

**Schedule 3 to the Judgment of Justice W.K. Winkler  
dated June 21, 2001**

**Trust Agreement**

**TRANSFUSION AND HIV CLAIMANTS' TRUST FUND**  
**TRUST AGREEMENT**

**THIS AGREEMENT** made as of this      day of      , 2001

**B E T W E E N:**

**THE CANADIAN RED CROSS SOCIETY**, a company incorporated under the laws of Canada (hereinafter referred to as the "Settlor")

- and -

**THE HONOURABLE PETER CORY** (hereinafter referred to as the "Trustee")

**WHEREAS:**

- A. The Settlor wishes to establish a fund for the benefit of those Transfusion Claimants and HIV Claimants (as defined herein) who have been or who will be determined to be Beneficiaries (as defined herein), and for this purpose has transferred and delivered to the Trustee and the Trustee acknowledges receipt of certain property, namely: the sum of \$10.00;
- B. As set out in the Plan of Arrangement (as defined herein) the Settlor will contribute the Plan Funds (as defined herein), which funds as and when received by the Trustee, together with the income thereon, will constitute a trust fund to be held, invested and administered for the Beneficiaries;
- C. The Settlor desires the Trustee to hold and administer such trust fund and the Trustee is willing to hold and administer such trust fund pursuant to the terms and provisions of this agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES AS FOLLOWS:**

**1. Definitions**

In this Agreement, and in any instrument supplementary or ancillary hereto:

- (a) **“Beneficiaries”** means those Transfusion Claimants and HIV Claimants who are entitled to receive a distribution from the Trust Fund in accordance with the Distribution Scheme.
- (b) **“Distribution Scheme”** means the process for determining the entitlement to and the quantum of distributions from the Trust Fund as more particularly set out in paragraph 5 of this Agreement.
- (c) **“Distribution Protocol”** means a distribution mechanism as more particularly set out in the applicable Schedule attached to this Agreement for certain of the funds contemplated in the Plan of Arrangement to be administered through the Trust.
- (d) **“HIV Claimants”** has the meaning set out in the Plan of Arrangement.
- (e) **“Income Tax Act”** means the *Income Tax Act* of Canada as amended from time to time
- (f) **“Notice Group”** means
  - (i) Siskind Cromarty Ivey & Dowler LLP or any successor representative counsel of the Beneficiaries who are referred to in the CJD Distribution Protocol attached hereto as Schedule “A”;
  - (ii) Class Counsel as described in the HCV Distribution Protocol attached hereto as Schedule “B”;
  - (iii) Mr. Kenneth Arenson and Ms Dawna Ring, as counsel on behalf of HIV Claimants; and
  - (iv) The Public Guardian and Trustee

provided that each member of the Notice Group listed above, other than The Public Guardian and Trustee, shall only be a member of the Notice Group and shall only have rights under this Agreement as a member of the Notice Group for so long as there are funds in the Trust Fund available for those Beneficiaries to whom such member's services or role relates.

- (g) **"Plan Funds"** means the property paid and assigned to the Trust Fund pursuant to Section 5 of the Plan of Arrangement.
- (h) **"Plan of Arrangement"** means the Amended Plan of Compromise and Arrangement dated July 31, 2000 as Amended and Approved at Meeting of the Creditors held on August 30, 2000, and sanctioned by the Ontario Superior Court of Justice by order dated September 14, 2000.
- (i) **"Termination Date"** has the meaning set out in paragraph 21(a) of this Agreement.
- (j) **"Transfusion Claimants"** has the meaning set out in the Plan of Arrangement.
- (k) **"Trust Counsel"** means Mr. Michael Royce of the law firm Lenczner Slaght Royce Smith Griffin and such other lawyers at that firm who may assist Mr. Royce under his supervision.
- (l) **"Trust Fund"** means the property settled upon the Trustee by the Settlor on or before the date of this Agreement together with all amounts accumulated by the Trustee and such additional property, which the Settlor or any other person, corporation, estate or trust may at any time and from time to time, with the approval of the Trustee, transfer, assign, convey or deliver to the Trustee to be held by it on the terms of this trust, and includes all property, into which the same may be converted by the Trustee, at any time or from time to time, as well as any additions or accretions thereto.
- (m) **"Trustee"** means any and all original, appointed or substituted Trustee and includes, without limitation, multiple Trustees.

