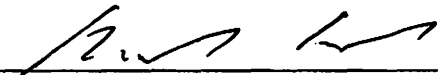
- (a) the payments to be made pursuant to the 2016 Allocation Orders and this Order; and
- (b) the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account,

the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor and Courts shall perform the roles and have the duties and responsibilities provided for in the Settlement Agreement and the HCV Late Claims Benefit Plan, with all the necessary adaptations, modifications and powers as may be required to do so.

14. The terms of this Order shall not be effective unless and until they are also approved by the Superior Court of Quebec and the Ontario Superior Court of Justice with no material differences.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

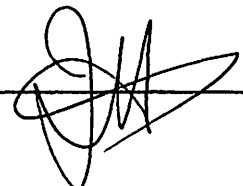
  
 \_\_\_\_\_  
 Signature of British Columbia  
 Joint Committee Member  
  
 Sharon Matthews, Q.C.

  
 \_\_\_\_\_  
 Signature of lawyer for the Attorney  
 General of Canada  
  
 for  
 Craig Cameron

*see attached*  
 \_\_\_\_\_  
 Signature of lawyer for Her Majesty the  
 Queen in Right of the Province of British  
 Columbia  
  
 Keith L. Johnston

*see attached*  
 \_\_\_\_\_  
 Signature of British Columbia Fund  
 Counsel  
  
 Gordon J. Kehler

  
 By the Court

\_\_\_\_\_  
 Registrar 

13. For the purposes of implementing, administering, monitoring and supervising:

- (a) the payments to be made pursuant to the 2016 Allocation Orders and this Order; and
- (b) the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account,

the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor and Courts shall perform the roles and have the duties and responsibilities provided for in the Settlement Agreement and the HCV Late Claims Benefit Plan, with all the necessary adaptations, modifications and powers as may be required to do so.

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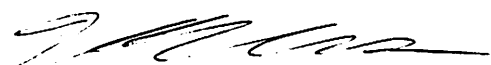
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of British Columbia  
Joint Committee Member

Sharon Matthews, Q.C.

\_\_\_\_\_  
Signature of lawyer for the Attorney  
General of Canada

Craig Cameron

  
\_\_\_\_\_  
Signature of lawyer for Her Majesty the  
Queen in Right of the Province of British  
Columbia

Keith L. Johnston

\_\_\_\_\_  
Signature of British Columbia Fund  
Counsel

Gordon J. Kehler

By the Court

\_\_\_\_\_  
Registrar



13. For the purposes of implementing, administering, monitoring and supervising:
- (a) the payments to be made pursuant to the 2016 Allocation Orders and this Order; and
  - (b) the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account,

the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor and Courts shall perform the roles and have the duties and responsibilities provided for in the Settlement Agreement and the HCV Late Claims Benefit Plan, with all the necessary adaptations, modifications and powers as may be required to do so.

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THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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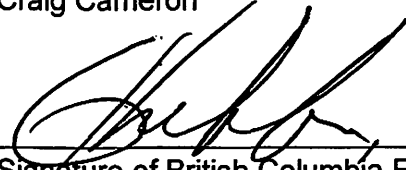
Signature of British Columbia  
Joint Committee Member

Sharon Matthews, Q.C.

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Signature of lawyer for the Attorney  
General of Canada

Craig Cameron




---

Signature of lawyer for Her Majesty the  
Queen in Right of the Province of British  
Columbia

Keith L. Johnston

---

Signature of British Columbia Fund  
Counsel

Gordon J. Kehler

By the Court

---

Registrar

No. C965349  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

**Anita Endean, as representative plaintiff**

Plaintiff

and

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

Defendants

and

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

Third Parties

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

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**ORDER MADE AFTER APPLICATION**

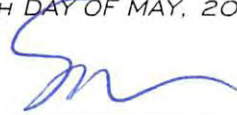
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CAMP FIORANTE MATTHEWS MOGERMAN  
Barristers & Solicitors  
#400 – 856 Homer Street  
Vancouver, BC V6B 2W5

Tel: (604) 689-7555  
Fax: (604) 689-7554  
Email: [service@cmmlawyers.ca](mailto:service@cmmlawyers.ca)

*Ag: nB:Ke*

*THE ATTACHED IS EXHIBIT "O" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



---

*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

**COUR SUPÉRIEURE**

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

No : 500-06-000016-960  
500-06-000068-987

DATE : 29 novembre 2017

---

**SOUS LA PRÉSIDENTE DE : L'HONORABLE CHANTAL CORRIVEAU, J.C.S.**

---

**500-06-000016-960**

**DOMINIQUE HONHON**

Requérante

c.

**PROCUREUR GÉNÉRAL DU CANADA**  
Et  
**PROCUREUR GÉNÉRAL DU QUÉBEC**  
Et  
**SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE**

Intimés

Et

**ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint**

**REQUÉRANT**

Et  
**FONDS D'AIDE AUX RECOURS COLLECTIFS**  
Et  
**LE CURATEUR PUBLIC DU QUÉBEC**

Mis en cause

---

500-06-000016-960 - 500-06-000068-987

PAGE : 2

**500-06-000068-987****DAVID PAGE**

Requérant

c.

**PROCUREUR GÉNÉRAL DU CANADA**

et

**PROCUREUR GÉNÉRAL DU QUÉBEC**

et

**SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE**

Intimés

et

**FONDS D'AIDE AUX RECOURS COLLECTIFS**

et

**LE CURATEUR PUBLIC DU QUÉBEC**

Mis en cause

---

**JUGEMENT SUR LA DEMANDE DU COMITÉ CONJOINT POUR LA MISE EN  
ŒUVRE DES ORDONNANCES D'ALLOCATION 2016**

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- [1] **ATTENDU QUE** le tribunal est saisi d'une *Demande du comité conjoint pour la mise en œuvre des Ordonnances d'allocation 2016 (Application from the Joint Committee for the implementation of the 2016 allocation orders)* présentée par Me Michel Savonitto, *ès qualités* de membre du Comité conjoint pour le Québec;
- [2] **CONSIDÉRANT** les allégations à la demande et les pièces déposées à l'appui de celle-ci;
- [3] **CONSIDÉRANT** la preuve au dossier;
- [4] **CONSIDÉRANT** que la demande n'est pas contestée et que le Procureur Général du Canada consent au libellé des ordonnances suivantes;
- [5] **PAR CES MOTIFS, LE TRIBUNAL :**
- [6] **ACCUEILLE** la demande;

- [7] **ORDONNE** la constitution de trois comptes distincts dans le Fonds en fiducie, à la date du 31 décembre 2013, à être détenus, investis et administrés par le Fiduciaire, à savoir:
- a) le **Compte pour les Réclamations tardives**, pour le paiement de l'indemnisation en vertu du Régime pour les réclamations tardives, les coûts reliés à son administration et les coûts reliés à la campagne de financement;
  - b) le **Compte pour les Indemnités de distribution spéciale**, pour le paiement des Indemnités de distribution Spéciale ordonnées :
    - i) au paragraphe 6 des Ordonnances d'allocation 2016<sup>1</sup> et les coûts administratifs y reliés; et
    - ii) aux paragraphes 10 à 13 du présent jugement;
  - c) le **Compte pour les Indemnités régulières**, pour le paiement de l'indemnisation prévue au Régime à l'intention des transfusés infectés par le VHC et au Régime à l'intention des hémophiles infectés par le VHC et des coûts reliés à leur administration;
- [8] **ORDONNE** qu'un montant de 7 411 000 \$ provenant du Capital Excédentaire soit alloué à titre de capital requis (*required capital*) pour le Régime d'indemnisation des réclamations tardives prévu au paragraphe 6 des Ordonnances d'allocation 2016;
- [9] **ORDONNE** qu'un montant de 12 199 000 \$ provenant du Capital Excédentaire soit alloué à titre de capital requis pour les Indemnités de distribution spéciale prévu au paragraphe 6 des Ordonnances d'allocation 2016;
- [10] **ORDONNE QUE** le membre no. 2213 et tous les autres Hémophiles directement infectés vivants qui sont des Personnes reconnues infectées par le VHC co-infectées avec le VIH et qui ont reçu un paiement forfaitaire selon l'article 4.08(2) du Régime à l'intention des hémophiles infectés par le VHC, puissent demander à l'Administrateur et ainsi recevoir par le biais d'une Indemnité de distribution spéciale, toutes les autres indemnités auxquelles ils auraient eu droit selon la Convention de règlement telle que modifiée par l'Annexe F, par les Ordonnances d'allocation 2016 et par toute autre ordonnance et jugement futurs, dans la mesure où les montants qu'ils ont reçus avant leur demande d'Indemnité de distribution spéciale soient indexés conformément à l'article 7.02 du Régime à l'intention des hémophiles infectés par le VHC à la date de cette demande et déduits de l'indemnisation à laquelle ils auront droit suite à leur demande d'Indemnité de distribution spéciale;

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<sup>1</sup> Voir le jugement rendu le 15 février 2017 conciliant les ordonnances d'allocation rendues en Ontario et en Colombie-Britannique avec le jugement d'allocation rendu le 15 août 2016.

- [11] **ORDONNE** qu'un montant de 4 600 000 \$ et de 500 000\$ à titre de capital requis, tous deux établis à la date du 31 décembre 2013 et provenant du Capital Excédentaire soient alloués pour financer le versement de l'Indemnité de distribution spéciale ordonnée au paragraphe 10 du présent jugement;
- [12] **ORDONNE** que le membre no. 7438 et toutes les autres Personnes reconnues à charge et présentant une incapacité permanente qui reçoivent ou ont reçu l'indemnisation pour perte des services domestiques suite au décès de la Personne infectée par le VHC puissent demander à l'Administrateur et ainsi recevoir, sous la forme d'une Indemnité de distribution spéciale, l'indemnisation pour perte de services domestiques au-delà de la date présumée d'expectative de vie naturelle de la Personne infectée par le VHC et jusqu'au moment de leur décès;
- [13] **ORDONNE** qu'un montant de 3 900 000 \$ et de 400 000 \$ à titre de capital requis, tous deux établis à la date du 31 décembre 2013 et provenant du Capital Excédentaire soient alloués pour financer le versement l'Indemnité de distribution spéciale ordonnée au paragraphe 12 du présent jugement;
- [14] **DÉCLARE QUE** la valeur du Compte des Réclamations tardives, établie au 31 décembre 2013, soit constituée des montants suivants provenant du Capital Excédentaire:
- a) 32 450 000 \$ plus 51 000 \$ de frais d'administration, tel que prévu au paragraphe 5 des Ordonnances d'allocation 2016;
  - b) le capital requis ordonné au paragraphe 8 du présent jugement;
  - c) les intérêts calculés sur ces montants (14a) et 14b)) en appliquant le taux annuel de rendement sur les actifs investis du Fonds en fiducie, net des dépenses d'investissement et ce, pour la période débutant le 1er janvier 2014 et se terminant le 31 décembre 2016;
- [15] **DÉCLARE** que la valeur du Compte des Indemnités de distribution Spéciale, établie au 31 décembre 2013, soit constituée des montants suivants provenant du Capital Excédentaire:
- a) 130 970 000 \$ plus 61 000 \$ de frais d'administration, tel que prévu à l'article 6 des Ordonnances d'allocation 2016;
  - b) le capital requis ordonné au paragraphe 9 du présent jugement;
  - c) les montants ordonnés au paragraphe 11 du présent jugement pour l'Indemnité de distribution spéciale pour les hémophiles co-infectés et pour le capital requis y étant associé;

- d) les montants ordonnés au paragraphe 13 du présent jugement pour l'Indemnité de distribution spéciale pour les Personnes à charge vivantes et présentant une incapacité permanente et pour le capital requis y étant associé;
  - e) les intérêts calculés sur ces montants (15a), 15b), 15c) et 15d)) en appliquant le taux annuel de rendement sur les actifs investis du Fonds en fiducie, net des dépenses d'investissement et ce, pour la période débutant le 1er janvier 2014 et se terminant le 31 décembre 2016;
- [16] **DÉCLARE** que la valeur du Compte des Indemnités régulières, établie au 31 décembre 2016, soit constituée du montant total des actifs du Fonds en fiducie déduction faites de:
- a) la valeur du Compte des Réclamations tardives au 31 décembre 2016 calculée conformément au paragraphe 14 du présent jugement; et
  - b) la valeur du Compte des Indemnités de distribution spéciale au 31 décembre 2016 calculée conformément au paragraphe 15 du présent jugement;
- [17] **ORDONNE** qu'à compter du 31 décembre 2016 et pour le futur, le Compte des Réclamations tardives, le Compte des Indemnités de distribution spéciale et le Compte des Indemnités régulières sera mis à jour mensuellement de la façon suivante :
- a) le taux mensuel de rendement de l'investissement sur le total des actifs investis sera calculé, net des coûts d'investissement;
  - b) chaque solde de compte sera ensuite diminué des paiements effectués (indemnités et dépenses) sur le compte; et
  - c) l'intérêt au taux mensuel de rendement de l'investissement sera ajouté à chaque solde de compte.
- [18] **ORDONNE** que chacun des Compte pour les Réclamations tardives, Compte pour les Indemnités de distribution spéciale et Comptes pour les Indemnités régulières inclue :
- a) les placements dans lesquels de tels actifs peuvent être investis de temps à autres;
  - b) les produits de disposition des placements; et



- c) tout revenu, intérêt, profit, gains et accroissements et autre actifs additionnels, droits et bénéfices de toute sorte et de toute nature quel qu'ils soient, à survenir directement ou indirectement, à partir de ou en lien avec ou s'ajoutant à l'un ou l'autre des éléments précédents mais excluant tous les paiements et déboursés effectués à partir dudit compte;

[19] **DÉCLARE** que pour les fins de la mise en œuvre, de l'administration, de la surveillance et de la supervision :

- a) des paiements à être effectués en vertu des Ordonnances d'allocation 2016 et du présent jugement; et
- b) du Compte des Réclamations tardives, du Compte des Indemnités de distribution spéciale et du Compte des Indemnités régulières;

l'Administrateur, le Fiduciaire, les Conseillers juridiques du Fonds, les Vérificateurs, le Comité conjoint, les Conseillers financiers, les Arbitres, Juges-Arbitres, le "Court Monitor" et les Tribunaux assumeront la fonction et auront les obligations et responsabilités qui sont prévus à la Convention de règlement et au Régime des Réclamations tardives, avec toutes les adaptations, modifications et pouvoirs nécessaires, le cas échéant.

[20] **DÉCLARE** que le présent jugement ne prendra effet qu'au moment où des ordonnances similaires auront été rendues par la Cour supérieure de l'Ontario et la Cour suprême de la Colombie-Britannique;

[21] **LE TOUT** sans frais.

  
CHANTAL CORRIVEAU, j.c.s.

Me Martine Trudeau  
Me Michel Savonitto  
Savonitto & Ass. inc.  
Pour Me Michel Savonitto *ès qualités* de membre du Comité conjoint

Me Nathalie Drouin  
Me Stéphane Arcelin  
Procureure générale du Canada/Attorney general of Canada  
Ministère de la Justice Canada  
Pour la Procureure générale du Canada

500-06-000016-960 - 500-06-000068-987

PAGE : 7

Me Serge Ghorayeb  
Bernard Roy (Justice-Québec)  
Pour la Procureure générale du Québec

Me Mason Poplaw  
Me Kim Nguyen  
McCarthy, Tétrault  
Conseillers juridiques du Fonds

*THE ATTACHED IS EXHIBIT "P" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Suits LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.



Court File No. 98-CV-141369

Wednesday, THE 30th  
DAY OF May, 2018

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:



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

Intervenor

Proceeding under the *Class Proceedings Act, 1992*

Court File No. 98-CV-146405

BETWEEN:

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

Intervenor

Proceeding under the *Class Proceedings Act, 1992*

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE DATED AT TORONTO THIS 4th DAY OF June 2018 SAIT A TORONTO LE 4 June 2018

REGISTRAR GREFFIER

**ORDER**  
**(2016 Financial Sufficiency)**

**THIS MOTION**, made by the Joint Committee, for orders permitting reports to be filed pursuant to the provisions of Clause 10.01(1)(i) of the January 1, 1986-July 1, 1990 Hepatitis C Settlement Agreement (the “**Settlement Agreement**”) and the orders of this Court dated January 16, 2017 and December 12, 2017, regarding the financial sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016 and the financial status of the three accounts of the Trust Fund as at December 31, 2016, and to maintain the current restriction on payments of amounts for loss of income claims in section 4.02(2)(b)(i) and for loss of support under section 6.01(1) of the Transfused HCV Plan and the Hemophiliac HCV Plan Trust Fund, was heard this day in Toronto, Ontario.

