

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

**BETWEEN:**

**Claimant File 70094**

**- and -**

**The Administrator**

**(On a motion to oppose confirmation of the decision of Vincent R.K. Orchard, released May 8, 2025)**

**BEFORE:** Justice Benjamin T. Glustein

**APPEARANCES:** WK, Claimant  
Belinda A. Bain, Fund Counsel  
In writing

**HEARD:** In writing

**DATE:** March 17, 2026

**REASONS FOR DECISION**

**Factual Overview and Procedural History**

- [1] This motion is brought by WK, the Claimant, to oppose confirmation of the decision of a Referee related to the administration of the 1986-1990 Hepatitis C Settlement Agreement (“Settlement Agreement”) for the Hepatitis C virus (“HCV”) Class Action.
- [2] The Settlement Agreement, approved by this court, compensates individuals who contracted HCV via a blood transfusion in Canada from January 1, 1986, up to and including July 1, 1990.
- [3] In 2017, this court approved the HCV Late Claims Benefit Plan (“the Plan”) for class members who missed the deadline to apply for compensation and did not otherwise meet the exceptions to the deadline.
- [4] An individual who is infected with HCV during the relevant time is referred to as a Primarily-Infected Person (“PIP”).

- [5] On or about March 28, 1997, WK was informed through a letter from the Canadian Red Cross Society that a blood sample he had donated on or about June 11, 1990, had tested positive for HCV. WK believes that he was infected with HCV via a blood transfusion received at the hospital.
- [6] On or about June 2023, WK submitted an Initial Claims Forms Package to the Administrator for compensation as a PIP under the Settlement Agreement. WK's position was that he was infected with HCV via a blood transfusion in Canada during the relevant time period under the Settlement Agreement (the "Class Period").
- [7] On May 14, 2024, the Administrator denied WK's Late Claim for compensation under the Plan on the basis that WK had not provided sufficient evidence to support that he was a PIP who received a blood transfusion during the Class Period.
- [8] The Administrator acknowledged that in WK's Initial Claims Package, WK indicated that he received a blood transfusion at the hospital. However, the Administrator found that when the blood bank records at the hospital were searched, there was no record that WK ever received a blood transfusion at that hospital.
- [9] Accordingly, WK's claim was denied based on Article Tran 3.01(1)(a) of the 1986-1990 Hepatitis C Settlement Agreement, Transfused Plan on the basis that there was a lack of evidence to support that WK received a blood transfusion between January 1, 1986, and July 1, 1990.
- [10] On June 10, 2024, WK submitted a Request for Review by an Arbitrator/Referee to the Hepatitis C Claims Centre. In this request for review, he wrote that he was "100% sure of receiving" a blood transfusion at the hospital during the Class Period.

### **The Referee's Decision**

- [11] On May 8, 2025, Referee Vincent R.K. Orchard denied WK's claim for compensation on the basis that there was no evidence to support that he received a blood transfusion during the Class Period.

#### *Evidence considered in Referee Orchard's Decision:*

- [12] On September 24, 2024, Referee Orchard conducted a telephone conference attended by WK and his wife, Fund Counsel, and Jennifer Langlotz, who is employed on behalf of the Administrator. During this telephone conference, Fund Counsel and the Administrator's representative agreed to process a summons, issued by Referee Orchard, to the hospital in order to locate evidence of WK's blood transfusion.
- [13] On September 30, 2024, Fund Counsel sent a summons for the hospital records to the hospital, seeking hospital, medical, and blood bank records from 1978-1990, which includes the time period when WK believed he was transfused.
- [14] On January 2, 2025, the hospital wrote to Fund Counsel confirming that no record was found of a blood transfusion received or for physician orders for "crossmatch" or transfusion for WK. The hospital produced all WK's hospital records in its possession for

the Class Period. These records included WK's 1989 hospital admission in connection with a right ankle fracture, which required surgery.