2. **Name of Trust**

The trust evidenced by this Agreement shall be known as the "Transfusion and HIV Claimants' Trust Fund".

3. **Trust Fund**

The Trust Fund, into which shall be paid the Plan Funds, shall be administered by the Trustee. The Plan Funds in the form of money or property received by the Trustee, and the earnings, profits and increments thereto, shall constitute the Trust Fund for the purposes of this Agreement. The Trust Fund shall constitute a trust fund held by the Trustee and shall not form any part of the revenue or assets of the Settlor. At no time shall any part of the Trust Fund be used for, or diverted to purposes other than those pursuant to the terms of this Agreement. No person shall have any interest in or right to the Trust Fund or any part thereof, except as expressly provided in this Agreement. The Trust Fund shall be vested, administered and managed by the Trustee in accordance with this Agreement. Each Beneficiary or other person who shall claim the right to any payment under the Distribution Scheme shall be entitled to look only to the Trust Fund for such payment. The making of payments under the Distribution Scheme shall be the obligation of the Trust Fund and not of the Trustee, any Plan Participant, the Settlor or any present and former director, governor, officer or employee of the Settlor.

4. **Acceptance of Trust**

The Trustee, by joining in the execution of this Agreement, signifies its acceptance of this trust and the duties and obligations contained herein.

5. **Distribution Scheme**

The Trust Fund will be distributed in accordance with the provisions of this Agreement, including, where relevant, the provisions of the Distribution Protocols annexed hereto as Schedules "A" and "B", together with relevant provisions of the Plan of Arrangement (collectively, the "Distribution Scheme"). In particular, but without limiting the foregoing, distributions to HIV Claimants and Other Transfusion Claimants shall be determined, administered and paid in accordance with Article 5 of the Plan of Arrangement.

**6. Payments**

- (a) The Trustee shall invest and keep the Trust Fund invested and until the Termination Date shall make all payments out of the Trust Fund which are required to be paid to the Beneficiaries in accordance with the terms and provisions of the Distribution Scheme.
- (b) The Trustee shall maintain records indicating payments to the Beneficiaries;
- (c) All amounts to be paid or transferred by the Trustee to a Beneficiary may be made from income or capital, as the Trustee in its sole discretion determines and shall be satisfied in cash unless the Trustee determines to satisfy in specie any amount or amounts so payable; and
- (d) The Trustee may accumulate such portions of the income of the Trust Fund as it, in its sole discretion, determines from time to time and add it to the capital of the Trust Fund.

**7. Powers of the Trustee and the Administration and Investment of the Trust Fund**

Subject to any restrictions contained herein or in the Distribution Scheme, the Trustee shall have, in addition to any other powers and authority to which trustees may be entitled by law, full power and authority to decide and determine any question with respect to the investment and administration of the Trust Fund, including without limiting the generality of the foregoing, the following specific powers and authority:

**(a) Power to Invest**

Without being required to adhere to all or any particular portion of the investment criteria or diversification requirements set out in the *Trustee Act*, R.S.O. 1990, c.T.23 as amended from time to time, to retain, invest and reinvest any part of the Trust Fund in bonds, debentures, or other evidences of indebtedness of or guaranteed by the Government of Canada, or a government of any province of Canada, guaranteed investment certificates of any trust corporation that is registered under the laws of

Canada or a province of Canada, and bank deposit receipts, deposit notes, certificates of deposits, acceptances or other similar instruments issued or endorsed by any bank listed in Schedule I or II to the *Bank Act* (Canada) and to retain and invest such part of the Trust Fund as the Trustee may from time to time deem necessary in cash or on deposit in any bank or trust company licensed to carry on business in Canada or any province thereof and with respect to these investments;

- (i) to alter or vary such investments from time to time in a like manner;
- (ii) to retain such investments for such length of time as the Trustee determines; and
- (iii) to delegate management and authority to discretionary managers of investment funds as the Trustee determines appropriate.