**ON READING** the Affidavit of Murray Krahn made February 28, 2018, the Affidavit of Richard Border made February 28, 2018, the Affidavit of Vincent Bain made February 26, 2018, the Joint Committee Report, and the Affidavit of Peter Gorham made March 9, 2018,

**AND ON BEING ADVISED** that the Joint Committee and Canada consent to this Order and that Her Majesty the Queen in Right of Ontario, the Intervenors, Fund Counsel, the Office of the Public Guardian and Trustee and the Office of the Children’s Lawyer take no position on this Order,

1. **THIS COURT ORDERS THAT** the reports listed below are hereby filed pursuant to the provisions of Clause 10.01(1)(i) of the January 1, 1986-July 1, 1990 Hepatitis C Settlement Agreement (the “**Settlement Agreement**”) and the orders of this Court dated January 16, 2017 and December 12, 2017;
  - (a) “Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990”, The Sixth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C



Compensation Claimant Cohort, July 2017, prepared by Murray Krahn, Yeva Sahakyan, Qilong Yi and William Wong;

- (b) Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016, by Eckler Ltd. (Richard Border and Wendy Harrison);
- (c) Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016; and
- (d) Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2016, by Morneau Shepell Ltd. (Peter J.M. Gorham)
2. **THIS COURT ORDERS THAT** the Trust Fund is financially sufficient as at December 31, 2016 and that, after taking into account an allocation of assets necessary to protect the class members from future major adverse experience, the Trust assets exceed the liabilities.
3. **THIS COURT ORDERS AND DECLARES THAT** the Trustee of the Settlement Agreement holds between \$173,618,000 and \$187,504,000 of actuarially unallocated money and assets as at December 31, 2016.
4. **THIS COURT ORDERS AND DECLARES THAT**, as at December 31, 2016, the financial status of the three accounts of the Trust Fund is as follows:
- |  |  |
|--|--|
| HCV Regular Benefit Account              | Excess Capital of between<br>\$176,497,000 and \$194,417,000     |
| HCV Special Distribution Benefit Account | Excess Capital of between<br>\$9,868,000 and \$13,947,000        |
| HCV Late Claims Benefit Account          | Insufficient Capital of between<br>\$16,781,000 and \$16,826,000 |

5. **THIS COURT ORDERS THAT** the orders in paragraphs 1 to 4 above shall not be effective unless and until orders and directions, with no material differences, are approved or rendered by the Superior Court of Québec and the Supreme Court of British Columbia.

Perell, J.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 4 2018

PER / PAR: 

PARSONS et al.  
KREPPNER et al.  
Plaintiffs

vs. THE CANADIAN RED CROSS SOCIETY et al.  
vs. THE CANADIAN RED CROSS SOCIETY et al.  
Defendants

Court File No. 98-CV-141369  
98-CV-146405

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

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**ORDER  
(2016 Financial Sufficiency)**

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STROSBERG SASSO SUTTS LLP  
Lawyers  
1561 Ouellette Avenue  
Windsor, ON N8X 1K5

HEATHER RUMBLE PETERSON  
LSUC#: 24671V

Tel: 519.561.6216  
Fax: 866.316.5308

PODREBARAC BARRISTERS  
PROFESSIONAL CORPORATION  
402-1246 Yonge Street  
Toronto, ON M4T 1W7

KATHRYN PODREBARAC  
LSUC#: 35640P  
Tel: 416.568.1299

Lawyers representing the Joint Committee in Ontario

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THE ATTACHED IS EXHIBIT "Q" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022



\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Suttis LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.



No. C965349  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

**Anita Endean, as representative plaintiff**

Plaintiff

and

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

Defendants

and

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

Third Parties

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

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**ORDER MADE AFTER APPLICATION**

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<input checked="" type="checkbox"/>	BEFORE THE HONOURABLE CHIEF JUSTICE HINKSON	) ) 08-May-2018 )
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ON THE APPLICATION of the British Columbia Joint Committee member dated February 28, 2018 before the Honourable Chief Justice Hinkson in writing, and the Attorney General of Canada, Her Majesty the Queen in Right of the Province of British Columbia and British Columbia Fund Counsel all having been served with the application materials;

ON BEING ADVISED that the Joint Committee, the Attorney General of Canada, the British Columbia Fund Counsel and Her Majesty the Queen in Right of the Province of British Columbia consent to the making of this order;

UPON READING the materials filed, including Affidavit #9 of Murray Krahn made February 28, 2018, Affidavit #9 of Richard Border made February 28, 2018, Affidavit #3 of Vincent Bain made February 26, 2018, the Joint Committee Report and the Affidavit #4 of Peter Gorham;

AND THIS ACTION BEING STAYED AGAINST the defendant the Canadian Red Cross Society by the Order of Mr. Justice Blair made on July 20, 1998 in Ontario Superior Court of Justice Action No. 98-CL-002970 (Toronto) and subsequently extended by further orders made on August 18, 1998, October 5, 1998, January 18, 1999, May 5, 1999, July 28, 1999 and February 25, 2000;

AND THIS ACTION BEING STAYED AGAINST the third parties Prince George Regional Hospital, Dr. William Galliford, Dr. Robert Hart Dykes, Dr. Peter Houghton and Dr. John Doe by order of Justice K. Smith, made May 22, 1997.

THIS COURT ORDERS that:

1. The reports listed below are hereby filed pursuant to the provisions of Clause 10.01(1)(i) of the January 1, 1986 – July 1, 1990 Hepatitis C Settlement Agreement (the “Settlement Agreement”) and the orders of this Court dated January 16, 2017 and December 12, 2017;

- (a) “Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990”, The Sixth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort, July 2017, prepared by Murray Krahn, Yeva Sahakyan, Qilong Yi and William Wong;

- (b) Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016, by Eckler Ltd. (Richard Border and Wendy Harrison);
- (c) Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016; and
- (d) Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2016, by Morneau Shepell Ltd. (Peter J.M. Gorham)

2. The Trust Fund is financially sufficient as at December 31, 2016 and that, after taking into account the allocation of assets necessary to project the class members from future major adverse experience, the Trust assets exceed the liabilities.

3. Declares that the Trustee of the Settlement Agreement holds between \$173,618,000 and \$187,504,000 of actuarially unallocated money and assets as at December 31, 2016.

4. Declares that as at December 31, 2016, the financial status of the three accounts of the Trust Fund is as follows:

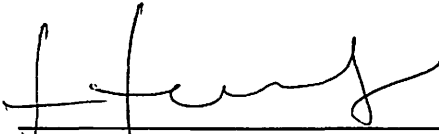
HCV Regular Benefit Account	Excess Capital of between \$176,497,000 and \$194,417,000
HCV Special Distribution Benefit Account	Excess Capital of between \$9,868,000 and \$13,947,000
HCV Late Claims Benefit Account	Insufficient Capital of between \$16,781,000 and \$16,826,000

5. the orders in paragraphs 1 to 4 above shall not be effective unless and until orders and directions, with no material differences, are approved or rendered by the Superior Court of Québec and the Ontario Superior Court of Justice.

  
BY THE COURT

  
REGISTRAR

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of British Columbia  
Joint Committee Member

for J.J. Camp, Q.C.

*see attached*

Signature of lawyer for the Attorney  
General of Canada

Craig Cameron



Signature of lawyer for Her Majesty the  
Queen in Right of the Province of British  
Columbia

Keith L. Johnston

*see attached*

Signature of British Columbia Fund  
Counsel

Gordon J. Kehler


By the Court

Registrar

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of British Columbia  
Joint Committee Member

J.J. Camp, Q.C.

  
\_\_\_\_\_

Signature of lawyer for the Attorney  
General of Canada

Craig Cameron

\_\_\_\_\_  
Signature of lawyer for Her Majesty the  
Queen in Right of the Province of British  
Columbia

Keith L. Johnston

\_\_\_\_\_  
Signature of British Columbia Fund  
Counsel

Gordon J. Kehler

By the Court  
  
\_\_\_\_\_  
Registrar

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND  
CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS  
BEING BY CONSENT:

\_\_\_\_\_  
Signature of British Columbia  
Joint Committee Member


J.J. Camp, Q.C.

\_\_\_\_\_  
Signature of lawyer for the Attorney  
General of Canada

Craig Cameron

\_\_\_\_\_  
Signature of lawyer for Her Majesty the  
Queen in Right of the Province of British  
Columbia

Keith L. Johnston

  
\_\_\_\_\_  
Signature of British Columbia Fund  
Counsel

Gordon J. Kehler

By the Court

\_\_\_\_\_  
Registrar

No. C965349  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

**Anita Endean, as representative plaintiff**

Plaintiff

and

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

Defendants

and

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

Third Parties

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

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**ORDER MADE AFTER APPLICATION**

---

CAMP FIORANTE MATTHEWS MOGERMAN  
Barristers & Solicitors  
#400 – 856 Homer Street  
Vancouver, BC V6B 2W5

Tel: (604) 689-7555  
Fax: (604) 689-7554  
Email: [service@cfmlawyers.ca](mailto:service@cfmlawyers.ca)

VIA MIKE BIKE



THE ATTACHED IS EXHIBIT "R" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022



\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

**COUR SUPÉRIEURE**

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

No : 500-06-000016-960  
500-06-000068-987

DATE : 18 mai 2018

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**SOUS LA PRÉSIDENTE DE : L'HONORABLE CHANTAL CORRIVEAU, J.C.S.**

---

**500-06-000016-960**

**DOMINIQUE HONHON**

Requérante

c.

**PROCUREUR GÉNÉRAL DU CANADA**  
Et  
**PROCUREUR GÉNÉRAL DU QUÉBEC**  
Et  
**SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE**

Intimés

Et

**ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint**

**REQUÉRANT**

Et  
**FONDS D'AIDE AUX RECOURS COLLECTIFS**  
Et  
**LE CURATEUR PUBLIC DU QUÉBEC**

Mis en cause

---

500-06-000016-960 - 500-06-000068-987

PAGE : 2

**500-06-000068-987****DAVID PAGE**

Requérant

c.

**PROCUREUR GÉNÉRAL DU CANADA**

et

**PROCUREUR GÉNÉRAL DU QUÉBEC**

et

**SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE**

Intimés

et

**FONDS D'AIDE AUX RECOURS COLLECTIFS**

et

**LE CURATEUR PUBLIC DU QUÉBEC**

Mis en cause

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**JUGEMENT SUR LA DEMANDE PRÉSENTÉE PAR LE MEMBRE DU COMITÉ  
CONJOINT AUX FINS DE RÉÉVALUER LES ASPECTS FINANCIERS DU FONDS**

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- [1] **ATTENDU QUE** le tribunal est saisi d'une *Demande du comité conjoint aux fins de réévaluer les aspects financiers du fonds* présentée par Me Michel Savonitto, *ès qualités* de membre du Comité conjoint pour le Québec;
- [2] **CONSIDÉRANT** la demande et l'ensemble des pièces déposées devant le tribunal par les parties, notamment :

**DATE DU DOCUMENT**

- a) "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus through the Blood Supply 1986-1990, The Sixth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort" préparé par Murray Krahn, Yeva Sahakyan, Qilong Yi et William Wong (le « Rapport MMWG ») et joint à l'affidavit du Dr. Murray Krahn;

Juillet 2017

- b) "Report of the Joint Committee Relating to the Financial Sufficiency of the 1986-1990 Hepatitis C

- |   |                 |
|---|-----------------|
| Trust, as at December 31, 2016” préparé par le Comité conjoint;   | 28 février 2018 |
| c) “Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016” préparé par Eckler Ltd (Richard Border et Wendy Harrison) et joint à l’affidavit de Richard Border; | 27 février 2018 |
| d) Affidavit détaillé de Dr. Vincent Bain et ses annexes;   | 28 février 2018 |
| e) « Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2013 » préparé par Morneau Shepell et joint à l’affidavit de Peter Gorham;  | 7 mars 2018     |

(collectivement, les « Rapports »);

- [3] **CONSIDÉRANT** que le Comité conjoint et le Procureur général du Canada consentent au présent jugement et que les autres intimés ne prennent pas position ni ne contestent la requête;
- [4] **PAR CES MOTIFS, LE TRIBUNAL :**
- [5] **ACCUEILLE** la demande;
- [6] **DÉCLARE** que les Rapports ont été déposés conformément aux dispositions prévues à l’article 10.01(1)(i) du Règlement Relatif à l’Hépatite C 1986-1990 et aux ordonnances rendues par cette Cour les 23 janvier 2017 et 21 février 2018;
- [7] **DÉCLARE** que les éléments d’actifs de la fiducie excèdent les obligations financières estimées de sorte que le Fonds en fiducie est financièrement suffisant à la date d’évaluation du 31 décembre 2016, selon les dispositions prévues à l’article 10.01(1)(i) du Règlement Relatif à l’Hépatite C 1986-1990;
- [8] **DÉCLARE** qu’après avoir pris en compte un montant pour protéger les membres d’une expérience majeure défavorable ou d’une catastrophe, les éléments d’actifs de la fiducie excèdent les obligations financières estimées d’un montant évalué entre 173 618 000 \$ et 187 504 000 \$ à la date du 31 décembre 2016;
- [9] **ORDONNE ET DÉCLARE** qu’à la date d’évaluation du 31 décembre 2016, la situation financière des trois comptes du Fonds en fiducie s’établit comme suit :

Compte pour les indemnités régulières	Capital excédentaire entre 176 497 000\$ et 194 417 000\$
Compte pour les Indemnités de distribution spéciale	Capital excédentaire entre 9 868 000\$ et 13 947 000\$
Compte pour les réclamations tardives	Capital insuffisant entre 16 781 000\$ et 16 826,000\$

[10] **ORDONNE ET DÉCLARE** que le présent jugement ne prendra effet qu'au moment où des ordonnances similaires auront été rendues par la Cour supérieure de l'Ontario et la Cour Suprême de la Colombie-Britannique;

[11] **LE TOUT** sans frais.

  
 \_\_\_\_\_  
**CHANTAL CORRIVEAU, j.c.s.**

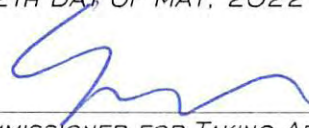
Me Martine Trudeau  
 Me Michel Savonitto  
 Savonitto & Ass. inc.  
 Pour Me Michel Savonitto *ès qualités* de membre du Comité conjoint

Me Nathalie Drouin  
 Me Stéphane Arcelin  
 Procureure générale du Canada/Attorney general of Canada  
 Ministère de la Justice Canada  
 Pour la Procureure générale du Canada

Me Serge Ghorayeb  
 Bernard Roy (Justice-Québec)  
 Pour la Procureure générale du Québec

Me Élisabeth Brousseau  
 Me Mason Poplaw  
 McCarthy, Tétrault  
 Conseillers juridiques du Fonds

*THE ATTACHED IS EXHIBIT "S TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Suttis LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

**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

***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

***Proceeding under the Class Proceedings Act, 1992***

**PERELL, J.**

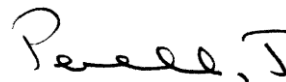
**ENDORSEMENT**

[1] This is a request for the approval of an order requested by the Joint Committee related to financial sufficiency to the 1986-1990 Hepatitis C Settlement Agreement and Trust Fund.

[2] Having reviewed the motion materials and upon being advised that the request is unopposed, I am satisfied that the request should be granted.

[3] In the circumstances of the Covid-19 emergency, this Endorsement is deemed to be an Order of the court that is operative and enforceable without any need for a signed or entered, formal, typed order. The form of the Order is set out in Schedule A.

[4] The parties may submit formal orders for signing and entry once the court re-opens; however, this Endorsement is an effective and binding Order from the time of release.



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Perell, J.

Released: February 18, 2021



**SCHEDULE A**

Court file # 98-CV-141369

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE ) THE DAY  
 )  
 PAUL PERELL ) OF FEBRUARY, 2021

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*

**ORDER  
(2019 Financial Sufficiency Assessment)**

**THIS MOTION**, made by the Joint Committee, for orders: permitting reports to be filed pursuant to the provisions of section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement (“**Settlement Agreement**”) and the order of this Court dated June 30, 2020; regarding financial sufficiency of the 1986-1990 Hepatitis C Trust and the financial status of the three notional Accounts of the Trust Fund as at December 31, 2019; declaring the Trustee holds actuarially unallocated assets as at December 31, 2019; reallocating previously allocated excess assets from the HCV Special Distribution Account to the HCV Late Claims Benefit Account as at January 1, 2020; retaining the restrictions on income loss payments under section 4.02(2)(b)(i) of the Transfused HCV Plan, the Hemophiliac HCV Plan and the HCV Late Claims Benefit Plan (“**Plans**”); removing the holdback under section 7.03A of the HCV Late Claims Benefit Plan; and, directions for further hearings for the allocation of the 2019 actuarially unallocated assets of the Trust Fund, was heard this day in Toronto, Ontario.

