

# APPENDIX A13

## COURT APPROVED PROTOCOL RULES FOR REFERENCES AND ARBITRATIONS

REVISED AUGUST 2024

This protocol sets out the rules for References and Arbitrations pursuant to Article 10 of the Transfused HCV Plan, the Hemophiliac HCV Plan, and the HCV Late Claims Benefit Plan, including in respect of Special Distribution Benefit payments made pursuant to the 2016 Allocation Orders<sup>1</sup>, the 2017 Allocation Implementation Orders<sup>2</sup>, and the 2023 Allocation Orders<sup>3</sup>.

### RULES TO THE CONTRARY

1. These rules are rules to the contrary and supersede the applicable rules of Reference or Arbitration in the province or territory where the Reference or Arbitration is being conducted.

### REFEREE OR ARBITRATOR

2. A Reference or Arbitration will be heard by a Referee or Arbitrator appointed from the roster of Referees and Arbitrators, as established by the Court having jurisdiction in the Class Action in which the claimant is a Class Member.

### NATURE OF REVIEW

3. A Reference or Arbitration shall be a review of the Administrator's decision utilizing the simplest, least expensive, and most expeditious procedure for the Reference or Arbitration.
4. In meeting this objective, the Referee or Arbitrator may conduct the Reference or Arbitration in whatever manner he or she considers appropriate, provided that the parties are treated with equality and each party is given a fair opportunity to present his, her or its case.

### REPRESENTATION

5. The claimant may act in person on a Reference or Arbitration or be represented by a lawyer, paralegal or other professional with a previously established practice of charging for professional services, if permitted in the jurisdiction applicable to the claimant (“**Representative**”). The Representative shall notify the Administrator and the Referee or Arbitrator in writing providing the written consent of the claimant.

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<sup>1</sup> Ontario order dated August 15, 2016, British Columbia order dated August 16m 2016, and Quebec judgments dated August 15, 2016 and February 5, 2017.

<sup>2</sup> Quebec judgment dated November 29, 2017, Ontario order dated December 12, 2017, and British Columbia order dated December 19, 2017.

<sup>3</sup> Ontario order dated May 30, 2023, British Columbia order dated May30, 2023, and Quebec judgment dated May 30, 2023.

## COMMENCEMENT

6. In order to commence a Reference or Arbitration, the claimant shall file a Request for Review by an Arbitrator/Referee in the prescribed form.
7. The Administrator shall forward the claimant's file to the claimant, Fund Counsel, and the Chair of the Roster of Arbitrators/Referees within ten (10) days of receipt of the Request for Review by an Arbitrator/Referee.
8. The claimant shall have fifteen (15) days upon receipt of the claimant's file to forward any supplementary submissions to the Chair of the Roster of Arbitrators/Referees and the Administrator.
9. The Fund Counsel shall have fifteen (15) days from the date of the Administrator's receipt of the claimant's submissions to forward any submissions in reply to the Chair of the Roster of Arbitrators/Referees and the Administrator.
10. The Chair of the Roster of Arbitrators/Referees shall appoint a Referee or Arbitrator in the Province or Territory where the claimant resides or is deemed to reside to take carriage of the matter unless the claimant resides or is deemed to reside in the Province of Québec, in which case the Referee or Arbitrator shall be the Referee or Arbitrator appointed by the Québec Superior Court.
11. The Administrator shall forward to the Referee or Arbitrator appointed, the claimant, and the Fund Counsel the following:
  - (a) a copy of the Claim and the Request for Review by an Arbitrator/Referee;
  - (b) a copy of all the written submissions and material in support of the submissions and other relevant 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 (collectively, the “**Arbitration/Reference File**”).

## MEDIATIONS

12. The Arbitrator has jurisdiction to request that the parties enter into mediation. The Referee has discretion to attempt to mediate the dispute at any time in the process.

## MODE OF HEARING

13. Within five (5) days of the receipt of the Arbitration/Reference File, the Referee or Arbitrator appointed shall determine with the parties if:
  - (a) an oral hearing is necessary; or

- (b) further written submissions are necessary.
14. Notwithstanding the Referee or Arbitrator's discretion in paragraph 13, an oral in-person or virtual hearing will be required where the claimant or Fund Counsel wishes to adduce oral evidence.
  15. Where it is determined no further written submissions are to be provided and no oral hearing is required, the Referee or Arbitrator shall advise the claimant and Fund Counsel that he or she will proceed on the basis of the Arbitration/Reference File and release his or her Reasons for Decision within the next thirty (30) days.
  16. If it is determined further written submissions are required, the Referee or Arbitrator shall identify to the claimant and Fund Counsel the issues to be addressed in the written submissions and the time limits for the receipt of such submissions, including any submissions in reply (collectively, the **"Final Submissions"**).
  17. Within thirty (30) days following the receipt of the Final Submissions, the Referee or Arbitrator shall release his or her Reasons for Decision.
  18. If it is determined an oral hearing is required, the Referee or Arbitrator shall:
    - (a) determine whether the hearing shall be an in-person hearing or conducted by electronic means and the time, date and location of the hearing and give all parties fifteen (15) days prior written notice of such time, date and location;
    - (b) give directions as to the issues to be addressed at the oral hearing;
    - (c) if necessary, give directions as to the issues which require oral evidence; and
    - (d) provide any other directions, as the Referee or Arbitrator deems appropriate.
  19. If the Referee or Arbitrator directs an oral hearing, the following rules will apply, unless the Referee or Arbitrator makes an order to the contrary:
    - (a) any documentation, including medical records, medical reports and/or loss of income documentation, intended to be relied upon by the claimant shall be produced to the Administrator and the Referee or Arbitrator at least fifteen (15) days prior to the date scheduled for the oral hearing;
    - (b) the Referee or Arbitrator, upon his or her own notice or upon written request by the Administrator, has the jurisdiction to order an independent medical examination of the claimant;
    - (c) subject to issues of privilege, the Referee or Arbitrator may accept all oral or written evidence as he or she, in his or her discretion, considers proper, whether admissible in a court of law or not; and

- (d) the Referee or Arbitrator may require production of documents and examination for discovery, if necessary.
- 20. Within thirty (30) days following the completion of the oral hearing, the Referee or Arbitrator shall release his or her Reasons for Decision.

#### **REASONS FOR DECISION**

- 21. A Referee or Arbitrator may extend the time for the release of his or her Reasons for Decision by a maximum of thirty (30) additional days if he or she considers such an extension is justified, provided the Chair of the Roster of Arbitrators/Referees approves the extension prior to the expiry of thirty (30) days following the completion of the oral hearing or Final Submissions
- 22. Any Reasons for Decision by a Referee or Arbitrator shall state the facts and conclusions without identifying the claimant by name or location. A Referee or Arbitrator may rely upon earlier decisions of other Referees and Arbitrators to arrive at his or her Reasons for Decision. All Reasons for Decision shall be posted on the applicable website [www.hepc8690.ca](http://www.hepc8690.ca) or [www.hepcclassaction.ca](http://www.hepcclassaction.ca).

#### **CONFIDENTIAL PROCESS**

- 23. The Reference or Arbitration process is private, and all information and evidence utilized in the Reference or Arbitration process is confidential.