**(b) Power To Purchase Annuities**

To purchase annuities for any one or more of the Beneficiaries and to select such type of annuity and mode of payment therefor as the Trustee determines.

**(c) Power To Insure**

To insure any property of the Trust Fund to whatever limits the Trustee deems advisable but the Trustee shall not be liable for any omission to purchase any such insurance or to purchase a particular amount of such insurance.

**(d) Power To Lease**

To lease any interest in real property for such term of months or years, to begin presently or in the future, as the Trustee determines, notwithstanding that the term of such lease extends beyond the duration of this trust; such lease may provide for options of renewal and/or purchase or for the purchase or disposal of buildings thereon or to be placed thereon, upon such terms and conditions as the Trustee determines.

**(e) Power To Make Payments For Persons under Legal Disability**

To make any payments or deliver any assets to or for any person under the age of majority or otherwise under legal disability ("LD Person") by making such payments or delivering such assets to any one (1) or more of the following distributees:

- (i) the LD Person, directly;
- (ii) a parent, custodian or guardian, in fact or in law, of the LD Person;
- (iii) any other person, including without limitation, an adult relative or friend of the LD Person, whether or not the legal guardian of the LD Person who, in the sole and unfettered opinion of the Trustee, shall have the care and custody of the LD Person; or
- (iv) any other person, including without limitation, an adult relative or friend of the LD Person, who has provided an asset to, made a payment for, performed a service for or otherwise provided a benefit to such LD Person since the settlement of this Trust, upon receipt of evidence thereof acceptable to the Trustee;

whose receipt shall be a sufficient discharge to the Trustee who shall not be bound to see to the application of any payments made or assets so delivered.

**(f) Power To Withhold For Payment Of Debts**

To prevent or withhold distributions of the capital of the Trust Fund, whether such distributions may be directed pursuant to this Agreement, by statute, by any Court, or by operation of law or equity, prior to the repayment or liquidation from the Trust Fund of any debt, note, bond, mortgage, pledge, obligation or other encumbrance or liability incurred by this trust or by the Trustee in the administration of this trust.



**(g) Power To Determine Dividends**

To determine whether any dividend or dividends received by the Trustee pursuant to Sections 83, 84 or 88 of the *Income Tax Act* shall constitute income or capital, or partly one and partly the other.

**(h) Power To Determine Income/Capital**

To determine what shall be allocated to the capital accounts and what shall be allocated to the income accounts of the Trust Fund, or partly one and partly the other, and to charge disbursements to income or capital, or partly one and partly the other and in determining the allocation between income and capital of the Trust Fund, the Trustee shall not be obliged to amortize premiums paid for securities or to take account of discounts.

**(i) Power to Allocate Capital Gains**

To allocate all or a portion of the net capital gains derived from the Trust Fund to the Beneficiaries, or some one or more of them, as the Trustee determines in its absolute discretion for the purposes of and as permitted by the *Income Tax Act*.

**(j) Power To Make Elections**

To make, or refrain from making, any elections, allocations, determinations and designations permitted or contemplated by any statute or regulation of any jurisdiction; and in connection with any allocation to be made jointly with any person under the age of majority (or otherwise under legal disability), to make such election jointly with the parent, custodian or guardian, in fact or in law, who shall be deemed to have the authority to make such election on behalf of such person.

**(k) Power to Set Up Reserves**

To set up reserves for municipal, income and other taxes, assessments, insurance, repairs, depletion, depreciation, obsolescence and for such other purposes as the Trustees determine and to claim any such reserves as deductions from the income of the Trust Fund for the purposes of and as permitted by the *Income Tax Act*.

**(l) Power To Deduct Tax For Non-Resident**

To deduct from the income paid or payable to a Beneficiary resident outside of Canada, any income tax paid or payable by this trust with respect to such income so that the burden of such tax will be borne solely by such non-resident Beneficiary and not by any other Beneficiary of this trust.