**ON READING** the Joint Committee Sufficiency Report, the Affidavit of Dr. Murray Krahn made November 19, 2020, the Affidavit of Richard Border made November 25, 2020, the Affidavit of Dr. Vince Bain made November 25, 2020, and the Affidavit of Peter Gorham made December 10, 2020,

**AND ON BEING ADVISED** that the Joint Committee consents to this Order, the Attorney General of Canada does not oppose this Order, and Her Majesty the Queen in Right of Ontario and the Intervenors take no position on this Order,

1. **THIS COURT ORDERS** that the reports listed below be filed with the Court pursuant to the provisions of section 10.01(1)(i) of the January 1, 1986-July 1, 1990 Hepatitis C Settlement Agreement and the order of this Court dated June 30, 2020:
  - (a) Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990, The Seventh Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort, November 18, 2020, (Murray Krahn, Yeva Sahakyan, Yi, Qilong, William Wong and Karen Bremner);
  - (b) Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019, by Eckler Ltd. (Richard Border and Euan Reid);
  - (c) Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019; and
  - (d) Actuarial Report Assessing the Financial Sufficiency of 1986-1990 Hepatitis C Trust Fund as at December 31, 2019, Morneau Shepell Ltd. (Peter J. M. Gorham).
2. **THIS COURT ORDERS** that overall the Trust Fund is financially sufficient as at December 31, 2019 and that, after taking into account an allocation of assets necessary to protect the class members from future major adverse experience, the Trust assets exceed the liabilities.
3. **THIS COURT ORDERS** that the Trustee holds between \$197,596,000 and \$203,578,000 of actuarially unallocated money and assets as at December 31, 2019.

4. **THIS COURT ORDERS** that as at December 31, 2019, the financial status of the three notional accounts of the Trust Fund is as follows:

HCV Regular Benefit Account	Excess Capital of between \$191,757,000 and \$197,910,000
HCV Special Distribution Benefit Account	Excess Capital of between \$27,718,000 and \$28,649,000
HCV Late Claims Benefit Account	Insufficient Capital of between \$21,879,000 and \$22,981,000

5. **THIS COURT ORDERS** that \$22,981,000 be reallocated from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account effective January 1, 2020, so that the HCV Late Claims Benefit Account will be financially sufficient to meet the projected maximum liabilities of the HCV Late Claims Benefit Plan and the HCV Special Distribution Benefit Account will have excess capital of between \$4,737,000 and \$5,668,000 as at January 1, 2020.
6. **THIS COURT DECLARES** that the restrictions on payment of amounts for loss of income claims under sections 4.02(2)(b)(i) of the Plans are not varied or removed at this time.
7. **THIS COURT ORDERS** that the 25% holdback on benefit payments provided for in section 7.03A of the HCV Late Claims Benefit Plan be removed at this time and that the administrator be directed to pay out to the affected claimants any monies held back with interest as provided in section 7.03(2)(a) of the HCV Late Claims Benefit Plan.
8. **THIS COURT DECLARES** that the parties may obtain a date through the Court Monitor for a joint hearing of the Courts to consider whether some or all of the actuarially unallocated assets as at December 31, 2019, set out in paragraph 3, should be allocated pursuant to paragraphs 9(b) and 9(c) of the 1999 Approval Order in Ontario.

9. **THIS COURT ORDERS** that the orders, declarations and directions requested herein shall not become effective unless and until orders, declarations and directions, with no material differences, are obtained from the Superior Court of Québec and the Supreme Court of British Columbia.

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PERELL J.

PARSONS et al.  
KREPPNER et al.

vs. THE CANADIAN RED CROSS SOCIETY et al.

Plaintiffs

Defendants

Court File No. 98-CV-141369  
98-CV-146405

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ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDINGS COMMENCED AT TORONTO

---

**ORDER**  
**(2019 Financial Sufficiency Assessment)**

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Toronto, ON M4T 1W7

KATHRYN PODREBARAC  
LSO#: 35640P  
Tel: 416.568.1299

Lawyers for the  
Joint Committee

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**DIANE LUISE PARSONS et al**

**v**

**THE CANADIAN RED CROSS SOCIETY et al**

---

**ENDORSEMENT**

---

PERELL J.

**Released:** February 18, 2021

*THE ATTACHED IS EXHIBIT "T" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



---

*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc  
Province of Ontario, for Strosberg Sasso Suttis LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.





No. C965349  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

**Anita Endean, as representative plaintiff**

Plaintiff

and

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

Defendants

and

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

Third Parties

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

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**ORDER MADE AFTER APPLICATION**

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BEFORE THE HONOURABLE  
CHIEF JUSTICE HINKSON

)  
) *March 15, 2021*  
)

ON THE APPLICATION of the British Columbia Joint Committee member dated November 30, 2020 before the Honourable Chief Justice Hinkson in writing, and the Attorney General of Canada, Her Majesty the Queen in Right of the Province of British Columbia and British Columbia Fund Counsel all having been served with the application materials;

ON BEING ADVISED that the Attorney General of Canada, British Columbia Fund Counsel and Her Majesty the Queen in Right of the Province of British Columbia do not oppose this order.

UPON READING the materials filed, including the Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019, Affidavit #7 of Murray Krahn made November 19, 2020, Affidavit #10 of Richard Border made November 25, 2020, Affidavit #4 of Vincent Bain made November 25, 2020 and Affidavit of Peter Gorham, made December 10, 2020;

AND THIS ACTION BEING STAYED AGAINST the defendant the Canadian Red Cross Society by the Order of Mr. Justice Blair made on July 20, 1998 in Ontario Superior Court of Justice Action No. 98-CL-002970 (Toronto) and subsequently extended by further orders made on August 18, 1998, October 5, 1998, January 18, 1999, May 5, 1999, July 28, 1999 and February 25, 2000;

AND THIS ACTION BEING STAYED AGAINST the third parties Prince George Regional Hospital, Dr. William Galliford, Dr. Robert Hart Dykes, Dr. Peter Houghton and Dr. John Doe by order of Justice K. Smith, made May 22, 1997.

THIS COURT:

1. Orders that the reports listed below are hereby filed pursuant to the provisions of section 10.01(1)(i) of the January 1, 1986 – July 1, 1990 Hepatitis C Settlement Agreement (the “Settlement Agreement”) and the order of this Court dated July 7, 2020;

- (a) “Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990”, The Seventh Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort, November 18, 2020, by Murray Krahn, Yeva Sahakyan, Qilong Yi, William Wong and Karen Bremner;

- (b) Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019, by Eckler Ltd. (Richard Border and Euan Reid);
- (c) Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019;
- (d) Actuarial Report Assessing the Financial Sufficiency of 1986-1990 Hepatitis C Trust Fund as at December 31, 2019, by Morneau Shepell Ltd. (Peter J.M. Gorham).

2. Orders that overall the Trust Fund is financially sufficient as at December 31, 2019 and that, after taking into account an allocation of assets necessary to protect the class members from future major adverse experience, the Trust assets exceed the liabilities.

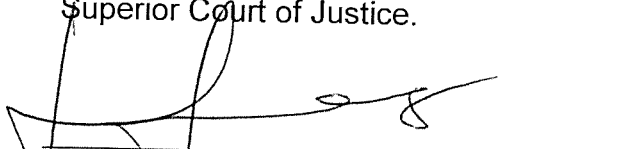
3. Declares that the Trustee holds between \$197,596,000 and \$203,578,000 of actuarially unallocated money and assets as at December 31, 2019.

4. Declares that, as at December 31, 2019, the financial status of the three notional accounts of the Trust Fund is as follows:

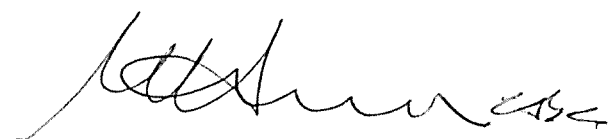
HCV Regular Benefit Account	Excess Capital of between \$191,757,000 and \$197,910,000
HCV Special Distribution Benefit Account	Excess Capital of between \$27,718,000 and \$28,649,000
HCV Late Claims Benefit Account	Insufficient Capital of between \$21,879,000 and \$22,981,000

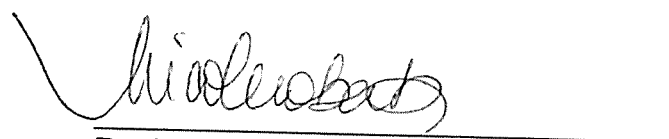
5. Orders that \$22,981,00 be reallocated from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account effective January 1, 2020, so that the HCV Late Claims Benefit Account will be financially sufficient to meet the projected maximum liabilities of the HCV Late Claims Benefit Plan and the HCV Special Distribution Benefit Account will have excess capital of between \$4,737,000 and \$5,668,000 as at January 1, 2020.

6. Declares that the restrictions on payment of amounts for loss of income claims under sections 4.02(2)(b)(i) of the Plans are not varied or removed at this time.
7. Orders that the 25% holdback on benefit payments provided for in section 7.03A of the HCV Late Claims Benefit Plan be removed at this time and that the administrator be directed to pay out to the affected claimants any monies held back with interest as provided in section 7.03(2)(a) of the HCV Late Claims Benefit Plan.
8. Declares that the parties may obtain a date through the Court Monitor for a joint hearing of the Courts to consider whether some or all of the actuarially unallocated assets as at December 31, 2019, set out in paragraph 3, should be allocated pursuant to paragraphs 9(b) and 9(c) of the 1999 Approval Order in British Columbia.
9. Orders that the orders and declarations in paragraphs 1 to 8 above shall not be effective unless and until orders, declarations and directions, with no material differences, are approved or rendered by the Superior Court of Québec and the Ontario Superior Court of Justice.

  
\_\_\_\_\_  
Signature of British Columbia  
Joint Committee Member

For: Deborah Armour, Q.C.

  
By the Court

  
\_\_\_\_\_  
Registrar

*THE ATTACHED IS EXHIBIT "U" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



\_\_\_\_\_  
*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts **LLP**,  
Barristers and Solicitors.  
Expires February 22, 2025.

**COUR SUPÉRIEURE**

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

No : 500-06-000016-960  
500-06-000068-987

DATE : Le 25 janvier 2021

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**SOUS LA PRÉSIDENTE DE : L'HONORABLE CHANTAL CORRIVEAU, J.C.S.**

---

**500-06-000016-960**

**DOMINIQUE HONHON**

Requérante

c.

**PROCUREUR GÉNÉRAL DU CANADA**  
Et  
**PROCUREUR GÉNÉRAL DU QUÉBEC**  
Et  
**SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE**

Intimés

Et

**ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint**

**REQUÉRANT**

Et  
**FONDS D'AIDE AUX RECOURS COLLECTIFS**  
Et  
**LE CURATEUR PUBLIC DU QUÉBEC**

Mis en cause

---

**500-06-000068-987****DAVID PAGE**

Requérant

c.

**PROCUREUR GÉNÉRAL DU CANADA**

et

**PROCUREUR GÉNÉRAL DU QUÉBEC**

et

**SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE**

Intimés

et

**FONDS D'AIDE AUX RECOURS COLLECTIFS**

et

**LE CURATEUR PUBLIC DU QUÉBEC**

Mis en cause

---

**JUGEMENT SUR LA DEMANDE DU COMITÉ CONJOINT AUX FINS DE RÉÉVALUER  
LES ASPECTS FINANCIERS DU FONDS**

---

- [1] **ATTENDU QUE** le tribunal est saisi d'une *Demande du Comité conjoint aux fins de réévaluer les aspects financiers du Fonds* présentée par Me Michel Savonitto, *ès qualités* de membre du Comité conjoint pour le Québec;
- [2] **CONSIDÉRANT** les allégations à la demande et l'ensemble de la preuve déposé par les parties;
- [3] **CONSIDÉRANT** que la demande n'est pas contestée;
- [4] **PAR CES MOTIFS, LE TRIBUNAL :**
- [5] **ACCUEILLE** la demande;
- [6] **DÉCLARE** que la demande et les rapports à son soutien ont été déposés conformément aux dispositions prévues à l'article 10.01 (1)(i) de la Convention de règlement et dans le délai imparti par le jugement rendu par cette Cour le 30 juin 2020;
- [7] **DÉCLARE** qu'à la date d'évaluation du 31 décembre 2019, en tenant compte d'une allocation d'actifs nécessaire pour protéger les membres de la survenance d'un événement défavorable majeur ou catastrophique, les actifs de la fiducie excèdent les obligations financières estimées de sorte que le Fonds en fiducie est suffisant dans son ensemble;

- [8] **DÉCLARE** qu'à la date d'évaluation du 31 décembre 2019, les actifs ne faisant pas l'objet d'une attribution actuarielle et détenus par le Fiduciaire s'élèvent à une somme entre 197 596 000 \$ et 203 578 000 \$;
- [9] **DÉCLARE** qu'à la date d'évaluation du 31 décembre 2019, la situation financière de chacun des trois (3) comptes théoriques du Fonds en fiducie est la suivante :

Compte pour les indemnités régulières	Capital excédentaire entre 191 757 000 \$ et 197 910 000 \$
Compte pour les Indemnités de distribution spéciale	Capital excédentaire entre 27 718 000 \$ et 28 649 000 \$
Compte pour les réclamations tardives	Capital insuffisant entre 21 879 000 \$ et 22 981 000 \$

- [10] **ORDONNE** qu'un montant de 22 981 000\$ soit réalloué du Compte pour les Indemnités de distribution spéciale en faveur du Compte des Réclamations tardives en date du 1er janvier 2020, de façon à permettre au Compte pour les Réclamations tardives d'être financièrement suffisant pour satisfaire au moment maximum de ses obligations financières estimées, laissant un capital excédentaire entre 4 737 000 \$ et 5 668 000 \$ au Compte pour les Indemnités de distribution spéciale à la date du 1<sup>er</sup> janvier 2020;
- [11] **ORDONNE** que la restriction financière de 25% en vigueur à l'article 7.03A du Régime d'indemnisation pour les Réclamations tardives et appliquée sur toutes les indemnités payables soit abolie et que l'Administrateur soit requis de verser aux membres reconnus visés toute somme ayant ainsi été retenue, incluant les intérêts tel que prévu à l'article 7.03(2)(a) du Régime d'indemnisation pour les Réclamations tardives;
- [12] **ORDONNE** le maintien de la restriction financière prévue à l'article 4.02(2)(b)(i) du Régime d'indemnisation des Réclamations tardives ainsi que de celle prévue à l'article 4.02(2)(b)(i) des Régime des Indemnités régulières telle que modifiée par les ordonnances des Tribunaux rendues à son égard en 2008;
- [13] **RÉSERVE** aux parties le droit de présenter une demande pour la tenue d'une audition conjointe devant la Cour supérieure du Québec, la Cour supérieure de l'Ontario et de la Cour suprême de la Colombie-Britannique, à être fixée à une date ultérieure, afin de décider si les actifs ne faisant pas l'objet d'une attribution actuarielle et détenus par le Fiduciaire qui s'élèvent à une somme entre 197 596 000 \$ et 203 578 000 \$ à la date d'évaluation du 31 décembre 2019 devraient être alloués en tout ou en partie en vertu de l'Annexe F du Règlement sur l'Hépatite C 1986-1990;



[14] **DÉCLARE** que le présent jugement ne prendra effet qu'à compter du moment où des ordonnances au même effet auront été rendues par les tribunaux de l'Ontario et de la Colombie-Britannique;

[15] **LE TOUT** sans frais.

Chantal Corriveau  Signature numérique de Chantal  
Corriveau  
Date : 2021.01.25 11:19:40 -05'00'

---

**CHANTAL CORRIVEAU, j.c.s**

Me Martine Trudeau  
Me Michel Savonitto  
Savonitto & Ass. inc.  
Pour Me Michel Savonitto *ès qualités* de membre du Comité conjoint

Me Nathalie Drouin  
Me Stéphane Arcelin  
Procureure générale du Canada/Attorney General of Canada  
Ministère de la Justice Canada  
Pour le Procureur général du Canada

Me Serge Ghorayeb  
Bernard Roy (Justice-Québec)  
Pour la Procureure générale du Québec

Me Mason Poplaw  
Me Kim Nguyen  
McCarthy, Tétrault  
Conseillers juridiques du Fonds

*THE ATTACHED IS EXHIBIT "V" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts **LLP**,  
Barristers and Solicitors.  
Expires February 22, 2025.

