

**1986-1990 Hepatitis C Class Action**

**Location of transfusions: Province of New Brunswick**

**Appeal of the Administrator's decision of March 28, 2023**

**Claim No. 70324**

**Date of the Hearing: October 21, 2025**

**Personal representative: present in person**

**For the Administrator**

**Belinda A. Bain**

**Alexandre Farag**

**Arbitrator: J. William Collette, KC**

**Date of the Arbitrator's decision: December 15, 2025**

### **Introduction**

1. The personal representative submitted a compensation claim under the Settlement Agreement related to the 1986-1990 Hepatitis C Class Action. She alleged that her deceased son (“the deceased”) received blood contaminated with hepatitis C (hereinafter the arbitrator sometimes uses the acronym “HCV” to refer to the hepatitis C virus) and that she qualifies for compensation under the Class Action.
2. The application was initially denied by the Administrator in its decision dated March 28, 2023, because there was no evidence that the deceased had received blood transfusions during the period covered by the Class Action.
3. Although it is now clear that the deceased did indeed receive blood transfusions during the period covered by the Class Action, there has never been any evidence that he was infected with hepatitis C before his death. Furthermore, there is no evidence that hepatitis C contributed to his death.
4. On the contrary, the evidence before the Arbitrator is that the deceased died of leukemia as an immediate cause and of Fanconi’s anemia as a prior cause (Exhibit 4, p. 51).
5. For these reasons, the Arbitrator’s decision confirms that the personal representative is not entitled to compensation from the Settlement Agreement Fund for the 1986-1990 Hepatitis C Class Action.

### **Settlement Agreement and Applicable Plan**

6. The Settlement Agreement incorporates two different “plans”. The plan that applies to this case is the Transfused HCV Plan (hereinafter referred to as the “Plan”).
7. The relevant provisions of the Plan provide in part as follows:

#### ***1.01 Definitions...***

***“Primarily-Infected Person,”*** means a person who received a Blood transfusion in Canada during the Class Period and who is or was infected with HCV....

...

#### ***3.01 Claim by Primarily-Infected Person***

1. *A person claiming to be a Primarily-Infected Person must deliver to the Administrator an application form prescribed by the Administrator together with:*
  - a. *medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Québec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period;*
  - b. *an HCV Antibody Test report, PCR Test report or similar test report pertaining to the claimant;*
  - c. *...(not relevant)*
2. *Notwithstanding the provisions of Section 3.01(1)(a), if a claimant cannot comply with the provisions of*

*Section 3.01(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 transfusion in Canada during the Class Period.*

...

### **3.05 Claim by HCV Personal Representative of HCV Infected Person**

1. *A person claiming to be the HCV Personal Representative of a HCV Infected Person who has died must deliver to the Administrator, within three years after the death of such HCV Infected Person or within two years after the Approval Date, whichever event is the last to occur, an application form prescribed by the Administrator together with*
  - :*
  - a. *proof that the death of the HCV Infected Person was caused by his or her infection with HCV;*
  - b. *unless the required proof has already been previously delivered to the Administrator:*
    - i. *if the deceased was a Primarily-Infected Person, the proof required by Sections 3.01 and 3.03; or*
    - ii. *... (not relevant)*
2. *A person claiming to be the HCV Personal Representative of a HCV Infected Person who is a minor or incompetent must deliver to the Administrator an application form prescribed by the Administrator together with:*
  - a. *unless the required proof has already been previously delivered to the Administrator:*

- i. if the HCV Infected Person is a Primarily-Infected Person, the proof required by Sections 3.01 and 3.03; or
  - ii. ... (not relevant)
- 3. Notwithstanding the provisions of Section 3.01(1)(b), if a deceased Primarily-Infected Person was not tested for the HCV antibody or HCV the HCV Personal Representative of such deceased Primarily-Infected Person may deliver, instead of the evidence referred to in Section 3.01(1)(b), evidence of any one of the following:
  - a. a liver biopsy consistent with HCV in the absence of any other cause of chronic hepatitis;
  - b. an episode of jaundice within three months of a Blood transfusion in the absence of any other cause; or
  - c. a diagnosis of cirrhosis in the absence of any other cause.