**(m) Power To Retain Agents/Employees**

To employ or retain and pay any agents, managers, employees, or other persons, firms or corporations in connection with the administration of this trust or any asset forming part of the Trust Fund and to delegate duties and powers to them without liability for such delegation.

**(n) Power To Retain Experts**

To employ such attorneys, auditors and other professional advisors and experts as may be selected by it and to pay their reasonable expenses and compensation out of the Trust Fund without diminution of compensation of the Trustee and the Trustee shall not be responsible for any loss occasioned by so acting or not acting, as the case may be. In particular, and without limiting the foregoing, the Trustee has the power and authority to retain Mr. Michael Royce of the law firm Lenczner Slaght Royce Smith Griffin as Trust Counsel, it being understood and agreed that Mr. Royce shall be permitted to be assisted by other lawyers at his firm in carrying out the work of Trust Counsel, provided that Mr. Royce retains overall supervision over such work.

**(o) Power To Determine**

To determine all questions and matters of doubt which may arise in the course of the management, administration, realization, liquidation, partition or winding up of this trust.

**(p) Power To Settle Claims**

Subject to the provisions of the Distribution Scheme to compromise and settle or waive, for such consideration and upon such terms and conditions as the Trustee determines, all claims

in favour of or against the Trust Fund; to waive, in whole or in part, unpaid accrued interest or accumulated dividends on any investment which may be held by the Trustee at any time or to release any person, firm, corporation or trust from any obligation to the Trust Fund, with or without compensation therefor.

**(q) Power To Institute/Settle Actions**

To institute, prosecute, defend, compromise and settle any suits or actions or other proceedings affecting the Trustee or the Trust Fund or any part thereof; to submit any matters to arbitration; to make partition with any co-owners or joint owners having any interest in any properties of the Trust Fund and to make such partition either by sale, set-off, agreement or otherwise.

**(r) Power To Register Property**

To register any personal property in the names of its nominees or in its own name or to hold the same unregistered or in any form by which ownership may be evidenced.

**(s) Power To Maintain One Or Several Funds**

To hold, manage and invest any one (1) or more other funds held hereunder as a consolidated fund in which each separate fund shall have an appropriate, undivided interest or, if any two (2) or more of such funds shall be held on the same terms, to combine them into a single fund.

**(t) Power To Select Place Of Trust Fund Retention**

To hold the Trust Fund or any part or parts thereof at any place or places and to move the same from time to time from place to place inside Canada.

**(u) Power To Operate Accounts**

To open and operate accounts at any bank or trust company inside or outside Canada; to deposit any cash balances therein; to draw, make, endorse, deposit, or deal in cheques, bills of exchange, promissory notes, drafts or any other mercantile, commercial or security documents of any nature or kind; to enter into contracts or agreements of any nature or kind

with such bank or trust company and, for such purposes, the Trustee may designate, in writing, any person or persons as the signing authority or authorities for any such accounts. Any succeeding trustee that is a trust company, as Trustee, may also deposit from time to time any cash balances in the Trust Fund with itself or any affiliate and it shall not be accountable for any profit earned thereon.

(v) Power To Execute Documents

To enter into, execute and deliver agreements, contracts, deeds, transfers, assignments, bills of sale, promissory notes, bills of exchange, receipts and powers of attorney and any and all other instruments in writing necessary or appropriate in the opinion of the Trustee for the administration or settlement of this trust and to execute any such instruments without warranty by or without recourse to the Trustee. Any decision or action whether actually made or taken in writing or implied by the Trustee's acts shall be conclusive and binding on all persons concerned.

(w) Power to Make Short-Term Borrowings

To make short term unsecured borrowings to enable cash payments under the Distribution Scheme or otherwise to facilitate the administration of the Trust Fund, in such amounts and on such terms as it shall deem advisable; provided that such borrowings shall only be made for the purpose of preventing the distress sale or uneconomic liquidation of medium or long term investments.

(x) Errors and Omissions and Fidelity Insurance

To purchase errors and omissions insurance and fidelity insurance to protect the Trust Fund and to pay the premiums therefor from the Trust Fund.