---

**Summary of Payments**

(Includes payments made in **January** for **December** Approvals)

---

	<b>Regular</b>	<b>Surplus</b>
<b>Payment Type</b>	<b>As of This Report</b>	<b>As of This Report</b>
Fixed Payments	\$403,965,797.54	\$39,554,929.83
Death < January 1, 1999 (DB9) – Estate & FMD Claims	\$54,292,004.77	\$6,464,981.20
Death > January 1, 1999 (DA9) – FMD Claims	\$37,523,576.20	\$11,522,389.40
Compensable HCV Drug Therapy	\$19,818,625.79	\$-
Cost of Care	\$58,393,474.84	\$870,002.69
Approved HCV Infected Person infected with HIV (4.08(2))	\$2,340,787.66	\$4,319,686.13
Uninsured Medical Expenses	\$33,225,100.07	\$-
Uninsured Funeral Expenses	\$4,082,511.48	\$-
Out of Pocket Expenses	\$11,143,982.80	\$1,226,739.58
Loss of Income	\$144,229,393.17	\$11,476,851.42
Loss of Support	\$46,929,356.61	\$-
Loss of Services	\$251,915,743.97	\$26,646,601.30
Provincial Program Reimbursement	-\$2,636,337.56	\$-
5K Holdback	\$14,885,841.50	\$-
<b>Total</b>	<b>\$1,080,109,858.84</b>	<b>\$102,082,181.55</b>

THE ATTACHED IS EXHIBIT "W" TO THE AFFIDAVIT  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022



---

COMMISSIONER FOR TAKING AFFIDAVITS

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

### Summary of Payments

(Includes payments made **January** for **December** Approvals)

Payment Type	Amount Paid
Fixed Payments	\$5,314,048.86
Death > January 1, 1999 (DA9) – FMD Claims	\$1,425,731.88
Death < January 1, 1999 (DB9) – Estate & FMD Claims	\$448,817.31
Drug Therapy	\$104,863.57
Funeral	\$24,327.39
Uninsured Medical Expenses	\$5,248.61
Loss of Support	\$3,135,884.39
Loss of Services	\$2,750,885.10
Out of Pocket (PKT)	\$15,646.38
Cost of Care	\$1,022,845.46
Provincial Program Reimbursement	\$(25,000.00)
<b>Total</b>	<b>\$14,223,298.95</b>

### Status of Claims Received as of December 31, 2021

Claim Type	Claims Approved	Claims In-Progress	Claims Denied
Primary	34	0	173
Secondary	1	1	2
Estate	6	19	46
Family Member	166	4	11
<b>Total</b>	<b>207</b>	<b>24</b>	<b>232</b>

*THE ATTACHED IS EXHIBIT "X" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

## CLAIMS RECEIVED SUMMARY

### PROFILE OF CLAIMANTS

CLAIMANT TYPE	APPROVED	DENIED	IN PROGRESS	TOTAL 31-Dec-21	TOTAL 31-Dec-20	TOTAL 31-Dec-19
<b>Primarily-Infected Persons (PIP)</b>						
■ Transfused	2,391	2,094	14	4,499	4,521	4,538
■ Hemophiliac	787	71	1	859	861	872
■ Total	3,178	2,165	15	5,358	5,382	5,410
<b>Secondarily-Infected Persons</b>						
■ Transfused	41	101	1	143	143	143
■ Hemophiliac	10	8	0	18	18	18
■ Total	51	109	1	161	161	161
<b>DB9 PIP (Deceased &lt; January 1, 1999)</b>						
■ Transfused	185	248	0	433	433	433
■ Hemophiliac	302	20	0	322	322	322
■ Total	487	268	0	755	755	755
<b>DB9 SIP (Deceased &lt; January 1, 1999)</b>						
■ Transfused	0	1	0	1	1	1
■ Hemophiliac	0	1	0	1	1	1
■ Total	0	2	0	2	2	2
<b>DB9 FMA (Family Members) Lump Sum Joint Payments</b>						
■ Transfused	780	0	0	780	780	780
■ Hemophiliac	1,036	0	0	1,036	1,035	1,035
■ Total	1,816	0	0	1,816	1,815	1,815
<b>DB9 FMD (Family Members) Pre-Set FMD Payments</b>						
■ Transfused	945	98	4	1,047	1,046	1,046
■ Hemophiliac	581	27	9	617	612	612
■ Total	1,526	125	13	1,664	1,658	1,658
<b>DA9 PIP (Deceased &gt; January 1, 1999)</b>						
■ Transfused	1,370	292	8	1,670	1,644	1,615
■ Hemophiliac	270	9	0	279	277	266
■ Total	1,640	301	8	1,949	1,921	1,881
<b>DA9 SIP (Deceased &gt; January 1, 1999)</b>						
■ Transfused	16	4	1	21	21	20
■ Hemophiliac	0	0	0	0	0	0
■ Total	16	4	1	21	21	20
<b>DA9 FMD (Family Members)</b>						
■ Transfused	5,056	196	58	5,310	5,247	5,223
■ Hemophiliac	1,127	25	9	1,161	1,124	1,104
■ Total	6,183	221	67	6,471	6,371	6,327
<b>Sub-Totals</b>						
■ Transfused	<b>10,784</b>	<b>3,034</b>	<b>86</b>	<b>13,904</b>	13,836	13,799
■ Hemophiliac	<b>4,113</b>	<b>161</b>	<b>19</b>	<b>4,293</b>	4,250	4,230
<b>Total</b>	<b>14,897</b>	<b>3,195</b>	<b>105</b>	<b>18,197</b>	<b>18,086</b>	<b>18,029</b>

*THE ATTACHED IS EXHIBIT "Y" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



---

*COMMISSIONER FOR TAKING AFFIDAVITS*


Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.



## CLAIMS RECEIVED SUMMARY

PROFILE OF CLAIMANTS						
CLAIMANT TYPE	APPROVED	DENIED	IN PROGRESS	TOTAL 31-Dec-21	TOTAL 31-Dec-20	TOTAL 31-Dec-19
<b>Primarily-Infected Persons (PIP)</b>						
■ Transfused	29	77	100	206	182	116
■ Hemophiliac	7	1	1	9	7	6
■ Total	36	78	101	215	189	122
<b>Secondarily-Infected Persons</b>						
■ Transfused	0	0	1	1	2	1
■ Hemophiliac	1	0	0	1	1	1
■ Total	1	0	1	2	3	2
<b>DB9 PIP (Deceased &lt; January 1, 1999)</b>						
■ Transfused	3	6	18	27	24	18
■ Hemophiliac	0	0	1	1	1	0
■ Total	3	6	19	28	25	18
<b>DB9 SIP (Deceased &lt; January 1, 1999)</b>						
■ Transfused	0	0	0	0	0	0
■ Hemophiliac	0	0	0	0	0	0
■ Total	0	0	0	0	0	0
<b>DB9 FMA (Family Members) Lump Sum Joint Payments</b>						
■ Transfused	0	0	0	0	0	0
■ Hemophiliac	0	0	0	0	0	0
■ Total	0	0	0	0	0	0
<b>DB9 FMD (Family Members) Pre-Set FMD Payments</b>						
■ Transfused	15	0	0	15	14	0
■ Hemophiliac	2	0	0	2	2	0
■ Total	17	0	0	17	16	0
<b>DA9 PIP (Deceased &gt; January 1, 1999)</b>						
■ Transfused	2	4	33	39	31	16
■ Hemophiliac	1	0	2	3	2	3
■ Total	3	4	35	42	33	19
<b>DA9 SIP (Deceased &gt; January 1, 1999)</b>						
■ Transfused	0	0	0	0	0	0
■ Hemophiliac	0	0	0	0	0	0
■ Total	0	0	0	0	0	0
<b>DA9 FMD (Family Members)</b>						
■ Transfused	132	0	13	145	125	111
■ Hemophiliac	16	1	0	17	14	11
■ Total	148	1	13	162	139	122
<b>Sub-Totals</b>						
■ Transfused	181	87	165	433	378	262
■ Hemophiliac	27	2	4	33	27	21
<b>Total</b>	<b>208</b>	<b>89</b>	<b>169</b>	<b>466</b>	<b>405</b>	<b>283</b>

*THE ATTACHED IS EXHIBIT "Z" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

Review of the levels  
of damages under  
Section 8 of the  
*Fatal Accidents Act*

Fall 2021

Review of the levels of damages under Section 8 of the *Fatal Accidents Act*

Published by Alberta Justice and Solicitor General, Government of Alberta

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## Background and Purpose

Section 8 of the *Fatal Accidents Act* (FAA) allows certain close family members of a deceased killed by a wrongdoer the right to claim compensation from that wrongdoer for the grief and loss of guidance, care and companionship of the deceased person.

In Alberta, once a claim is made and the liability of the wrongdoer is established, the amount of compensation is automatic, and there is no requirement for the family members to prove their grief. The family members entitled to make a claim are the spouse, partner, parents and children of the deceased. This compensation is referred to in the Act as “damages for bereavement”.

Section 8 does not deal with compensation to surviving family members for the loss of actual financial benefits that would have been received from the deceased person.<sup>1</sup> It does not deal with criminal law. It does not deal with systems such as workers' compensation that compensate surviving family members regardless of whether the death of the worker was caused by anyone's fault. Other parts of the law apply to these areas.

Section 9 of the Act requires the government to review the levels of damages in section 8 every five years to determine whether the amounts need to be adjusted. The results of the review are reflected in this Report.

The fundamental advantage of a set statutory amount of damages for bereavement is that once a claim is made and liability of the wrongdoer is established, the award is automatic and no testimony or evidence of grief is necessary for the claimant to receive the award. The underlying concept is that the law should acknowledge the grief and loss of guidance, care and companionship and allow the family members to deal with the tragedy without the intrusion of adversarial litigation.

No amount of money can fully compensate a family for their grief and loss of a loved one, so setting an amount for damages is not easy. These damages are not a measure of the value of the lost life. They are meant to give recognition to the seriousness of the family's loss and compensate for grief and loss suffered by the surviving family.

Section 8 acknowledges the grief and loss of guidance, care and companionship suffered by the surviving family members but allows them to deal with the tragedy without the intrusive inquiries that would flow from adversarial litigation. Close family members should not be exposed to questioning or have to testify on the nature of their grief and the quality of the relationship they have lost. This can be particularly difficult in the loss of a child.

---

<sup>1</sup> The *Survival of Actions Act* (SAA) allows a cause of action to survive for the benefit of the person's estate. Only those damages that resulted in actual financial loss to the deceased or the deceased's estate are recoverable. Damages for loss of expectation of life, pain and suffering and so on are not recoverable. Damages must be proven.

The amount of damages under section 8 must balance a number of factors. The amount must be large enough to be meaningful to the person receiving it. At the same time, it must be justifiable within the context of existing damages awarded across Canada. It must take into account that with a set amount, some survivors may be over compensated while others may be under compensated when the specific circumstances of each case are considered. It must also be recognized that an automatic amount is meant to save the family the stress and aggravation of adversarial litigation.

As previously stated, close family members should not be exposed to questioning or have to testify on the nature of their grief and the quality of the relationship they have lost. However, there is a consequence for keeping caring families out of the litigation arena on issues of grief and loss of guidance, care and companionship. When damages do not require proof there is a loss of discretion and flexibility. Section 8 ensures that the statutory regime compensates the people who would have received compensation under a discretionary system.

Since the cost of compensating surviving family members for grief and loss of guidance, care and companionship is paid by the wrongdoer, often the insurer of the wrongdoer makes the payment when the death results from a motor vehicle collision or other incident with insurance coverage. A change in the cost of the levels of section 8 damages may impact automobile or other insurance rates.

# I. Current section 8 of Alberta's *Fatal Accidents Act*

Section 8(2) of the Alberta *Fatal Accidents Act* provides a spouse, partner, parent (mother or father) and each child (son or daughter) the right to claim compensation for the grief and loss of guidance, care and companionship suffered when the death of spouse, partner, parent or child is caused by the wrongful conduct of a third party.

These damages for grief and loss of guidance, care and companionship are paid by the person who caused the death, or, in many cases, by that person's insurance company.

Section 8 of the *Fatal Accidents Act* provides, in part:

## **Damages for bereavement**

8(1) In this section,

- (a) "child" means a son or daughter;
- (b) "parent" means a mother or father.

(2) If an action is brought under this Act, the court, without reference to any other damages that may be awarded and without evidence of damage, shall award damages for grief and loss of the guidance, care and companionship of the deceased person of

- (a) subject to subsection (3), \$82,000 to the spouse or adult interdependent partner of the deceased person,
- (b) \$82,000 to the parent or parents of the deceased person to be divided equally if the action is brought for the benefit of both parents, and
- (c) \$49,000 to each child of the deceased person.

(3) The court shall not award damages under subsection (2)(a) to the spouse or adult interdependent partner if the spouse or adult interdependent partner was living separate and apart from the deceased person at the time of death.

(4) Repealed 2002 cA-4.5 s36.

(5) A cause of action conferred on a person by subsection (2) does not, on the death of that person, survive for the benefit of the person's estate.

In addition to statutory grief and loss of guidance, care and companionship damages, section 7 of the *Fatal Accidents Act* also allows certain family members to claim "pecuniary damages" (repayment of out-of-pocket expenses) such as expenses for care of the deceased person between the injury and the death; travel and accommodation expenses in visiting the deceased person between the injury and death; funeral expenses; and grief counseling fees.



The pecuniary damages under the Act are for actual financial loss and these amounts must be proven. These damages may be claimed by a spouse, partner, parent (including a father, mother, grandfather, grandmother, stepfather and stepmother), child (including a son, daughter, grandson, granddaughter, stepson and stepdaughter), or brother or sister of the deceased. As with section 8 damages, these pecuniary damages under section 7 are paid by the person who caused the loss (or his or her insurer).

## II. Legislative History, Amendments, and Reviews

Traditionally, under the common law the courts did not award damages for wrongful death to anyone. This was consistent with the principle of tort law that intended to return the injured person to the position he or she was in prior to the act or omission of the wrongdoer. This could not be done when a person was deceased.

The courts also did not recognize the grief and loss inflicted on survivors as a legal wrong committed by the wrongdoer against the surviving relatives.

Consequently, legislatures enacted wrongful death statutes to provide certain surviving relatives of a person wrongfully killed with the right to sue the wrongdoer to recover damages. These damages may include pecuniary damages (actual financial loss) and non-pecuniary damages (proposed compensation for pain and suffering).

Originally, the legislation in Alberta only provided for damages for the loss of financial benefits that the surviving family members could have expected to receive from the deceased person. In 1967, the Act was amended to allow a court to also award damages for reasonable funeral expenses and disposal of the body.

In April 1977, the Alberta Law Reform Institute (ALRI) issued Report No. 24, *Survival of Actions and Fatal Accidents Act Amendment*. The focus of this report was the reform of survival legislation and the adoption in part of the Uniform Survival Legislation Act (issued by the Uniform Law Conference of Canada). In Report No. 24, ALRI recommended that the estate's action for loss of expectation of life be abolished and a new cause of action be created for loss of guidance, care and companionship compensation. Immediate family members would be allowed to sue for damages for loss of guidance, care and companionship. ALRI also recommended that the amount of damages be established in legislation (statutory damages without proof of grief).

The Alberta government acted on the ALRI recommendations by enacting section 8 of the *Fatal Accidents Act*. Section 8 came into force on January 1, 1979. It followed the ALRI recommendations except for one change – ALRI had recommended loss of guidance, care and companionship damages for parents only for the wrongful deaths of minor children but the legislature allowed for loss of guidance, care and companionship damages for the wrongful deaths of children of all ages.

Section 8 empowered the court to award \$3,000 to the parents of a deceased child (to be shared between the parents); \$3,000 to the spouse of a deceased; and \$3,000 to the minor children of a deceased (to be shared between all the children).

The level of damages awarded for loss of guidance, care and companionship under section 8 was criticized from the time of the enactment of the legislation especially in the case of a child's death.

In Report for Discussion (RFD) No. 12, June 1992, ALRI reviewed section 8 of the *Fatal Accidents Act*. ALRI recommended in part that the amount to be paid for loss of guidance, care and companionship continue to be established by statute to relieve the loved ones from having to prove their loss (the degree of suffering and nature of the relationship with the deceased) in an adversarial situation. It recommended that damages for the loss of a child or spouse be increased to \$40,000; and damages to each child be increased to \$25,000 to be meaningful to survivors. It also recommended that the levels of damages be reviewed regularly.