**For greater certainty, nothing in this Section will relieve any claimant from the requirement to prove that the death of the Primarily-Infected Person was caused by his or her infection with HCV.**

- 8. In accordance with these provisions, the personal representative of a person infected with HCV must provide (among other evidence) the following in order to be eligible for compensation under the Program:
  - Proof that the deceased's death was caused by his or her infection with HCV (Section 3.05(1)(a);

- Proof that the deceased received a blood transfusion in Canada during the period covered by the Class Action (sections 3.05(1)(b)(i) and 3.01(1)(a)); **and**
- An HCV Antibody Test report, a PCR Test report or similar test report demonstrating that the deceased was infected with HCV (sections 3.05(1)(b)(i) and 3.01(1)(b)).

**The claim**

9. Unfortunately, the deceased suffered from Fanconi's anemia (a bone marrow disease) and passed away from leukemia on January 7, 1987, at the age of 13.
10. On the personal representative's general information form (Exhibit 4 – appeal record p. 58), it is indicated that the deceased received blood four times during the period covered by the Class Action, and several times before the period covered by the Class Action. She also stated that **the deceased had not had a positive hepatitis C antibody test, that no test showed that the hepatitis C virus was in his blood, and that he had not been treated for hepatitis C prior to his death.**
11. As a result of the traceability report prepared after and as a result of this appeal (documents 2 and 3), we know that the deceased received 31 units of blood in 1986/1987 at the Regional Hospital in New Brunswick. Of these 31 units, 18 donors were HCV seronegative, 3

donors were deceased (HCV status unknown), 8 donors could not be located, and 2 donors did not respond to the screening request.

12. The personal representative suggests that since there are unknowns in the results of these tests, this is sufficient to rule in her favour against the Administrator.

**The evidence presented at the hearing on October 21, 2025 and analysis**

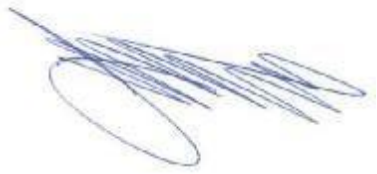
13. The Administrator's representatives accepted at the hearing and before the hearing that the deceased received blood transfusions during the period covered by the Class Action. These transfusions were necessary to treat Fanconi's anemia and leukemia.
14. The personal representative testified that the deceased had jaundice at the time of his death. For her, it was a sign that the deceased had hepatitis C at the time of death.
15. According to the 1986-1990 Hepatitis C Class Actions Settlement (see Section 3.05(3)b) above in this decision), in the absence of any other cause for the jaundice, its presence could be evidence of a hepatitis C infection. However, the documents on the record show that the deceased was infected with hepatitis A a few years before his death (exhibit 4 – appeal record p. 28). Hepatitis A can cause jaundice. In addition, leukemia itself can also cause liver problems, including jaundice.

16. The personal representative and the witnesses all spoke of the sudden decline of the deceased. Even though he had a significant genetic illness, it appeared that he was full of energy one moment and seriously ill the next. The personal representative attributed the sudden death to the recent transfusions. According to her, the fact that some of the blood donors for the transfusions cannot be declared seronegative should be enough for her to qualify for compensation. However, the Plan requires positive proof of infection with hepatitis C—proof that does not exist in this case.
17. There is no evidence that the deceased was infected with hepatitis C.
18. As we can see, the unknowns in the test results alone are not sufficient to rule in favour of the personal representative; it is still her burden to prove qualification under the Plan.
19. To date, the personal representative has not been able to provide evidence that the deceased's death was caused by his HCV infection or even that he was infected with HCV. Therefore, the personal representative is not eligible for compensation under the terms of the Settlement Agreement.
20. The Administrator had no choice but to comply with the provisions of the Plan and deny the personal representative's application.
21. Unfortunately, the Arbitrator is in the same position. There is no evidence that the deceased was infected with hepatitis C. There is no evidence that his death was directly or indirectly related to hepatitis C.



22. The Arbitrator must also respect the provisions of the Plan. For these reasons, the application must be denied.

Done in Moncton, NB, this 15th of December, 2025



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J. William Collette, KC, Arbitrator