The exercise of any one or more of the foregoing powers or any combination thereof from time to time shall not be deemed to exhaust the rights of the Trustee to exercise such power or powers or any combination thereof from time to time.

**8. Additional Powers of the Trustee**

The Trustee shall have, full power, obligation and authority in administering the Distribution Scheme, including without limiting the generality of the foregoing:

- (a) to make and enforce such rules and regulations as it shall deem necessary or proper for the efficient administration of the Distribution Scheme;
- (b) to finally decide all questions concerning the administration of the Distribution Scheme;
- (c) to make all approvals required by the Distribution Scheme;
- (d) to compute the amount of payments which shall be paid to any person out of the Trust Fund in accordance with the provisions of the Distribution Scheme and to determine the persons to whom such amounts shall be paid;
- (e) to authorize payments to be made from the Trust Fund;
- (f) to authorize, prescribe, publish and distribute, at the cost of the Trust Fund, all forms and notices necessary for the administration of the Distribution Scheme including, without limitation, any advertising to potential Beneficiaries as to the existence of the Trust Fund and the call for claims relating thereto.

**9. Trustee's Authority**

Persons dealing with the Trustee shall be under no obligation to see to the proper allocation of any money paid or properties delivered to the Trustee or to inquire into the Trustee's authority as to any transaction with respect to the Trust Fund.

**10. Liability of the Trustee - Investments**

The Trustee shall not be liable for the making, retention or sale of any investment or reinvestment made by it as herein provided nor for any loss to or diminution of the Trust Fund, except that the Trustee shall be liable for any loss to or diminution of the Trust Fund due to its wilful misconduct, gross negligence or fraud.

Without limiting the generality of the foregoing, the Trustee shall not be personally or corporately liable for any loss or expense incurred by the Trust Fund through the insufficiency or deficiency of title to any property acquired for or on behalf of the Trust Fund, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Trust Fund shall be invested, or for any loss or damage arising out of the bankruptcy, insolvency or tortious act of any person with whom any of the moneys, securities or effects of the Trust Fund shall be deposited, or for any loss occasioned by any error of judgment or oversight on its part, or for any other loss, damage or misfortune which shall happen in the execution of the duties of its offices or in relation thereto unless the same shall occur as a result of or due to its own wilful misconduct or gross negligence.

**11. Liability of the Trustee – Exoneration & Indemnity**

**(a) Responsibility:**

The Trustee shall not be responsible for the acts or defaults of any predecessor Trustee, for any error in judgment or mistake of law or for any act of omission or commission which does not amount to actual fraud or which does not constitute wilful misconduct or wilful breach in the administration of this trust. No Trustee shall be required to take any proceedings, in court or otherwise, against any other Trustee for any breach or alleged breach of trust committed by such other Trustee.

**(b) Presumption of Permissibility:**

The presumption of over-all permissibility shall apply to all acts and dealings of the Trustee as long as good faith and honesty of purpose prevail. The Trustee shall be deemed to have acted within the scope of its authority and to have exercised reasonable care, diligence and prudence unless the contrary shall be proven by affirmative evidence.

**(c) Exoneration:**

The Trustee shall be exonerated from any responsibility or liability for loss or damage occasioned to the Trust Fund through a bona fide exercise by it of any of the powers and discretions authorized by this Agreement or by law.

**(d) Personal Liability:**

The Trustee shall not be personally liable for any moneys to become due from or arising out of claims against the Trust Fund. The Trustee shall have power to bind the Trust Fund without rendering itself personally liable.

**(e) Indemnification:**

The Trustee shall be indemnified and saved harmless from the Trust Fund against all fines, penalties, claims, losses, costs, charges, damages, expenses, and other charges which it may at any time sustain or incur, or be liable for in connection with any suits-at-law or equity actions, causes of action, claims and demands of whatsoever nature and kind brought or made in connection with or in relation to the execution of the duties of the Trustee unless the Trustee shall be finally determined to be liable therefor by reason of its wilful misconduct, gross negligence or fraud.

