

**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 8162

- and -

The Administrator

**(On a motion to oppose confirmation of the decision of the C. Michael Mitchell,
released on February 18, 2009)**

Reasons for Decision

WINKLER J.:

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 additional 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. (4th) 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's husband passed away in 1996 after becoming infected with Hepatitis C. In 2001, the Claimant was approved under the Settlement Agreement for compensation relating to her husband's Hepatitis C infection, including compensation for

loss of services in the home.

4. The Administrator determined the Claimant's compensation in accordance with the court approved protocol regarding loss of services in the home. Under this protocol, the maximum pay period for compensation for loss of services of a deceased person is based on the life expectancy of the deceased "without reduction for any pre-existing ailment or illness (including HCV)", as set out in "the most current Canada Life Tables".

5. The Claimant now seeks additional compensation pursuant to the Settlement Agreement. In support of this request, the Claimant's son argues on behalf of the Claimant that "The life expectancy tables are an average and do not take into account that many Canadian males live well past the life expectancy average." The Claimant's son also notes that "In review of the Auditor's report on the hepcc web site there certainly appears to be enough money in the claims package to extend my mother's loss of services benefit date indefinitely."

6. In his initial request for additional compensation, dated January 4, 2008, the Claimant's son argued that additional compensation was also warranted because "there had been a slight increase in the life expectancy of an adult male based on the Canada Life Expectancy tables published by Stats Canada." However, in his letter of June 10, 2008, the Claimant's son seemed to indicate that he had resolved this issue with the Administrator. Accordingly, for the purpose of this motion, I will not consider the possible implications of an increase to the applicable life expectancy figures.

Standard of Review

7. 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

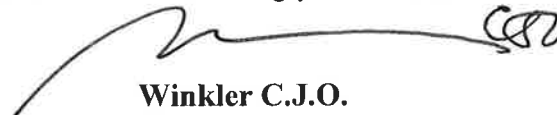
8. It is possible, as suggested by the Claimant's son, that the deceased would have lived well past the average life expectancy for Canadian males had he not been infected with Hepatitis C. However, that possibility is not a factor in determining compensation under the Settlement Agreement.

9. It must be remembered that the terms of the Settlement Agreement provide for the methods by which compensation is to be calculated and paid. In that this is a class action, the aim of using the tables to determine compensation is to provide a method of compensation that is fair for the class as a whole, rather than perfect compensation in each individual case. Individual differences may only be addressed to the extent that the

Settlement Agreement provides for such differences. In the circumstances of this appeal, there are no provisions in either the Settlement Agreement or the court approved protocols that permit this court to provide the additional compensation that the Claimant seeks. Accordingly, the Administrator and the referee were correct in denying the Claimant's request for additional compensation.

Result

10. 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.

Oct 8 / 2009

Released: