

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE) MONDAY THE 15th 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 20th to June 22nd, 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 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 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

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