

**IN THE MATER OF A REFERENCE PURSUANT TO THE HEPATITIS C  
1986-1990 CLASS ACTION SETTLEMENT AGREEMENT  
(Parsons v. The Canadian Red Cross et al.  
Court File No. 98-CV-141369)**

**BETWEEN**

**Claimant File 51**

**- and -**

**The Administrator**

**(On a motion to oppose confirmation of the decision of the Honorable Robert S. Montgomery, Q.C., released on September 11, 2007)**

**Reasons for Decision**

**WINKLER C.J.O.:**

**Nature of the Motion**

1. This is a motion to oppose confirmation of the decision of a referee appointed pursuant to the terms of the Settlement Agreement in the Hepatitis C litigation for the class period January 1, 1986 to July 1, 1990. The Claimant made a claim for compensation pursuant to the Agreement which was denied by the Administrator charged with overseeing the distribution of the settlement monies. The Claimant appealed the denial to a referee in accordance with the process set out in the Agreement. The referee upheld the decision of the Administrator and denied the appeal. The Claimant now opposes confirmation of the referee's decision by this court.

**Background**

2. The Settlement Agreement is Pan-Canadian in scope and was approved by this court and also approved by courts in British Columbia and Quebec. (See *Parsons v. The Canadian Red Cross Society* (1999), 40 C.P.C. (4<sup>th</sup>) 151 (Ont. Sup. Ct.)). Under the Agreement, persons infected with Hepatitis C through a blood or specified blood product transfusion, within the period from January 1, 1986 to July 1, 1990, are entitled to varying degrees of compensation depending primarily on the progression of the Hepatitis C infection.

**Facts**

3. The Claimant seeks compensation as a Secondarily-Infected Person pursuant to the Hemophiliac HCV Plan. At issue is whether the Claimant is a "spouse" of a Primarily-Infected Person, as defined pursuant to section 1.1 of the Plan.

4. The Claimant asserts that she was in a relationship with a Primarily-Infected Person at all relevant times, and that she visited him regularly. However, the Claimant was not legally married to this person and did not live with him. As set out by the referee, the Claimant's evidence was that:

...she and the primarily-infected person did not live together and they did not merge their finances or otherwise present themselves as a cohabitating couple...

and further,

It is conceded by the claimant that the primarily-infected person continued to live with his mother during the course of their relationship...[t]hey never mixed their finances. They structured their affairs so they would not be a common law couple.

5. The Claimant's application was denied by the Administrator. The decision of the Administrator was upheld by a referee on September 11, 2007.

### **Standard of Review**

6. In a prior decision in this class proceeding, the standard of review set out in *Jordan v. McKenzie* (1987), 26 C.P.C. (2d) 193 (Ont. H.C., aff'd (1990), 39 C.P.C. (2d) 217 (C.A.) was adopted as the appropriate standard to be applied on motions by a rejected claimant to oppose confirmation of a referee's decision. In *Jordan*, Anderson J. stated that the reviewing court "ought not to interfere with the result unless there has been some error in principle demonstrated by the [referee's] reasons, some absence or excess of jurisdiction, or some patent misapprehension of the evidence."

### **Analysis**

7. In order to qualify for compensation as a Secondarily-Infected Person pursuant to section 3.02 of the Hemophilic HCV Plan, a Claimant must establish, among other things, that he or she was infected with HCV for the first time by either a Spouse or a Parent. The term "spouse" is defined in section 1.1 of the Hemophilic HCV Plan as follows:

"Spouse" means:

1. (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.

8. The Claimant appears to be arguing she qualifies as a spouse pursuant to part 1(a)(iii) of the above-mentioned definition even though she never lived with the Primarily-Infected Person. In making this argument, the Claimant asserts that the term “cohabit” does not necessarily mean to live together. Rather, she argues that the term “cohabit” is a flexible term, and that the intention of the Hemophiliac HCV Plan should be taken into account when interpreting this term.

9. Counsel for the Claimant has provided extensive written submissions regarding the meaning of the term “cohabit”. The flaw in the argument however is that “Cohabit” is in fact a defined term under the Transfused Plan. The definition is straightforward and clear, stating, in article 1.01, that:

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

10. The foregoing definition leaves little doubt that the term “cohabit”, in the context of the Transfused HCV Plan, means “to live together”. Accordingly, the Claimant’s burden is more clearly demonstrated by substituting the definition for the word “cohabited” in the relevant qualifying condition. Viewed in that manner, in order to qualify for compensation, the claimant would have to establish that she “lived together in a conjugal relationship [with the Primarily Infected Person] for at least two years”.

11. The Claimant was not able to establish that she lived with the Primarily-Infected Person. The fact that the Claimant had a relationship with the Primarily-Infected Person and spent significant time with him is not sufficient in the face of the clear requirements under the Plan. In this regard, I cannot accede to the Claimant’s submission that there is reason to deviate from these clear requirements because the definition of “cohabit” used in the Plan is the same as that used in the *Family Law Act*, R.S.O. 1990, c. F.3 and certain *FLA* cases have resulted in a more expansive definition.

12. The words of the definition of “cohabit” under the *FLA* and Article 1.01 of the Plan may well be the same but they are used in different contexts and serve different purposes. The relevant provisions of the *FLA* relating to the definition are concerned with relationships and the orderly distribution of assets and responsibilities resulting therefrom. The definitions in the Plan, on the other hand, are meant to describe, with clarity, and thereby circumscribe, the class of persons entitled to compensation from a

limited fund. Where the language used to accomplish that is clear and unambiguous, as here, there is no basis to introduce uncertainty by an expansive interpretation regardless of how similar words might be interpreted in cases dealing with extrinsic and unrelated legislation.

13. I note that the Claimant has made extensive submissions regarding the definition of the term "conjugal" but regardless of how the term "conjugal" is defined, the Claimant's application cannot succeed because she did not live with the Primarily-Infected Person. Therefore, it is unnecessary to consider the definition of the term "conjugal" for the purposes of this appeal.

### **Result**

14. In my view, the referee committed no errors in principle, with respect to jurisdiction or by misapprehending the evidence before him. Accordingly, the referee's decision is confirmed.



**Winkler C.J.O.**

**Released:** April 7, 2008