**(f) Corporate Trustee's Exercise Of Discretion:**

Any Trustee which is a corporation may exercise or concur in the exercise of any discretion or power conferred in this Agreement or conferred by law on the Trustee by a resolution of such corporation by its board of directors or by its governing body. Such corporate Trustee may delegate the right and power to exercise or concur in the exercise of any such discretion or power to any one or more of its directors, officers or employees or to such other person or persons as such corporate Trustee shall determine proper.

**(g) Responsibility Regarding Insurance Policies:**

The Trustee shall not be responsible for the form, genuineness, validity, sufficiency or effect of any policy of insurance at any time forming part of the Trust Fund or held by the Trustee, or for the act of any person which may render any such policy null or void, or for the failure of the insurance company or issuing body to make payment under such policy when proceeds thereunder become due and payable, or for any delay occasioned by reason of any restriction or provision contained in any such policy or if for any reason

(other than failure to pay premiums as provided for in this Agreement), any policy shall lapse or the proceeds thereunder otherwise become uncollectible.

(h) Posting Of Security:

The Trustee shall not be required to give a bond or security in any matter or jurisdiction whatsoever for the purpose of the administration of this trust.

(i) First Lien Or Charge:

The Trustee shall have a first lien or charge on all of the assets comprising the Trust Fund from time to time (subject only to any specific charge or security from time to time given by it in the administration of this trust) as security to it for the payment of all sums and moneys with which the Trust Fund is charged and for the indemnification and protection of itself personally with respect to the administration of this trust. Such lien shall extend to and include the income (including the future income) derived from the Trust Fund. The Trustee shall be entitled to sell such portion of the assets of the Trust Fund as the Trustee determines and apply the proceeds thereof for the purpose of enforcing such lien.

(j) Removal Of Liens Against Trustee:

In the event that there shall be at any time any lien or charge of any kind on any assets comprising the Trust Fund arising as a result of any claim against the Trustee, in its personal capacity, the Trustee, in its personal capacity, shall promptly take all actions necessary to remove, at its personal expense, such lien or charge.

**12. Taxes Imposed on the Trust Fund**

The Trustee shall deduct from and charge against the Trust Fund, the income therefrom or any payment made out of the Trust Fund, as the case may be, any taxes which may be imposed upon or in respect of the Trust Fund, the income thereof or any payment made out of the Trust Fund, as the case may be, which the Trustee is required to deduct, withhold, remit or pay.



13. **Records**

The Trustee shall keep full and accurate accounts and records of all investments, receipts, disbursements, transactions and allocations made by the Trustee and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by the members of the Notice Group.

14. **Expenses and Compensation of the Trustee and the Trust Counsel**

The Trustee and Trust Counsel shall be paid their reasonable fees and disbursements. Such fees and disbursements and all expenses of administration shall be withdrawn and paid by the Trustee out of the Trust Fund from time to time.

15. **Accounts**

Within ninety (90) days following December 31 of each year the Trustee shall file with the Notice Group its accounts for such year or other annual period in the form acceptable for trustees' accounts under the *Rules of Civil Procedure*. Upon the expiration of the ninety (90) days from the date of filing such accounts the Trustee shall be forever released and discharged from any liability or accountability to anyone as regards the acts or transactions shown in such accounts except with respect to any such acts or transactions as to which the Notice Group shall within such ninety (90) day period file with the Trustee a written statement setting forth its exceptions or objections, and except for loss to or diminution of the Trust Fund resulting from the Trustee's wilful misconduct or gross negligence. No person other than the Notice Group may require an accounting or bring any action against the Trustee with respect to the Trust Fund and/or its actions as Trustee.

16. **Indemnification of Trust Counsel**

Trust Counsel shall be indemnified and saved harmless from the Trust Fund against all fines, penalties, claims, losses, costs, charges, damages, expenses, and other charges which it may at any time sustain or incur, or be liable for in connection with any suits-at-law or equity actions, causes of action, claims and demands of whatsoever nature and kind brought or made by anyone other than the Trustee in connection with or in relation to the providing of advice to the

Trustee unless Trust Counsel shall be finally determined to be liable therefor by reason of its wilful misconduct, gross negligence or fraud.