- [15] Ms. Langlotz was the first witness at the hearing before Referee Orchard. Her evidence involved a review of the hospital records. She was cross-examined by WK.
- [16] Ms. Langlotz, who is employed by a company that manages claims for compensation under the Settlement Agreement, has a professional background as an RN. She obtained her nursing degree in 1990 and has significant experience working as a nurse in Canadian hospitals, including in the ER, surgery, orthopedic surgery, burn units, urology, and in surgical recovery. She teaches RNs and RPNs and is experienced with hospital charts and blood bank records.
- [17] At the hearing, Ms. Langlotz referred to several relevant records including the following:
- (a) The CBS Traceback completed for the purpose of the Litigation Notification Program. In this record, the CBS concluded on the basis of their search for the patient's blood bank records that "the patient was not transfused." This transfusion summary and the CBS letter were both dated 2024-05-10;
  - (b) WK's record of admission to the ER on May 11, 1989, at 19:45 for a "right ankle injury and a history of 'twisted ankle playing soccer'";
  - (c) A May 14, 1989, discharge summary related to hospital admission on May 11, 1989, for the displaced ankle fracture. The summary indicates that surgery was performed for "an open reduction and internal fixation of the displaced ankle fracture;" that "[l]aboratory results were normal", and that "[p]ost-operatively the patient did well with no specific problems. WK was discharged home on May 14, 1989;
  - (d) The May 11 and 12, 1989 doctor's orders, which "did not contain any entry for a blood transfusion." Further, the surgeon "did not order any steps related to a transfusion";
  - (e) The Operative Report, which also had no record of a blood transfusion;
  - (f) The pre-operative nursing checklist, which is a "running checklist" that recorded "that a Crossmatch for blood from the hospital Blood Bank Lab was not required nor were any other lab tests required"; and
  - (g) The Intravenous Therapy (IV Therapy) record of May 12 and May 13, 1989, which referred to "all IV solutions given to the patient during his entire stay." This IV Therapy Record did not indicate that blood was given to the patient.
- [18] Ms. Langlotz noted that no blood transfusion was recorded in WK's May 14, 1989, discharge summary. Ms. Langlotz testified that the discharge summary, included in Exhibit 1, would indicate if a patient had received a blood transfusion. She testified that "in all her years of experience, she has not seen a medical chart where a transfusion was performed and not recorded in the chart records." She further testified that a blood transfusion is not typically required for orthopedic surgery.

[19] Ms. Langlotz noted that a crossmatch for blood from the hospital blood bank was not required for WK. She testified that a crossmatch is a “lab test done prior to getting blood from the Blood Bank if a transfusion is required.” Because the “blood must be a match with a patient’s blood [...] [i]t is an essential step for a transfusion.”

[20] WK cross-examined Ms. Langlotz. WK asked Ms. Langlotz if it was possible that no record of a blood transfusion existed “for reason of ‘reprisal.’” Ms. Langlotz said this was not possible. [21] WK asked Ms. Langlotz about blood testing for HCV in 1989 in hospitals. She said that, to her knowledge, “a test of blood before a blood transfusion would only be done if ordered by the doctor and her experience was that such a test would only be ordered if the doctor suspected problems with the patient’s liver.”

[22] WK suggested to Ms. Langlotz that the hospital records were incorrect. He asserted that, contrary to the hospital records, both he and his wife believed a blood transfusion had occurred. WK also asked Ms. Langlotz if “it has happened that nurses don’t follow doctor’s orders.” According to Referee Orchard, Ms. Langlotz was “not aware of nurses deliberately not following doctor’s orders just as she was not aware of entries of procedures performed in a hospital not being recorded intentionally for reasons of reprisals.”

[23] Referee Orchard noted that the questions posed by WK and his wife during crossexamination verged on argument and that it would have been inappropriate for Ms. Langlotz, a witness, “to respond to an argument about the honest belief of the Claimant and his wife that a significant procedure such as a blood transfusion was not recorded in the records by mistake when the records are consistent as recorded in numerous places in the medical chart that no blood transfusion ever took place.”