ALRI again recommended that only family members who are likely to have the closest family relationship with the deceased person should be allowed to claim loss of guidance, care and companionship damages (ie. spouses, parents and children). A parent could claim damages for the death of a minor child or an unmarried child who was less than 26 years old. A child could claim damages for the death of a parent if the child was a minor child or an unmarried child less than 26 years old.

In determining the age criteria for the child, ALRI chose 25 years of age as the outer limit of dependency as most children have finished their education by that age and are close to financial independence. ALRI intended to encompass the time in which the child-parent relationship is the closest personal relationship in the child's life.

### **1994 Amendments**

In September 1994, the ALRI recommendations were adopted and the levels of damages were raised to \$40,000 for a spouse, cohabitant or parent losing a minor child or an unmarried child less than 26 years old, and \$25,000 to each minor child or each unmarried child under 26 years of age for the loss of a parent.

### **1999 Review and 2000 Amendments**

In 1999, the levels of damages were reviewed by ALRI and an increase in the amounts for inflation to \$43,000 and \$27,000 respectively was recommended. Those recommendations were implemented in February 2000.

### **2002 Amendments**

In 2002, the levels of damages were significantly increased to \$75,000 and to \$45,000 respectively in conjunction with an amendment to the *Survival of Actions Act*<sup>2</sup>. Adult interdependent partners and

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<sup>2</sup> ALRI recommended the SAA be amended to remove loss of future income claims (Report No. 76, *Should a Claim for the Loss of Future Earnings Survive Death?* 1998). The Government accepted the ALRI recommendation and to give effect to this recommendation amended the SAA to only allow claims for actual financial loss under that Act while

unmarried children with no adult interdependent partner were added as eligible claimants and all age restrictions were removed (age restrictions were required to be removed as a result of court decisions that struck down these restrictions as Charter violations).

#### **2007 Review**

The 2007 review was conducted by Alberta Justice and Solicitor General (JSG) in a similar manner to ALRI's 1999 review, and in consultation with ALRI. Changes to the amounts were not recommended.

#### **2010 Amendments**

Section 8 of the *Fatal Accidents Act* was amended in 2010 in two respects. The first was to remove the reference to the marital status of claimants (marital status of claimants was required to be removed as a result of court decisions that struck down these restrictions as Charter violations). The second was to remove the reference to "illegitimate" children to modernize the language and make it consistent with other Alberta statutes.

#### **2013 Amendments**

In 2012, a review was conducted and a Discussion Paper was used to obtain comments from stakeholders. In 2013, the levels of damages were adjusted for inflation and increased to \$82,000 and \$49,000 respectively.

#### **2017 Review**

The 2017 review was conducted by JSG in a similar manner to ALRI's 1999 review. Changes to the amounts were not recommended.

## **III. Loss of Guidance, Care and Companionship Damages in Other Canadian Jurisdictions**

### **The right to claim loss of guidance, care and companionship damages**

The right to claim loss of guidance, care and companionship damages varies throughout Canada. The majority of provinces in Canada have enacted within their fatal accident statutes provisions allowing for recovery of damages for loss of guidance, care and companionship caused by the death of the deceased (Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, and Yukon). Even where damages for loss of guidance, care and companionship are not expressly included in fatal accident statutes, damages for loss of guidance, care and companionship have

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also increasing bereavement damages under the FAA to ensure fair compensation for spouses, parents and children without proof of loss.

been included by the courts as allowable damages under pecuniary loss (British Columbia, Northwest Territories and Nunavut).

Four provinces (Saskatchewan, Manitoba, Yukon and Alberta) provide damages for loss of guidance, care and companionship in fixed amounts with no evidence of damages required (statutory damages). As noted above, the fundamental advantage of this approach is that the family members do not have to put forward evidence that they are grieving or have suffered a loss. The law acknowledges that grief and loss exist.

The remaining provinces and the federal government<sup>3</sup> also allow claims for damages for loss of guidance, care and companionship but the usual rules of evidence apply and damages must be proven by the family members making the claim. This approach allows the court to review each set of facts on a case by case basis and set an appropriate amount of damages for the particular circumstances. The drawback is that family members must prove their grief and may have to testify in court, which can aggravate the loss and extend the family's grieving period.

Below is a chart of the legislation across Canada relating to damages for grief and loss of guidance, care and companionship. The amounts of statutory damages and damages in reported case law are shown on pages 11 and 12.

Jurisdiction	Are the amounts set by statute of established by the court on proof of loss?	What do the amounts compensate?
AB	Statute	Grief and loss of guidance, care and companionship
SK	Statute	Grief and loss of guidance, care and companionship
MB	Statute	Loss of guidance, care and companionship
YK	Statute	Grief and loss of guidance, care and companionship
BC	Court	Loss of guidance, companionship and care (pecuniary damages)
ON	Court	Loss of guidance, care and companionship

<sup>3</sup> In *Ordon Estate v. Grail* [1998] 3 S.C.R. 437, the Supreme Court of Canada held that the definition of damages in the context of fatal maritime accident claims should include damages for loss of guidance, care and companionship. The Court found that contemporary conceptions of loss include the idea that it is truly a harm for a dependent to lose the guidance, care and companionship of a spouse, parent or child.

QC	Court	<i>Solatium doloris</i> moral compensation for grief and distress
NB	Court	Loss of companionship or grief
NS	Court	Loss of guidance, care and companionship
PEI	Court	Loss of guidance, care and companionship
NL	Court	Loss of guidance, care and companionship
NT	Court	Loss of guidance, companionship and care (pecuniary damages)
NU	Court	Loss of guidance, companionship and care (pecuniary damages)
Canada	Court	Loss of guidance, care and companionship

### Loss of guidance, care and companionship damage awards across Canada

Alberta has reviewed the current statutory damages and the relevant reported case law since 2006 in other Canadian jurisdictions. Below is a summary of the findings.<sup>4</sup>

	Relationship to deceased person			
	Spouse	Parent	Child	
AB	\$82,000	\$82,000 (divided equally if both parents claim)	\$49,000	
YK	\$75,000	\$37,500 to each parent but where only one parent claims \$75,000	\$45,000	
SK	\$60,000	\$30,000	\$30,000	

<sup>4</sup> See Appendix A for a list of the case law considered.

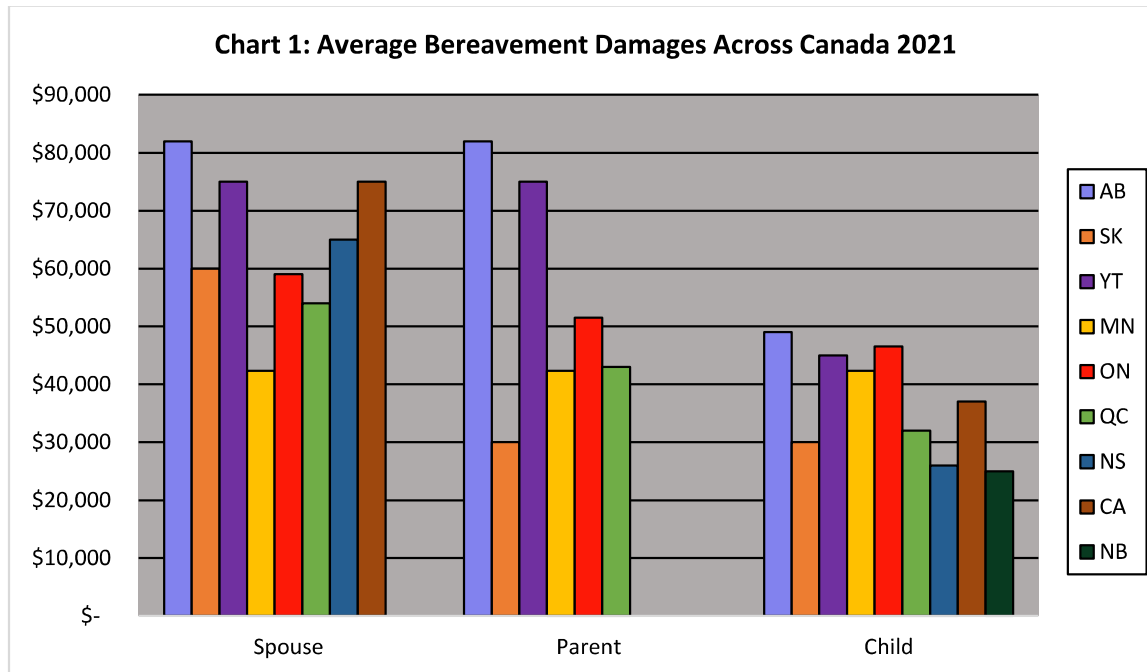
MB	\$42,301 <sup>5</sup>	\$42,301	\$42,301 (minor child only)	\$14,100 (for child 18 years and older)
BC	Average \$15,000 No range	Average \$7,250 Range \$7,000 to \$7,500	Average \$35,000 No range	
ON	Average \$59,027 <sup>6</sup> Range \$7,500 to \$100,000	Average \$51,527 Range \$11,250 to \$125,000	Average \$46,511 Range \$3,000 to \$135,000	
QC	Average \$69,000 Range \$5,000 to \$150,000	Average \$38,400 Range \$6,250 to \$125,000	Average \$42,000 Range \$2,500 to \$125,000	
NS	No reported cases	No reported cases	Average \$4,000 No range	
NB	No reported cases	No reported cases	No reported cases	
PEI	No reported cases	No reported cases	No reported cases	
NL	No reported cases	No reported cases	No reported cases	
NT	No reported cases	No reported cases	No reported cases	
NU	No reported cases	No reported cases	No reported cases	
Canada	\$75,000 No range	No reported cases	Average \$37,000 Range \$25,000 to \$75,000	

<sup>5</sup> These are required to be adjusted for inflation after 2002 (the amounts in 2002 dollars are \$30,000 each spouse, parent and minor child; \$10,000 for each child 18 years and older). See Bank of Canada Inflation Calculator.

<sup>6</sup> The amounts in this table reflect reductions for contributory negligence as found by the court.

## Comparison of Damage Awards

As shown in Chart 1 below, the current levels of damages under section 8 of the Alberta *Fatal Accidents Act* compare favourably with awards of a similar nature in other provinces across Canada.



A true direct comparison is not possible due to differing rules in each jurisdiction. For example, some jurisdictions provide an amount for each parent, whereas in Alberta damages for parents are divided equally if the action is brought for the benefit of both parents.

This chart compares averages. However, where a court determines the amount of damages based on proof of loss the range of damage awards can vary widely depending on the facts of the case.

A number of provinces have no reported cases. Similarly, there are few federal cases under the *Marine Liability Act*.

## IV. *Fatal Accidents Act*, 1976 (U.K.)

England allows statutory loss of guidance, care and companionship damages for wrongful death to the surviving spouse or civil partner or surviving parents of an unmarried minor child. The current statutory amount of damages for loss of guidance, care and companionship is £15,120.

Applying the annual exchange rate for 2020, £15,120 is the equivalent of \$26,004 (Canadian Dollars)<sup>7</sup>.

<sup>7</sup> See Bank of Canada's website. (2020 1.7199 average)



## V. Inflation

According to the Bank of Canada, the Consumer Price Index for April 2021 is 140.0.<sup>8</sup> If the Alberta amounts were increased for inflation, the damages could be \$88,225 for spouse, partner and parents, and \$52,720 per child.

Some of the other provinces' damages awards already factor in inflation. For example, Manitoba's is built in by statute. Courts in Ontario and Quebec often take into account the effects of inflation when reviewing previous case law to determine an appropriate award in a particular case.<sup>9</sup>

If Alberta increases its amounts to account for inflation, the gap between Alberta's damages amounts and the other jurisdictions would increase.

## VI. Insurance premiums

Any change to the amounts of damages will likely have an impact on insurance rates.

In 1993, the Alberta Law Reform Institute (ALRI) estimated that its proposals to increase the amount of damages from \$3,000 to \$40,000 and \$25,000<sup>10</sup> would result in a premium increase per vehicle of no more than \$22.<sup>11</sup> As complete information was not available, the analysis was based on a number of assumptions, but at the time the insurance industry agreed that the analysis was reasonably accurate.

The most recent Alberta collision statistics available are for 2018. As noted by ALRI, changes in the amount of statutory damages are most likely to affect automobile insurance premiums as compared to other types of liability insurance.

The Alberta collision statistics for 2018 indicate that 289 people were killed in that year as a result of traffic collisions. Details of the road user class (driver, passenger, or other category) and age of the deceased are included in Appendix B. Appendix B also provides details of the methodology of ALRI.<sup>12</sup>

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<sup>8</sup> See Bank of Canada's website.

<sup>9</sup> See, for example, *Wilson v. Beck*, 2011 CarswellOnt 6583 at par 251.

<sup>10</sup> \$40,000 to parents for the loss of a child, \$25,000 to each child for the loss of a parent.

<sup>11</sup> Alberta Law Reform Institute, Report for Discussion (RFD) No. 12, June 1992.

<sup>12</sup> Alberta Traffic Collision Statistics 2018 include the following statistics on numbers killed: 2014 – 369; 2015 – 330; 2016 – 299; and 2017 – 290 and 2018 – 289. When ALRI did Report for Discussion (RFD) No. 12, June 1992 the report was based on 1989 fatal collision statistics and in that year there were 520 fatalities. Overall it appears that fatal collisions have been less from 2014 to 2018 than in 1989. At the same time as noted in the report, with the requirement to remove the age and marital restrictions imposed by the Courts, the class of individuals able to claim bereavement damages has expanded (all parents regardless of the age or marital status of the deceased child and all children regardless of their age or marital status when their parent dies).



Based on the final 2018 statistics and ALRI's estimation that a maximum of 70% may involve a claim, the result is that claims for section 8 damages could be made in approximately 202 fatalities.

Current information is not available on the possible impacts to insurance premiums resulting from potential changes to the levels of damages. Nevertheless, it is important to note that if the statutory amounts are changed, there may be a resulting change in insurance premiums.

## VII. Recommendation

On average, Alberta still has among the highest bereavement damages in Canada. Accordingly, the department recommends that Alberta retain the current amounts for the levels of damages under section 8 at this time.

# Appendix A: Case law relating to loss of guidance, care and companionship damages

## Québec

*Chouinard c. Ailes de Gaspé inc.*, 2006 QCCS 5760 (CanLII), 2006 CarswellQue 11446

*Tremblay c. Kyzen inc.*, 2006 QCCS 3275 (CanLII), 2006 CarswellQue 5224; affirmed 2008 CarswellQue 3116

*De Montigny c. Brossard (Succession de)*, 2006 QCCS 1677 (CanLII), 40 CCLT (3d) 109, 2006 CarswellQue 2552; amount of damages affirmed 2010 SCC 51, [2010] 3 SCR 64 (appeal partially allowed on other issues)

*Gravel c. Édifices Gosselin et Fiset enr.*, 2007 QCCS 5116 (CanLII), 2007 CarswellQue 10401

*Larouche c. Blackburn*, 2008 QCCS 1890 (CanLII), 2008 CarswellQue 4057

*B.H. c. Centre hospitalier régional de Baie-Comeau*, 2009 QCCS 585 (CanLII), 2009 CarswellQue 1212

*Savard (Succession de) c. Houle*, 2009 QCCS 795 (CanLII), 2009 CarswellQue 1640

*L.S. c. Centre hospitalier affilié universitaire de Québec – Hôpital de l'Enfant Jésus*, 2009 QCCS 1622 (CanLII); appeal allowed in part (but not on damages), 2011 QCCA 1521 (CanLII), 2011 CarswellQue 9188; leave to appeal to SCC filed Sep 29, 2011, docket 34460 ; no decision as of April 12, 2012

*Larouche c. Simard*, 2009 QCCS 529 (CanLII), 2009 CarswellQue 1044; appeal allowed in part (but not on damages), 2011 QCCA 911 (CanLII), 2011 CarswellQue 5199

*Shaikh c. Kane*, 2010 QCCS 1871 (CanLII), 2010 CarswellQue 4432

*Thivierge c. Gouriou*, 2011 QCCQ 340 (CanLII), 2011 CarswellQue 611

*Roussin c. Plan Nagua inc.*, 2011 QCCS 5301 (CanLII), 2011 CarswellQue 11008

*Papatie c. Québec (Procureur general)*, 2013 QCCS 868, 2013 CarswellQue 1798, 2013 CarswellQue 5657, EYB 2013-219071, 362 D.L.R. (4th) 720 (C.S. Que.)

