

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

Edward Killough, Patricia Nicholson, Irene Fead, Daphne Martin,  
Deborah Lutz, and Melanie Crehan

PLAINTIFFS

AND:

The Canadian Red Cross Society, Her Majesty the Queen in Right  
of British Columbia, and the Attorney General of Canada

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

**DISTRIBUTION PROTOCOL FOR THE SETTLEMENT WITH  
HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA**

**Introduction**

1. This document is the protocol to be followed by the Administrator for the distribution of funds from the settlement with Her Majesty the Queen in Right of British Columbia (the "Province"). The Settlement Fund means the Settlement Fund as defined in the Settlement Agreement with the Province plus interest at a rate of prime minus 2% from September 29, 2000 until the date of payment to Class Counsel. The intent of this document is to provide a fair, expeditious and cost-effective distribution procedure. This protocol should be interpreted with these goals in mind.
2. Capitalized terms have the same meanings as set out in the Order of this Court approving the settlement with the Province including the meanings that are incorporated in that Order by reference to other documents.

## **Eligibility**

3. A member of the Primary Class shall be eligible for payment from the settlement with the Province if that person has been accepted as eligible for payment from the settlement with the Red Cross pursuant to the Distribution Protocol that is attached as Schedule 2 of the Order approving the settlements with the Red Cross and the Province.
4. Members of the Derivative Class are not eligible for payment from the settlement with the Province.
5. Notwithstanding the above, no Class Member shall be eligible for payment from the settlement with the Province if the Class Member is eligible for payment from any program that makes payments to persons who were infected with HCV as a result of the receipt of Blood elsewhere than in the Province of British Columbia. This exclusion includes, without limitation, eligibility for payment from the Ontario Hepatitis C Assistance Plan, the Manitoba Hepatitis C Plan and the Quebec Hepatitis C Plan.
6. No Class Member shall be eligible for payment from the settlement with the Province if the Class Member is eligible for payment from the FPT 1986-1990 Settlement.
7. Any decision by the Administrator to deny a claim may be appealed by motion to the Court on notice to the Administrator, Class Counsel and the Province.

## **Distribution**

8. The deadlines for filing claims shall be the same as those set for the settlement with the Red Cross. Payments to eligible members of the Primary Class shall be in installments on the same dates as the distribution of the settlement with the Red Cross.
9. Provided the Province is satisfied as to the level of participation in the settlement (pursuant to Clause 27 of the Settlement Agreement attached as Schedule 4 to the Order), it shall pay the Settlement Fund, in trust, to Class Counsel on or before June 14, 2002. The Province may, in its sole discretion, pay the Settlement Fund, in trust, to Class Counsel prior to the expiry of the 45 day time period set out in Clause 27(b) of the Settlement Agreement.
10. If the Settlement Fund is paid to Class Counsel prior to the Initial Distribution of the Red Cross settlement, payments to eligible members of the Primary Class shall be in installments on the same dates as the distribution of the Red Cross settlement. If the Settlement Fund is paid to Class Counsel after the Initial

Distribution of the Red Cross settlement, the first payments to eligible members of the Primary Class shall be in an installment on the day following the payment to Class Counsel and the remaining installments shall be on the same dates as the distribution of the Red Cross settlement.

11. The settlement fund shall be held in trust by the Administrator and shall be invested in conservative, low risk investments. All Income earned on the settlement fund shall be added to the fund for distribution to class members in the manner set out below.
12. The Initial Distribution shall be calculated by dividing 50% of the settlement fund (after provision for payment of the Administrator's accounts and Class Counsel's fees and disbursements) into equal shares among all accepted claims that were filed on or before the Initial Deadline (as defined in the Distribution Protocol for the settlement with the Red Cross).
13. Members of the Primary Class who file their claims after the Initial Deadline shall have their claims paid in a Second Distribution on the same date that the Second Distribution is made in the settlement with the Red Cross. These Late Claimants shall be paid the same amount that was paid to accepted claimants in the Initial Distribution if there are sufficient funds to make such payments and still retain 10% of the remaining settlement fund (after provision for payment of the Administrator's accounts). If there are insufficient funds to make such equal payments, the payments shall be pro-rated so as to retain 10% of the remaining settlement fund. If, after providing for payment to Late Claimants, there remains more than 10% of the settlement fund, the amount over 10% shall be paid out equally to all members of the Primary Class.
14. The Administrator shall continue to receive claims from members of the Primary Class. As such claims are accepted, they shall be paid the lesser of
  - a. the total paid in the First and Second Installments to members of the Primary Class whose claims were filed on or before the Initial Deadline, or
  - b. the total paid to Late Claimants in the Second Installment.
15. On the Final Distribution date of the settlement with the Red Cross, there shall be final distribution of all funds remaining in the settlement with the Province. The amount remaining shall be used first to equalize the payments to members of the Primary Class who qualified as Late Claimants pursuant to paragraphs 10 or 11 if such payments were less than the amounts paid to members of the Primary Class under paragraph 9. If there are insufficient funds available to make these equalization payments, the available funds shall be divided equally among all class members entitled to an equalization payment. If, after such equalization payments, there are funds remaining, a Final Distribution shall be calculated as

the remainder of the settlement funds divided into equal shares among all class members whose claims for payment have been accepted.

16. Any amount payable to a person under a legal disability will be paid to the Public Guardian and Trustee or to such other person as the law provides.

### **Expenses of the Administrator**

17. All fees and expenses of the Administrator relating to administration of the settlement with the Province shall be paid out of the settlement fund on a monthly basis commencing on the date that the funds are transferred from the Province. Accounts for fees and expenses shall be submitted to Class Counsel who may, in his discretion, authorize the payment of the account or refer the account for assessment by the Court.

### **Appeals**

18. Any decision of the Administrator regarding the claim of a Class Member may be appealed by the Class Member by motion to the Court on notice to the Administrator, Class Counsel and the Province.

### **Directions**

19. The Administrator may seek directions on any matter relating to its duties hereunder from the Court on notice to Class Counsel and the Province.

### **Dates**

20. If any date referred to in this protocol falls on a Saturday, Sunday or Statutory Holiday, that date shall be interpreted as being the next business day.

### **Reporting**

21. The Administrator shall report on a quarterly basis to the Court, Class Counsel and the Province. Such reports shall include the number of claims received, the number accepted, the fees and expenses of the Administrator, and any other

matters of significance relating the settlement implementation. The Administrator shall, if requested, meet annually with Class Counsel and the Province to report on the progress and status of settlement implementation and to discuss issues relating to settlement implementation.