*Referee Orchard’s Reasons:*

[24] Referee Orchard dismissed WK’s Claim as it did not meet the requirements to qualify for compensation under the Plan. Referee Orchard found that WK had an honestly held belief that he received a blood transfusion from the hospital in May 1989. However, he held that WK’s honestly held belief was not enough to ground the Claim. Specifically, WK had not provided admissible evidence that he was transfused during the Class Period, as required by the Plan.

[25] Referee Orchard referred to Article 3.01 Tran(1)(a) of the Plan, which requires proof by way of medical records to demonstrate that a Claimant received a blood transfusion during the Class Period. In his view, the “drafters of the Plan decided that personal recollections of the Claimants or any Family Members is not admissible evidence to establish, on a balance of probabilities, that the Claimant received a Blood transfusion in Canada during the Class Period, if the Claimant could not comply with the provisions of Article 3.01(a).” WK did not produce any such records to the Administrator or at his appeal to the Referee.

[26] Referee Orchard further referred to Article 3.01 Tran(2), which outlines that if a Claimant cannot comply with Article 3.01 Tran(1)(a), they must deliver corroborating evidence independent of the personal recollection to establish the blood transfusion occurred during the Class Period. He found that WK had not satisfied Articles 3.01 Tran(1) or (2), as he had no proof of the transfusion beyond his and his wife’s recollections.

## Issue

[27] The legal issue for my determination is whether the Referee erred in concluding that WK had not provided admissible evidence that WK received a blood transfusion during the Class Period.

## Standard of Review

[28] 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.) applies to this motion. This standard has been adopted, in prior decisions under the Settlement Agreement arising out of this class proceeding, as the appropriate standard to be applied on motions by a Claimant opposing confirmation of a Referee's decision.<sup>1</sup>

[29] The applicable standard of review provides 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."

## Position of the Parties

### *The Claimant's Position:*

[30] WK's position is that Referee Orchard did not properly assess the evidence in this case. WK submits that Referee Orchard did not meaningfully engage with a study WK provided during the hearing by The American Society of Hematology titled "Registration Errors Among Patients Receiving Blood Transfusions: A National Analysis From 2008-2017."<sup>2</sup>

[31] WK further submits that Referee Orchard misapprehended the medical records in this case. According to the Claimant, Referee Orchard found that there was "no blood work taken or done." However, he contends that, on page 108 of the appeal record, there is evidence of blood and urine work.

[32] WK says that he received someone else's platelet therapy, even though this is not provided for in the hospital records.

### *Fund Counsel's Position:*

[33] Fund Counsel's position is, that while it is undisputed that WK was at one time infected with HCV, there is no evidence to suggest that he received a blood transfusion during the Class Period. Accordingly, he is not entitled to compensation under the Settlement Agreement.

[34] Fund Counsel notes that while WK believes he received a blood transfusion at the hospital, the blood bank and patient records at this hospital indicate that he was not transfused. She further submits that there "is no evidence in any of the available medical documentation of a blood

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<sup>1</sup> Reasons for Decision of Winkler C.J.O, [Claimant File 7518](#) dated March 25, 2010 (On a motion to oppose confirmation of the decision of Daniel Shapiro, Q.C., released July 13, 2006), at para. 14; Reasons for Decision of Perell J., [Claimant File 7438](#), dated December 16, 2013 (On a motion to oppose confirmation of the decision of the Referee, C. Michael Mitchell, released on November 14, 2013), at para. 7; *HCV Settlement Agreement Claim No. 11910*, [2004 BCSC 1431](#), at para. 2.

<sup>2</sup> This study was not included in the appeal file. It can be found online independently at the following link: <https://pubmed.ncbi.nlm.nih.gov/32996605/>.

transfusion received by [WK] during the Class Period.” She further states that there is no corroborating evidence independent of his or his family’s recollection that a blood transfusion occurred.