*Sacco c. Paysagistes Izzo et Frères Itée* 2014 CarswellQue 7733

*Nguyen c. Site touristique Chute à l'ours de Normandin inc.* 2014 CarswellQue 519

*Émond c. Benhaim* 2014 CarswellQue 12131

## Nova Scotia

*Simpson Estate v. Cox*, 2006 NSSC 84 (CanLII), 2006 CarswellINS 135; affirmed 2006 NSCA 125 (CanLII), 2006 CarswellINS 499

## Federal

*Wilcox v. Miss Megan (Ship)*, 2008 FC 506 (CanLII), 2008 CarswellINat 1193

*McDonald v. Queen of the North (Ship)*, 2009 BCSC 1129 (CanLII), 2009 CarswellIBC 2188. Court approved settlement.

**British Columbia**

*Stegemann v. Pasemko*, 2010 CarswellBC 707 (BCCA)

*Camaso Estate v. Egan*, 2011 BCSC 456, 2011 CarswellBC 907 (B.C.S.C.)

*James Estate v. Gillis*, 2011 CarswellBC 1625 (B.C.S.C.)

*Haczewski v. British Columbia* 2012 BCSC 380, 2012 Carswell 722, 7C.C.L.I. (5ht) 211, 33 M.V.R. (6th) 57 (B.C.S.C.)

*Duncan (Litigation guardian of) v. Brown* 2014 CarswellBC

*Panghali v. Panghali*, 2014 BCSC 647.

**Ontario**

*Rupert v. Toth*, 2006 CanLII 6696 (ON SC), 2006 CarswellOnt 1345

*Wright v. Hannon*, 2007 CanLII 240 (ON SC), 2007 CarswellOnt 59

*Johnson v. Milton (Town)*, 2008 ONCA 440 (CanLII)

*Madonia v. Stevens*, 2008 CanLII 70461 (ON SC), 2008 CarswellOnt 8256

*Singleton v. Leisureworld Inc.*, 2008 CanLII 16071 (ON SC), 2008 CarswellOnt 2128

*Fiddler v. Chiavetti*, 2010 ONCA 210 (CanLII), [2010] O.J. No 1159, 2010 CarswellOnt 1670

*Wilson v. Beck*, 2011 CarswellOnt 6583 (On. S.C.J.). *Medical malpractice*

*Vokes Estate v. Palmer* 2012 ONCA 2012 OJ No 3393 (QL); 218 ACWS (3d) 994; 26 CPC (7th) 13; 294 OAC 342 (Jury Trial award)

*Rycroft Estate v. Gilas*, 2017 ONSC 1397

*The Estate of Carlo DeMarco v. Dr. Martin*, 2019 ONSC 2788

*Panchyshyn v. Hammond*, 2020 ONSC 381

*Campeau v. Ontario*, 2021 ONSC 129

## Appendix B: Alberta Traffic Collision Statistics 2018

Of the 289 fatalities the following applies:

### Road User Class

Drivers	164
Passengers	39
Pedestrians	40
Motorcyclists	18
Bicyclists	2
Other	14
Unspecified	12

### Age

Under 5	3
5-9	3
10-14	1
15-19	27
20-24	37
25-29	29
30-34	23
35-44	38
45-54	36
55-64	36
65 and over	55
Unspecified	1

As noted by ALRI, some fatalities would not give rise to a claim for damages that would be covered by an automobile insurance policy. These fatalities would include:

- 1) The Workers' Compensation Board (WCB) reported that in 2018 there were 27 motor vehicle incident fatalities accepted by the WCB. These deaths fall under the umbrella of the no-fault workers compensation scheme.
- 2) It can be assumed that a number of drivers who died in traffic fatalities were the cause of their own death. This may apply in the case of a single vehicle accident in which the sole occupant, the driver, dies or in the case of a multi-vehicle collision in which the deceased driver is solely responsible.
- 3) There will also be accidents in which driver error is not the cause of the collision resulting in death of a pedestrian or bicyclist.
- 4) There will be other accidents which cannot be attributed to anyone's fault such as where a car strikes a wild animal on the highway.
- 5) Finally, there will be accidents in which the deceased was contributorily negligent and, therefore, the damages will be reduced accordingly. For example, if the deceased is found to be 20% contributory negligent, the award is reduced by 20%. ALRI suggests that a significant number of drivers who died in traffic collisions will be contributorily negligent.

Taking into account the above noted, ALRI determined that the net result is that a significant number of fatalities would not give rise to a claim for bereavement damages and in another significant number of cases recovery would be reduced by the contributory negligence of the deceased. Factoring in those considerations, ALRI estimated that a maximum of 70% may involve a claim and at least 30% would involve no claim. The result is that claims for bereavement damages based on 2018 statistics could be made in approximately 202 fatalities

Potentially, in these 202 fatalities, claims may be brought by a spouse or partner; a parent of the deceased, and children of the deceased. For example where a deceased is survived by a spouse or partner, a parent and two children the bereavement damages may total \$262,000 (\$82,000 to the spouse or partner; \$82,000 to the parent and \$49,000 to each child). However, there are too many variables to make any reasonable assumptions about whether a deceased would have left a surviving spouse or partner, whether a deceased would have left a surviving parent and whether a deceased would have left surviving children. For example the younger the deceased the less likely he or she is to have a surviving spouse or partner or have surviving children but the more likely he or she is to have a surviving parent. In the absence of specific individual data, it is not possible to determine exact bereavement damage amounts.

*THE ATTACHED IS EXHIBIT "AA" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

## Housekeeping Damages Calculator <sup>TM</sup>

### Hourly Replacement Rates

The following table reflects the hourly replacement rates used in accordance with the province of residence selected. These rates are in 2021 dollars and do not include provincial sales tax or GST.

Province of Residence	Hourly Replacement Rate
Alberta	\$22.75
British Columbia	\$22.61
Manitoba	\$18.56
New Brunswick	\$15.80
Newfoundland & Labrador	\$17.95
Northwest Territories	\$33.63
Nova Scotia	\$21.09
Nunavut	\$33.63
Ontario	\$21.43
Prince Edward Island	\$20.13
Quebec	Not supported by calculator
Saskatchewan	\$21.41
Yukon	\$33.98

The hourly rates for housekeeping claims are researched from NOC 4412, "Home support workers, housekeepers and related occupations" using Statistics Canada's 2001 and 2006 Censuses, Statistics Canada's "2011 National Household Survey", Statistics Canada's 2016 Census, the Federal Government of Canada's JOB BANK website, and various provincial wage surveys (see Table 9-6 in C.L.Brown, *Damages: Estimating Pecuniary Loss* (Toronto, Ontario: Canada Law Book, a Thomson Reuters business), December 2020 (28<sup>th</sup> edition), Chapter 9, for specific provincial wage surveys used).

We deflate the 2021 rates above by Statistics Canada's "Estimates of Average Weekly Earning" and "Survey of Employment, Payrolls and Hours", NAICS 5617 (services to buildings and dwellings) for Canada.

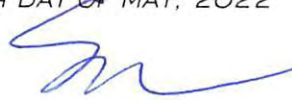
A survey entitled "Cleaning Survey: A report on the findings of a province wide survey to determine the average hourly cost of having a home cleaned" was carried out by *Profit Matters Inc.* who used the *IPSOS/Reid Alberta Omnibus* survey in the fall of 2005 in Alberta to poll respondents. The results indicated that of the 803 respondents, slightly less than 10% used cleaners. The rates for these urban areas in 2005 were \$17.11 in Calgary, and \$14.66 in Edmonton. Other cities and rural areas reported average hourly costs of \$10.12 to \$11.06. This yielded an average of \$14.64 for the whole province.



Increasing the \$14.64 rate to 2021 \$ for Alberta results in a rate of \$28.14. Note that in the **Housekeeping Damages Calculator**<sup>TM</sup> and in our assessments, Brown Economic uses \$22.75 for Alberta (see above).



*THE ATTACHED IS EXHIBIT "BB" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022*



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*COMMISSIONER FOR TAKING AFFIDAVITS*

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

## Estimate for Possible SDB &amp; Late Claim Enhancements

## 8690 - As of 2019

	# of Benefits	Cost per Unit	Cost
Alive PIP/SIP	3220	\$40.00	\$128,800.00
DA9/DB9 - Family Members	7499	\$40.00	\$299,960.00
Child 21+	1849		
Child under 21	241		
Sibling	1804		
Parent	322		
Spouse	635		
Grandchild	2622		
Grandparent	26		
DB9 - \$72K & \$120K Estates	1709	\$50.00	\$85,450.00
DA9 - Estates	1563	\$62.50	\$97,687.50
DB9 - \$50K Estates	182	\$62.50	\$11,375.00
Loss of Income	338	\$125.00	\$42,250.00
Loss of Services	784	\$125.00	\$98,000.00
<b>Total</b>			<b>\$763,522.50</b>

## 8690 - Post 2019

	# of Benefits	Cost per Unit	Cost
Alive PIP/SIP	0	\$40.00	\$0.00
DA9/DB9 - Family Members	131	\$40.00	\$5,240.00
Child 21+	35		
Child under 21	0		
Sibling	29		
Parent	5		
Spouse	16		
Grandchild	45		
Grandparent	0		
DB9 - \$72K & \$120K Estates	1	\$50.00	\$50.00
DA9 - Estates	3	\$62.50	\$187.50
DB9 - \$50K Estates	0	\$62.50	\$0.00
Loss of Income	3	\$125.00	\$375.00
Loss of Services	45	\$125.00	\$5,625.00
<b>Total</b>			<b>\$11,477.50</b>

## LCBP - As of 2019

	# of Benefits	Cost per Unit	Cost
Alive PIP/SIP	5	\$40.00	\$200.00
DA9/DB9 - Family Members	92	\$40.00	\$3,680.00
Child 21+	33		
Child under 21	0		
Sibling	12		
Parent	4		
Spouse	9		
Grandchild	34		
Grandparent	0		
DB9 - \$72K & \$120K Estates	0	\$50.00	\$0.00
DA9 - Estates	2	\$62.50	\$125.00
DB9 - \$50K Estates	0	\$62.50	\$0.00
Loss of Income	0	\$125.00	\$0.00
Loss of Services	0	\$125.00	\$0.00
<b>Total</b>			<b>\$4,005.00</b>

## LCBP - Post 2019

	# of Benefits	Cost per Unit	Cost
Alive PIP/SIP	22	\$40.00	\$880.00
DA9/DB9 - Family Members	63	\$40.00	\$2,520.00
Child 21+	19		
Child under 21	0		
Sibling	12		
Parent	2		
Spouse	6		
Grandchild	24		
Grandparent	0		
DB9 - \$72K & \$120K Estates	0	\$50.00	\$0.00
DA9 - Estates	1	\$62.50	\$62.50
DB9 - \$50K Estates	3	\$62.50	\$187.50
Loss of Income	0	\$125.00	\$0.00
Loss of Services	8	\$125.00	\$1,000.00
<b>Total</b>			<b>\$4,650.00</b>

**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*

This is the 1<sup>st</sup> Affidavit  
of Euan Reid in the BC Action  
and was made on May , 2022  
No. C965349  
Vancouver Registry

**In the Supreme Court of British Columbia**

Between:

**Anita Endean, as representative plaintiff**

Plaintiff

and:

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

Defendants

and:

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

Third Parties

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

**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

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**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

**AFFIDAVIT OF EUAN REID**  
(Affirmed May 13, 2022)

I, Euan Reid, FIA, FCIA, of Eckler Ltd., located at 980 – 475 Georgia Street, Vancouver, British Columbia, V6B 4M9, AFFIRM THAT:

1. I am a Principal of Eckler Ltd. ("Eckler").
2. Attached and marked as **Exhibit "A"** is a true copy of the Eckler Actuarial Report to the Joint Committee - Proposed Allocation of the 2019 Sufficiency Assessment Actuarially Unallocated Assets of the 1986-1990 Hepatitis C Trust.
3. In addition to myself, the Eckler personnel involved in reviewing the data and developing the actuarial model that provides a basis for the opinions expressed in the report were Richard Border, Dong Chen and Kevin Chen. Mr. Border and I are the authors of the report and the opinions expressed are ours.
4. I certify that all Eckler personnel involved in the project are aware that our duties are:
  - a) to provide opinion evidence that is fair, objective and non-partisan and related only to matters within our area of expertise; and
  - b) to assist the Courts and provide such additional assistance as the Courts may reasonably require to determine a matter in issue.
5. All Eckler personnel involved in the project are also aware that the foregoing duties prevail over any obligation we may owe to any party on whose behalf we are engaged and we are aware that we are not to be advocates for any party. I confirm that the report conforms with the above-noted duties. I further confirm that if called upon to give oral or written testimony, I and any other Eckler personnel will give such testimony in conformity with these duties.

6. Attached and marked as **Exhibit "B"** is my curriculum vitae. Attached and marked as **Exhibits "C", "D" and "E"**, respectively, are the curricula vitae of Richard Border, Dong Chen and Kevin Chen.

AFFIRMED BEFORE ME at Vancouver,  
British Columbia, on May 13<sup>th</sup>, 2022



\_\_\_\_\_  
A Commissioner for taking  
Affidavits for British Columbia

)  
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\_\_\_\_\_  
Euan Reid

**LINNAE E. ROACH**  
Commissioner for taking Affidavits  
in and for the Province of British Columbia  
856 Homer Street, 4th Floor  
Vancouver, BC, V6B 2W5  
Tel: 604-689-7555 Fax: 604-689-7554

THE ATTACHED IS EXHIBIT "A" TO THE AFFIDAVIT OF  
EUAN REID AFFIRMED BEFORE ME THIS 13<sup>th</sup> DAY OF  
MAY, 2022



\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

**LINNAE E. ROACH**  
Commissioner for taking Affidavits  
In and for the Province of British Columbia  
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Actuarial Report to the Joint Committee

**Proposed Allocation of the  
2019 Sufficiency Assessment  
Actuarially Unallocated Assets**

**1986 – 1990 Hepatitis C Trust**

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Vancouver, British Columbia  
February 28, 2022

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## I. Introduction

1. Our assessment of the financial sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019 was documented in our report (referred to in this report as the “2019 Sufficiency Report”) dated November 25, 2020.
2. Our 2019 Sufficiency Report concluded that, after allowing for an appropriate level of Required Capital, there was Excess Capital, or actuarially unallocated assets, of \$197,596,000.
3. The Joint Committee has informed us that there are payments due to 417 entitled class members that were not reflected in the data used for the 2019 financial sufficiency review, and that these have been estimated as \$2,559,000 in total (in 2021 dollars where applicable). These are payments in respect of the additional benefits that were granted by allocating the actuarially unallocated assets arising at the December 31, 2013 financial sufficiency review (the “2013 Allocation Benefits”). After allowing for these additional payments, the available Excess Capital reduces to \$195,037,000.
4. The Settlement Approval Orders give the Courts discretion to allocate the actuarially unallocated assets “for the benefit of class members and family class members”, referred to in this report as “2019 Allocation Benefits”. The Joint Committee has defined a list of specific potential 2019 Allocation Benefits, to be funded by the Excess Capital, or actuarially unallocated assets.
5. We were asked by the Joint Committee to calculate the cost of these potential 2019 Allocation Benefits. Our calculations showed that the total costs, including an appropriate level of Required Capital were \$194,941,000.
6. This report provides actuarial analysis of the 2019 Allocation Benefits recommended by the Joint Committee.

## II. Summary of 2019 Sufficiency Report Results

7. As noted above, our 2019 Sufficiency Report concluded that, after allowing for an appropriate level of Required Capital, there was Excess Capital, or actuarially unallocated assets, of \$197,596,000.
8. A summary of the financial position of the Trust as at December 31, 2019 is as follows:

2019 Results (\$,000's) <sup>1</sup>	HCV Regular Benefit Account	HCV Special Distribution Benefit Account	HCV Late Claims Benefit Account	Total Fund
<b>Assets</b>				
Invested Assets	887,810	99,514	48,436	1,035,760
Provincial/Territorial Notional Assets	92,553	n/a	n/a	92,553
<b>Total Assets</b>	<b>980,363</b>	<b>99,514</b>	<b>48,436</b>	<b>1,128,313</b>
<b>Liabilities</b>				
Transfused	370,278	36,091	44,008	450,377
Hemophiliac	219,667	20,963	5,129	245,760
HIV Program	410	n/a	n/a	410
Expenses	67,070	1,749	9,732	78,551
<b>Total Sufficiency Liabilities</b>	<b>657,425</b>	<b>58,803</b>	<b>58,870</b>	<b>775,098</b>
Excess Assets over Liabilities	322,938	40,711	(10,434)	353,216
Required Capital	131,181	12,993	11,445	155,619
<b>Excess Capital</b>	<b>191,757</b>	<b>27,718</b>	<b>(21,879)</b>	<b>197,596</b>
<b>Funded ratio</b> (= Total Assets ÷ Total Sufficiency Liabilities)	<b>149%</b>	<b>169%</b>	<b>82%</b>	<b>146%</b>

9. Subsequent to the 2019 sufficiency review, the courts ordered that \$22,981,000 be reallocated from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account effective January 1, 2020 to ensure that the underfunded HCV Late Claims Benefit Account was financially sufficient.
10. The Joint Committee has also informed us that there are payments totalling \$2,559,000 in respect of certain 2013 Allocation Benefits that were not included in the data provided for the 2019 sufficiency review, and should be added to the liabilities of the notional Special Distributions Benefit Account. We have taken this estimate at face value, as an adjustment for indexing differences between 2021

<sup>1</sup> In some cases in this table and elsewhere in this report, amounts may appear not to add up to the total shown. This occurs because amounts have been rounded to thousands or millions for presentation.

dollars (on which the estimate was based) and 2020 dollars (as used for the 2019 sufficiency review) is unlikely to be material.

11. The revised summary of the financial position of the Trust as at December 31, 2019 after the court orders and additional liability for missing 2013 Allocation Benefit payments is as follows:

2019 Results Restated (\$,000's)	HCV Regular Benefit Account	HCV Special Distribution Benefit Account	HCV Late Claims Benefit Account	Total Fund
<b>Assets</b>				
Invested Assets	887,810	76,533	71,417	1,035,760
Provincial/Territorial Notional Assets	92,553	n/a	n/a	92,553
<b>Total Assets</b>	<b>980,363</b>	<b>76,533</b>	<b>71,417</b>	<b>1,128,313</b>
<b>Liabilities</b>				
<b>Total Sufficiency Liabilities</b>	<b>657,425</b>	<b>61,362</b>	<b>58,870</b>	<b>777,657</b>
Excess Assets over Liabilities	322,938	15,171	12,547	350,656
Required Capital	131,181	12,993	11,445	155,619
<b>Excess Capital</b>	<b>191,757</b>	<b>2,178</b>	<b>1,102</b>	<b>195,037</b>
<b>Funded ratio</b> (= Total Assets ÷ Total Sufficiency Liabilities)	<b>149%</b>	<b>125%</b>	<b>121%</b>	<b>145%</b>

12. The foregoing table indicates that, as at December 31, 2019 the assets exceed the restated sufficiency liabilities by about \$350,656,000.
13. After allowing for the Required Capital buffer of \$155,619,000, which is unchanged by the additional liability for missing 2013 Allocation Benefit payments, the restated Excess Capital is \$195,037,000. This is the amount that is available to fund Allocation Benefits for class members and family class members.
14. All three notional accounts are financially sufficient, and with positive Excess Capital, as provided by the reallocation of 2013 actuarially unallocated assets in the 2019 sufficiency order.
15. The settlement is funded by invested Assets, initially funded by the Federal Government in terms of the settlement, as well as ongoing payments by the Provinces and Territories (PT) equal to 3/11ths of the emerging costs for the HCV Regular Benefit Account. The PTs do not contribute to the HCV Special Distribution Benefit Account or the HCV Late Claims Benefit Account. The overall PT liability is capped at 3/11ths of the original settlement, increased with interest at the rate on three-month treasury bills, less the PT share of costs to date. As at December 31, 2019, this capped PT liability, which equates to the maximum funds available from the PT, was \$92,553,000. This figure can be regarded as the PT Notional Assets.

16. It is illustrative to break down the sufficiency result for the HCV Regular Benefit Account between the portion covered by the Invested Assets and the portion covered by the remaining PT Notional Assets.

<b>HCV Regular Benefit Account as at December 31, 2019</b>			
<b>\$000</b>	<b>Total Assets</b>	<b>Invested Assets</b>	<b>PT Notional Assets</b>
Assets	980,363	887,810	92,553
Sufficiency Liabilities <sup>2</sup>	657,425	478,127	179,298
Excess of Assets over Sufficiency Liabilities	322,938	409,683	(86,745)
Reallocation of cost from the PT Notional Fund to the Invested Fund	0	(86,745)	86,745
Excess of Assets over Sufficiency Liabilities after reallocation of cost	322,938	322,938	0
Required Capital	131,181	131,181	0
Restated Excess Capital	191,757	191,757	0

17. We note that:

- The PT Notional Assets is less than 3/11 of the total Sufficiency Liabilities.
- Based on the sufficiency assumptions, our model projects that the PT Notional Assets will be exhausted by 2030.
- The PT shortfall thus emerging has been charged against the Invested Assets. This reflects our expectation that once the PT Notional Assets is exhausted, the full amount of payments will be charged to the Invested Assets (as opposed to reducing the compensation amounts payable).
- Consistent with this we have allocated the full amount of the Required Capital against the Invested Assets.
- The Excess Capital, which is the amount by which the assets exceed the sum of the Sufficiency Liabilities plus a provision to protect the class members from future major adverse experience or catastrophe (the Required Capital), is therefore associated with the Invested Assets only; there is no Excess Capital in the PT Notional Assets.
- From an actuarial perspective, the assets identified as Excess Capital are actuarially unallocated assets.

18. We understand that the Joint Committee recommends that the Allocation Benefits be funded from the Excess Capital in the Invested Assets. Therefore, the time at which the PT Notional Assets would be exhausted does not change as a result of the Allocation Benefits. The fact that PT Notional Assets are less than 3/11ths of the total liability does not affect the amount of actuarially unallocated assets.

<sup>2</sup> Allocated 8/11 to the Invested Fund and 3/11 to the PT Notional Fund.

### III. Approach to our Calculations

19. We have calculated the costs of the specific Allocation Benefits with an effective date of December 31, 2019. The costs consist of two pieces. Firstly, a retroactive component that represents the cost of back dating the 2019 Allocation Benefits to the settlement date; this is our estimate of the costs that would have been paid by December 31, 2019 had the Allocation Benefits always been in place. No interest is paid on retroactive payments, but the payments are indexed to January 1, 2020. Secondly, a future cost that represents the cost of payments after December 31, 2019 and is essentially the increase in the December 31, 2019 liability arising as a result of the Allocation Benefits.
20. The future liability costs have been calculated using the methods and assumptions employed in our 2019 Sufficiency Assessment, as outlined in our 2019 Sufficiency Report. We have not repeated a description of the methods and assumptions in this report. Where additional assumptions are required, we have described them in our outline of the calculations in Appendix A.
21. In our 2019 Sufficiency Report, we set out both Best Estimate and Sufficiency liabilities. As the label suggests, Best Estimate liabilities are calculated using best estimate assumptions, while the Sufficiency liabilities are calculated using assumptions that include, where appropriate, margins for adverse deviations. As the Excess Capital that is being used to fund the 2019 Allocation Benefits is calculated on a Sufficiency basis, for consistency, our estimates of the cost of the 2019 Allocation Benefits set out in this report have also been calculated on a Sufficiency basis.
22. While the 2019 Sufficiency Report assumptions include margins for adverse deviations, not every assumption in the Sufficiency calculations has a margin added, and in many cases the Sufficiency assumption and the Best Estimate assumption is the same. We have taken a similar approach to setting any assumptions needed to calculate the liabilities arising from the 2019 Allocation Benefits and have only added margins where we believe they are required. This is consistent with the assumption setting process that was carried out in conjunction with Morneau Shepell.
23. We have generally calculated the retroactive costs directly from the actual payment history. However, it was not possible to identify from the payment history the year that Loss of Services benefits paid from the Special Distribution Benefit account were incurred. We estimated the amount of these benefits incurred at and after 2014 by assuming the same proportions before 2014 and after 2013 as the Regular Benefit Account. We have not added any margins for adverse deviations in this circumstance as we believe it is immaterial.

#### IV. 2019 Allocation Benefits

24. The table below contains the costs of the 2019 Allocation Benefits that the Joint Committee is putting forward for approval. The details for each specific 2019 Allocation Benefit are included in Appendix A.
25. Each 2019 Allocation Benefit has two cost components. The retroactive cost is the cost of paying the 2019 Allocation Benefit to claimants who have qualified in the past for the 2019 Allocation Benefit in question.<sup>3</sup> The future cost is the cost of payments that are expected to fall due in the future, either to claimants who are currently receiving payments for the head of damage in question, or for claimants who are expected to qualify for such payments in the future.
26. In addition to calculating the cost of the 2019 Allocation Benefits, we have recalculated the Required Capital that would be needed if these 2019 Allocation Benefits are approved. The Required Capital is calculated using the same method employed in the 2019 Sufficiency Report. The approach takes into account the risks that the Trust faces as a whole, and sets aside capital to protect the claimants from these risks. Retroactive payments do not have a need for Required Capital and so we have calculated the increase in Required Capital based on the future liability increase only. The dollar amount of the total increase in Required Capital is set out in the table below. More detail is provided in Appendix B.
27. The Joint Committee has obtained from the administrator an estimate of the administration cost associated with providing the 2019 Allocation Benefits in question, and also provided the estimated cost for other services. We have included these costs in this report, as detailed in Appendix C. We have not reviewed these administration costs for reasonableness.
28. The total cost of the 2019 Allocation Benefits is \$194,941,000, including the increase in Required Capital, which is less than the restated Excess Capital of \$195,037,000.

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<sup>3</sup> In the case of Loss of Services compensation, the Joint Committee has recommended limiting retroactive payments to those in respect of Services provided at and after 2014.

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Cost of 2019 Allocation Benefits by benefit				
\$000	Retroactive increase to benefits already paid	Increase in sufficiency liabilities for future benefits	Increase in required capital	Total
Increase all lump sum payments by 6.8% <sup>4</sup>	44,614 <sup>5</sup>	8,219	1,851	54,684
Increase payments to Approved Family Members by 50%	37,503 <sup>6</sup>	28,010	6,299	71,812
Loss of Income: increase compensation for lost pension benefits from 10% to 14% of net loss of income (capped at \$200,000, indexed from 2014).	4,280 <sup>7</sup>	1,940	433	6,653
Increase loss of services rate from \$12/hour to \$14/hour (1999 dollars) at and after 2014. (No changes to pre-2014 rate.)	9,543 <sup>8</sup>	41,472	9,257	60,272
<b>Administration Expense Allowance</b>				1,520
<b>Total Cost of 2019 Allocation Benefits</b>	<b>95,940</b>	<b>79,641</b>	<b>17,840</b>	<b>194,941</b>
<b>Excess Capital</b>				<b>195,037</b>
<b>Remaining Excess Capital</b>				<b>96</b>

<sup>4</sup> Includes disease level lump sum and other optional lump sum payments

<sup>5</sup> Assumes all past payments are supplemented by 6.8% of the relevant lump sum in 2020 dollars.

<sup>6</sup> Assumes all past payments are supplemented by 50% of the relevant amount in 2020 dollars.

<sup>7</sup> No allowance for indexing or interest on past payments. Total paid to each claimant would be calculated as  $14\%/10\% - 1 = 40\%$  of total payments prior to 2020.

<sup>8</sup> Assumes all past payments are supplemented by  $14/12-1 = 16.7\%$  of the relevant amount in 2020 dollars.

## V. Rebalancing of Notional Accounts

29. The Joint Committee has proposed that all 2019 Allocation Benefits be paid from the existing notional Special Distribution Benefit Account.
30. A reallocation of Excess Capital between the notional Regular Benefit Account, Special Distribution Benefit Account and Late Claims Benefit Account will be required to maintain the sufficiency of all three accounts. The required amounts of rebalancing are shown in the table below.

\$000	Total Fund	Regular Benefit Account	Special Distribution Benefit Account	Late Claims Benefit Account
Restated Excess Capital as at December 31, 2019	195,037	191,757	2,178	1,102
Cost of 2019 Allocation Benefits, including Required Capital and administration costs	(194,941)	0	(194,941)	0
Reallocation of 2019 Excess Capital among Notional Accounts	0	(191,661)	192,763	(1,102)
<b>Remaining Excess Capital</b>	<b>96</b>	<b>96</b>	<b>0</b>	<b>0</b>

31. Since the 2019 Allocation Benefits will be created from Excess Capital, none of the associated administrative costs should be borne by the provinces and territories. The provinces and territories bear a 3/11ths share of any expenses paid from the Regular Benefit Account, but do not share any part of the expenses paid from the other accounts. We have therefore assumed that all administration costs associated with the 2019 Allocation Benefits will be charged to the existing Special Distribution Benefit account.
32. The table above shows that, effective December 31, 2019, \$191,661,000 should be reallocated from the Regular Benefit Account to the Special Distribution Benefit Account, and \$1,102,000 from the Late Claims Benefit Account to the Special Distribution Benefit Account.

## VI. Opinion

33. In our opinion,
- (a) after allowing for the 2019 Allocation Benefits the Trust funds are sufficient to meet the liabilities of the Trust,
  - (b) the claimant data on which the calculations are based are sufficient and reliable for the purposes of the calculations,
  - (c) the assumptions are appropriate for the purposes of the calculations, and
  - (d) the methods employed in the calculations are appropriate for the purposes of the calculations.
34. This report has been prepared, and our opinions given, in accordance with accepted actuarial practice in Canada.
35. To the best of our knowledge, there are no material subsequent events that would affect the results and recommendations of this report.
36. On behalf of the Eckler actuarial personnel who worked on this report, we certify that we are aware that our duties are:
- a) to provide opinion evidence that is fair, objective and non-partisan and related only to matters within our area of expertise; and
  - b) to assist the Courts and provide such additional assistance as the Courts may reasonably require to determine a matter in issue.
37. We are aware that the foregoing duties prevail over any obligation we may owe to any party on whose behalf we are engaged and we are aware that we are not to be an advocate for any party. We confirm that the report conforms with the above-noted duties. We further confirm that if called upon to give oral or written testimony, we will give such testimony in conformity with these duties.



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<sup>9</sup> Canadian Institute of Actuaries is the Primary Regulator.

## Appendix A – Detail on 2019 Allocation Benefits

### A.1 Increase Lump Sum Payments by 6.8%

38. The Settlement Orders include lump sum compensation payments to HCV Infected Persons based on their disease progression. The 2013 Allocation Benefits increased the compensation amounts by 8.5%. The current amounts are summarised in the table below, as well as the current amounts including the proposed 6.8% increase.

Payment criteria	Original compensation (1999 dollars)	Current compensation including 8.5% increase from 2013 Allocation Benefits (2020 dollars) <sup>10</sup>	Compensation including 8.5% increase from 2013 Allocation Benefits and 6.8% increase from 2019 Allocation Benefits (2020 dollars)
Approved infected claimant	10,000	16,138	17,235
Positive PCR test	20,000	32,276	34,471
Non-bridging fibrosis	30,000	48,414	51,706
Cirrhosis	65,000	104,897	112,030
Decompensation / hepatocellular cancer / B-cell lymphoma / symptomatic mixed cryoglobulinemia / glomerulonephritis/ renal failure	100,000	161,381	172,355
<b>Total</b>	<b>225,000</b>	<b>363,106</b>	<b>387,797</b>

39. The Joint Committee is of the view that having regard for the severity of illness, pain and suffering of those at disease level 6, including liver failure and liver cancer, the cumulative disease level payments should approach the maximum recoverable for personal injury. We understand that the Supreme Court of Canada has imposed a limit on personal injury damages of \$100,000 in January 1978 dollars. A judgment issued by the British Columbia Supreme Court<sup>11</sup> in June 2003 described a method for indexing this cap, using the ratio of the current Consumer Price Index (CPI) with the January 1978 CPI. Using this method, the \$100,000 limit translates to a limit of \$389,744 in January 2020. This is 7.3% greater than the current total fixed payment amount of \$363,106 in 2020 dollars, from the table above.

<sup>10</sup> The conversion factor from 1999 dollars to 2020 dollars is 1.487376509

<sup>11</sup> Lee v. Dawson (2003), 17 B.C.L.R.4th 80, 4 (S.C.)