[35] Fund Counsel notes that Article 3.01Tran of the Plan outlines that, to be eligible for compensation, a Claimant must deliver corroborating evidence, independent of their or their family member’s personal recollection, to establish that on a balance of probabilities he or she received a blood transfusion in Canada during the Class Period. She goes on to submit that, because there is no evidence of WK’s blood transfusion during the Class Period, he has not fulfilled this requirement.

### **Disposition on Appeal**

[36] For the reasons outlined below, I confirm the disposition of the Referee’s decision and dismiss the Claimant’s motion. The Referee did not err in his finding that the Claimant failed to provide admissible evidence sufficient to qualify for compensation under the Plan.

### **Reasons and Legal Analysis**

[37] Article 3.01Tran(1) of the Plan sets out a person’s eligibility to make a Late Claim as a PIP and the required proof for compensation:

#### **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 Héma-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.

[Emphasis added.]

[38] Article 3.01Tran(2) of the Plan provides an alternative to Claimants who cannot provide one of the official records referred to in 3.01Tran(1)(a). It reads as follows:

(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.

[Emphasis added.]

- [39] The Referee made no error in his interpretation of these Articles.
- [40] WK did not provide evidence that he received a blood transfusion in Canada during the Class Period by way of any of the enumerated records outlined in Article 3.01Tran(1)(a).
- [41] Nor did WK provide any evidence that could corroborate his recollection to establish on a balance of probabilities that he received a blood transfusion in Canada during the Class Period, as provided for in Article 3.01Tran(2). WK and his wife's recollections do not meet the evidentiary threshold as required by this provision.
- [42] WK's Notice of Motion indicates that the Referee should have considered other evidence, such as published studies and records of bodily samples ordered, to determine WK's eligibility for compensation. I disagree.
- [43] The Referee was not permitted to rely on the American Society of Hematology's report produced by WK in his assessment of whether WK was eligible to make a Claim and be compensated under the Plan.
- [44] Similarly, the Referee was not permitted to rely on WK's recollection or honestly held belief that he received someone else's platelet therapy in the absence of any hospital records or corroborating evidence.
- [45] On my review of the record, I find that the Referee did not misapprehend the evidence available to him. Page 108 of the appeal record, referenced in WK's Notice of Motion, indicates that he had a "URINAL/UR/STOOL HEMATOLOGY" test during his May 1989 hospital stay. WK indicates that the Referee should have relied on this document in coming to his decision. I disagree. These records do not reveal whether WK received a blood transfusion.
- [46] I find no error in Referee Orchard's assessment of the evidence in this case. While the appeal record before me indicates that WK has contracted HCV, there is no admissible evidence that he received a blood transfusion in Canada during the Class Period. He has not provided medical, clinical, laboratory, hospital, Canadian Red Cross, Canadian Blood Service, or HémaQuébec records of any such blood transfusion. He has also not provided any corroborating evidence outside of his or his family's personal recollections.

## **Conclusion**

- [47] Referee Orchard made no error when he found that WK had not provided admissible evidence that he received a blood transfusion in Canada during the Class Period. Referee Orchard is bound to follow Article three of the Plan and was not permitted to rely on

documents such as published third party studies or tests of bodily samples unrelated to a documented blood transfusion in coming to his decision. Nor was Referee Orchard permitted to rely on WK's or his family's personal recollection that WK was transfused. Because of the lack of admissible evidence before him, Referee Orchard was required to rule as he did.

[48] For these reasons, I dismiss the motion to oppose the Referee's decision.

[49] The court extends its greatest sympathies to WK for the pain he has suffered due to his illness. This legal finding is in no way a comment on what he has endured.

A handwritten signature in black ink, appearing to read "Benjamin J. Glustein". The signature is written in a cursive style with a horizontal line underneath the name.

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Justice Glustein

**Released:** March 17, 2026