40. Taking into account the amount of available Excess Capital, the Joint Committee has proposed an increase of 6.8% to each of the fixed payment amounts. This is less than the maximum increase of 7.3%, based on the limit imposed by the Supreme Court of Canada. We are comfortable that this also provides a margin for safety to account for differences between the CPI indexing method described in the judgement mentioned above and the method required under the HCV Settlement Orders, so that the cap is unlikely to be breached due to differences in indexing in future years.
41. As well as the lump sums described above that are based on a claimant's disease progression, there are a number of optional lump sums payable under the Settlement Orders:
- a) The estates of HCV related deaths before January 1, 1999 may elect either \$120,000 in full settlement of all claims (\$120K option), or \$50,000 plus claims by the family, including loss of support or loss of services (\$50K+ option).
  - b) The estates of HIV co-infected persons who died before January 1, 1999 may elect to be paid \$72,000 in full satisfaction of all other claims, even if HCV is not the cause of death (\$72K option).
  - c) A claimant who is also infected with HIV may elect to be paid \$50,000 in full satisfaction of all other claims including post death claims of dependents and family members;

The Joint Committee has proposed the same 6.8% increase to these optional lump sum amounts.

**A.2 Increase Family Claim Payments on Death to Approved Family Members by 50%**

- 42. The Joint Committee has proposed an increase of 50% to the lump sum compensation paid to Approved Family Members on the death of an HCV Infected Person. Approved Family Members are the HCV Infected Person’s spouse, children, siblings, parents, grandparents and grandchildren. The 2013 Allocation Benefits increased the amounts paid to children age 21 and over, and parents.
- 43. The current compensation amounts in 1999 dollars, and the corresponding amounts with a 50% increase, are shown in the table below:

	Original compensation (1999 dollars)	Increase provided from 2013 Allocation Benefits (1999 dollars)	Total Benefit (1999 dollars)	Total Current Benefit (2020 dollars)	Total Benefit with 50% increase (1999 dollars)	Total Benefit with 50% increase (2020 dollars)
Spouse	25,000	-	25,000	37,184	37,500	55,777
Child <21	15,000	-	15,000	22,311	22,500	33,466
Child 21 and over	5,000	4,600	9,600	14,279	14,400	21,418
Parent	5,000	4,600	9,600	14,279	14,400	21,418
Sibling	5,000	-	5,000	7,437	7,500	11,155
Grandparent	500	-	500	744	750	1,116
Grandchild	500	-	500	744	750	1,116

- 44. The administrator provided us with a summary of the past payments made to Approved Family Members. For retroactive payments, we tabulated the actual payments, and increased these actual costs by 50% and indexed to 2020 dollars.
- 45. To calculate the cost for future claims, we assumed that the family profile for the future claims would be the same as the family profile of claims made in the past. In other words, we calculated the ratio of the retroactive cost for each category (e.g. children age 21 and over, parents) to the total past payments (aggregated across all categories, e.g. spouse, child under 21, etc). We applied these ratios to the sufficiency assumption for loss of guidance, care and companionship and reran our model to obtain the increase in the liability to get the future cost for each category.

### A.3 Compensation for Diminished Pension Due to Disability

46. Claimants who are unable to work lose not only employment income, but also may lose access to pension benefits. Currently, claimants are compensated for lost pension benefit at a rate of 10% of pre-tax loss of income to a maximum pension of \$20,000 (2014 dollars) per annum.
47. In our report dated October 14, 2015 on the 2013 Allocation Benefits, we suggested a rate of 14% would be an appropriate proxy for compensation for diminished pension due to disability, comprising 10% in relation to missed employment pension and 4% in relation to an employer's contribution to the Canada Pension Plan (CPP).<sup>12</sup> The 2013 Allocation Benefit was limited to 10% in order to ensure that the overall cost of the 2013 Allocation Benefits was less than the available Excess Capital at that time.
48. The previously suggested rate of 14% is necessarily broad brush, given the very wide range of pension arrangements offered by employers, but in our view it remains appropriate.
49. For example, the total contribution rate (employer plus employee) to the Public Service Pension Plan of Canada is around 18%-25% of pay, depending on when a member joined the plan and their level of earnings. At the other end of the spectrum, some employees will have no pension benefits, and others will have defined contribution arrangements often at quite low rates of contribution (e.g. less than 10% of pay). As a very rough rule of thumb, we believe that a reasonable level of retirement income (relative to the pre-retirement income) can be achieved with a contribution of 20% of pay. On average, claimants may be receiving pensions funded at half that rate, so we suggest 10% of pay per year as a proxy for compensation for diminished employment pension due to disability.
50. In addition to lost pension benefits, claimants who are not working lose CPP/QPP benefits for the years they do not work. In 2021, employees and employers contribute equally to CPP at a rate of 5.45% each on income up to the Yearly Maximum Pensionable Earnings (YMPE = \$61,600 in 2021). CPP is phasing in higher contributions and benefits, and from 2025 employers and employees will each pay 5.95% on income up to the YMPE, and an additional 4% on income between the YMPE and a new earnings ceiling equal to 114% of the YMPE. Similar contribution rates and recent enhancements apply to the QPP. Based on the income levels of current claimants and lower contribution rate in the past, in our view 4% remains a reasonable equivalent rate to missed employer contributions to CPP/QPP.

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<sup>12</sup> Claimants in Quebec are eligible for the Quebec Pension Plan (QPP) rather than CPP. Employer contribution rates to the CPP and the QPP are similar, and in our view it is appropriate to use the same proxy for both.

51. It is statistically unlikely that another very large loss of income claim will be submitted,<sup>13</sup> but in the event that one does, it could have a material impact on the Trust. For that reason, we have been instructed by the Joint Committee to assume that the current cap on maximum pension will continue.

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<sup>13</sup> Statistics Canada data shows that based on 2019 earnings, only 1% of the population earn over about \$250,300 annually, 0.1% of the population earn over \$790,100 and 0.01% over \$2.97 million.



**A.4 Increasing Loss of Services (SRV) compensation rate to \$14/hour at and after 2014**

52. Currently Loss of Services (SRV) claims are compensated at \$12 per hour, in 1999 dollars. Claims were capped at 20 hours per week under the original Settlement Orders, and this was extended to a cap of 22 hours per week as part of the 2013 Allocation Benefits. The Joint Committee is concerned that the current rate, which translates to \$17.85 per hour in 2020 dollars, is too low relative to the actual cost of services, leaving claimants out of pocket.
53. The Government of Canada’s Job Bank website ([www.jobbank.gc.ca](http://www.jobbank.gc.ca)) publishes wage data by occupation and region. The table below shows the range of hourly wages for home support workers, housekeepers and related occupations (National Occupational Classification 4412), with wage data updated in December 2020.

	Wages (\$ per hour)			
	Low	Median	High	Median with estimated 20% fees
<b>Canada</b>	<b>12.91</b>	<b>16.85</b>	<b>24.00</b>	<b>20.22</b>
Newfoundland and Labrador	15.00	16.44	17.30	19.73
Prince Edward Island	13.00	13.00	23.28	15.60
Nova Scotia	12.95	17.93	21.00	21.52
New Brunswick	12.91	14.10	17.00	16.92
Quebec	13.50	15.00	22.00	18.00
Ontario	14.35	18.00	25.00	21.60
Manitoba	12.00	15.00	21.76	18.00
Saskatchewan	13.00	18.00	25.00	21.60
Alberta	15.00	18.65	28.85	22.38
British Columbia	15.20	19.56	24.00	23.47
Yukon Territory	15.00	22.00	31.80	26.40
Northwest Territories	15.30	21.00	36.55	25.20
Nunavut	16.00	25.00	33.17	30.00

54. Based on the table above, the current rate of \$17.85 per hour is insufficient to cover the worker’s wages in many jurisdictions. The cost of services to claimants is considerably higher than just the wages received by the worker. The fees charged by housekeeping agencies would typically allow for administration costs, Employment Insurance, CPP/QPP, workers compensation insurance premiums, vacation pay and other employee benefit costs, and we would expect these to add at least 20% to the wage costs. In addition, sales taxes on invoices for services range from 5-15% across country. The final column in the table above shows the median wage costs plus an allowance of 20% for these additional costs. Bearing in mind the amount of available Excess Capital, the Joint Committee has proposed an increase of 16.7% for Loss of Services claims at and after 2014. This

would increase the hourly rate from \$12 to \$14 in 1999 dollars, or from \$17.85 to \$20.83 in 2020 dollars, and in our view such an increase is reasonable and broadly reflects the actual replacement cost of services in the home.

## Appendix B – Required Capital on 2019 Allocation Benefits

55. In our 2019 Sufficiency Report, we developed a Hepatitis C specific framework to systematically assess the sources of risk not covered in the sufficiency liability and calculate an appropriate “Required Capital” for the Hepatitis C fund, in order to protect the claimants from future major adverse experience or catastrophe. This “Required Capital” represents the amount of assets, over and above those needed to meet the liabilities, that is to be used for the protection, and benefit, of claimants.
56. Our approach takes into account any existing margins for adverse deviation in the actual liability calculation; to the extent there are margins for adverse deviation in the actual liability calculation, the impact is to reduce the additional Required Capital. Conversely, if there is no margin in the actual liability (i.e. it is a "best estimate" liability), the Required Capital would be higher. This approach prevents inappropriate duplication (between the actual liability and the Required Capital) in providing for uncertainty.
57. The approach takes into account the risks that the Trust faces as a whole, and sets aside capital to protect the claimants from these risks. Retroactive payments are assumed to be paid immediately, meaning there are no longer risks associated with these payments in future, and there is no need for Required Capital in relation to these payments. We have therefore calculated the increase in Required Capital based on the future liability increase only. The consequence of this is that the Required Capital associated with the 2019 Allocation Benefits, expressed as a percentage of the increase in the liability, is less than the Required Capital percent in our 2019 Sufficiency Report.
58. Applying the same methodology and assumptions as set out in our 2019 Sufficiency Report, we have calculated the additional required capital in relation to the 2019 Allocation Benefits as shown in the following table:

Required Capital on Hepatitis C Specific Approach (\$,000's)						
Risk Component		2019 Sufficiency Report			Increase in Risk Component Due to 2019 Allocation Benefits	
		Regular Benefit Account	Special Distribution Benefit Account	Late Claims Benefit Account		Total
Investment Risks		77,158	7,246	5,182	89,586	9,849
Claimant Risks	Disease Progression Rate Risk	38,237	5,653	1,445	45,335	7,590
	Treatment Efficacy Risk	27,947	2,741	1,184	31,873	3,894
	Benefit Amount Uncertainty Risk	26,444	2,596	1,134	30,174	3,688
	Cohort Risk	0	0	5,154	5,154	0
Risk Diversification Credit		(38,605)	(5,243)	(2,654)	(46,503)	(7,181)
<b>Total Required Capital</b>		131,181	12,993	11,445	155,619	<b>17,840</b>
Required Capital as a percentage of the Sufficiency Liability		20.0%	22.1%	19.4%	20.1%	10.2%

The total required capital of \$17,840,000 is allocated to each allocation benefit based on the proportion of their future cost over the total allocation benefit future cost, as shown in Section IV of this report.

## Appendix C – Administration Expenses

59. The administrator has provided an estimate of the administration cost associated with the 2019 Allocation Benefits being paid retroactively for the known cohort as of 2019 and currently in both the Regular and LCBP Plans (\$784,000), as well as costs associated with system programming changes (\$14,000) and the administration of missed 2013 Allocation Benefits (\$50,000).
60. The Joint Committee has estimated the additional administration cost for future 2019 Allocation Benefits payments to be \$5,000 per annum. Applying the same methodology and assumptions as set out in our 2019 Sufficiency Report, we have calculated the present value of this future administration cost to be \$127,000.
61. The Joint Committee has estimated further costs of \$75,000 arising from the administration of estates. These are costs associated with the Administrator managing the receipt of estate documents, issuing and mailing cheques, as well as managing returned mail and obtaining current contact information for family members of the deceased.
62. The Joint Committee has estimated that the fees from service providers other than the administrator will be \$300,000.
63. We have assumed a sales tax rate of 13% for the administrative component, assuming this is in Ontario, and an average rate of 10.6% for the other service providers, based on the average sales tax rate used for the Joint Committee expense allowance in the 2019 sufficiency review.
64. The total administration costs are summarized in the following table:

\$000's	Costs	Sales Tax Rate	Costs with Tax
<b>Cost estimates provided by administrator</b>			
Retroactive Payment Cost	784	13.0%	890
Programming Change Cost	14	13.0%	20
Missed 2013 Allocation Benefits	50	13.0%	60
<b>Additional cost estimates provided by Joint Committee</b>			
Future Payment Cost	127	13.0%	140
Estate Administration Cost	75	13.0%	80
Other Service Cost	300	10.6%	330
<b>Total</b>	<b>1,350</b>		<b>1,520</b>

THE ATTACHED IS EXHIBIT "B" TO THE AFFIDAVIT OF  
EUAN REID AFFIRMED BEFORE ME THIS 13<sup>th</sup> DAY OF  
MAY, 2022



\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

**LINNAE E. ROACH**  
Commissioner for taking Affidavits  
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**Euan Reid, FIA, FCIA**

Euan is a Principal of Eckler. He joined the firm in 2017, having relocated to Vancouver from London, UK. He began actuarial work in 2004, and is a Fellow of the Institute and Faculty of Actuaries (UK) and the Canadian Institute of Actuaries.

Euan advises Canadian pension plans in the public and private sectors, with a particular focus on identifying, measuring and managing risks such as longevity. He is the primary consultant to several multi-employer pension plans registered in B.C. and Alberta, as well as consulting to the four public sector pension plans in B.C., and to WorkSafeBC.

Euan worked on the 2016 and 2019 sufficiency reviews.

Euan graduated in 2004 and holds a first class degree in mathematics from Durham University.

THE ATTACHED IS EXHIBIT "C" TO THE AFFIDAVIT OF  
EUAN REID AFFIRMED BEFORE ME THIS 13<sup>th</sup> DAY OF  
MAY, 2022



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**Richard Border, FIA, FCIA**

Richard is a Principal and Shareholder based in the Vancouver office. He has over 30 years of actuarial experience in pension consulting, valuation of long-term liabilities (such as Workers' Compensation plans), investment consulting, technical design of investment and insurance products for pension plans, management information, and financial modeling.

Since joining Eckler in early 2002, Richard has specialized in pensions and workers compensation actuarial consulting. He is the lead actuary to public sector pension plans in British Columbia (specifically, the BC Public Service, Municipal, College, and Teachers' pension plans). His responsibilities for these clients include acting as lead consultant, providing technical actuarial analysis, as well as consulting advice and guidance on plan design issues. He is the external actuary for WorkSafeBC and is responsible for the actuarial opinion on the adequacy of the liabilities in the WorkSafeBC annual report. He has similar responsibilities for the Workers Compensation Board of Manitoba.

Richard has worked on the 2001, 2004, 2007, 2010, 2013, 2016 and 2019 HCV sufficiency reviews and has co-signed each of the associated reports.

Richard graduated from the University of Cape Town in 1986 with a BSc statistics. He is a Fellow of both the Institute and Faculty of Actuaries (UK) and the Canadian Institute of Actuaries.

THE ATTACHED IS EXHIBIT "D" TO THE AFFIDAVIT OF  
EUAN REID AFFIRMED BEFORE ME THIS 13<sup>th</sup> DAY OF  
MAY, 2022



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**Dong Chen, FSA, FCIA**

Dong is a consulting actuary who joined Eckler Ltd. in 2003, working part time while finishing his university studies. Since graduating from Simon Fraser University in 2004, he has been with Eckler on a full-time basis. Dong specializes in the valuation of private and public sector pension plans. He has worked on the triennial HCV fund sufficiency reviews since 2004.

He is a Fellow of both the Society of Actuaries and the Canadian Institute of Actuaries.

THE ATTACHED IS EXHIBIT "E" TO THE AFFIDAVIT OF  
EUAN REID AFFIRMED BEFORE ME THIS 13<sup>th</sup> DAY OF  
MAY, 2022



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**Kevin Chen**

Kevin Chen joined Eckler Ltd. in 2009 as a summer student, and then commenced permanent employment in January 2010. He has an undergraduate degree in actuarial science from Simon Fraser University, and completed a Master's degree in actuarial science from the University of Waterloo in 2010. He is making good progress with his Society of Actuaries exams and focuses on technical actuarial work, mainly in the pensions area. He has worked on the 2010, 2013, 2016 and 2019 HCV fund sufficiency reviews.

PARSONS et al.  
KREPPNER et al.

vs. THE CANADIAN RED CROSS  
SOCIETY et al.

Court File No. 98-CV-141369 CP00  
98-CV-146405

Plaintiffs

Defendants

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDINGS COMMENCED AT TORONTO

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**MOTION RECORD**  
**(Joint Committee Motion to Allocate 2019**  
**Excess Capital)**

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