**17. Notice Provisions for Applications to Court**

Any application to Court with respect to the administration of the Trust or any rights with respect to the Trust shall be on notice to the Notice Group and the Trustee only and such notice shall be sufficient notice for all purposes of such application.

**18. Resignation or Removal of Trustee**

(a) The Trustee may resign at any time by giving sixty (60) days written notice to the Notice Group. The Notice Group may remove the Trustee at any time by giving thirty (30) days written notice to the Trustee.

(b) In the event that before the Trust Fund has been fully distributed:

(i) any Trustee, being an individual:

(1) dies;

(2) refuses or becomes unable to act or to continue to act or becomes mentally incapable of managing his or her affairs. For the purposes of this subparagraph 18(b)(i)(2), a Trustee shall be deemed to be unable to act or to continue to act as a Trustee of the Trust if such Trustee is under a legal disability or if two (2) medical doctors licensed to practice in Canada notify the remaining or successor Trustee or Trustees of the Trust, then acting, or if no such Trustee, the Notice Group that illness or physical or mental disability have rendered such a Trustee unable to give prompt and intelligent consideration to financial affairs;

(3) resigns as a Trustee;

(4) is declared bankrupt, insolvent, or mentally incompetent;

- (5) ceases to be a resident of Canada within the meaning of the Income Tax Act; or
  - (6) becomes a citizen of the United States of America or becomes a resident of the United States of America within the meaning of the Internal Revenue Code (U.S.), or
- (ii) any Trustee, being a corporation, company or other entity:
- (1) resigns as a Trustee;
  - (2) enters into liquidation, whether compulsory or voluntary (not being merely a voluntary liquidation for the purposes of amalgamation or reconstruction);
  - (3) has a receiver or a receiver-manager appointed with respect to its affairs; or
  - (4) becomes subject to any bankruptcy laws,

such Trustee shall, immediately upon the happening of an event contemplated in subparagraphs (i) to (ii) above, and upon expiry of the 60 day notice period with respect to a resignation contemplated in subparagraph (a) above, cease to be a Trustee hereof.

- (c) The Trustee may at any time, by an instrument in writing, appoint an additional Trustee or Trustees hereunder.
- (d) Any person appointed pursuant to this Article 18 of this Agreement shall, upon acceptance of such appointment, be vested with the Trust Fund and with all the trusts, powers, authorities, duties and obligations herein contained, along with the continuing Trustee or Trustees without further assignment, transfer or conveyance of any kind or any order of any court or tribunal whatsoever as if such person were an original party to this Agreement.

- (c) All instruments in writing relating to the appointment of replacement or additional Trustees shall be attached to this Agreement and shall be sufficient evidence of the facts to which such instruments relate.

**19. Authority of the Notice Group**

Any notice, direction, request and instruction given by the Notice Group to the Trustee pursuant to any of the provisions of the Distribution Scheme or this Agreement shall be consistent with the terms thereof and the Trustee shall be fully protected in acting in accordance with such signed instrument, provided it has determined that such action is consistent with the terms of the Distribution Scheme and this Agreement.

**20. Amendment**

The Trustee shall have the right and power to amend this Agreement, in whole or in part, at any time and from time to time, or to terminate this Agreement, provided that no amendment may be made authorizing or permitting any part of the Trust Fund to be used for, or diverted to purposes other than those provided for under the terms of this Agreement and the Disbursement Scheme.

**21. Termination**

- (a) This Trust shall terminate on the earlier of
  - (i) complete depletion of the Trust Fund in accordance with the implementation of the Distribution Scheme;
  - (ii) determination that there are no more Beneficiaries left unpaid, payment of all expenses of the Trustee and the Notice Group and discharge of any and all liabilities of the Trust Fund; and
  - (iii) the twenty-first (21<sup>st</sup>) anniversary of the date hereof

which earlier date is referred to as the "Termination Date".

- (b) On the Termination Date the Trustee shall pay any part of the Trust Fund then remaining to a registered charity for the purpose of assisting persons affected by Hepatitis C and/or a registered charity for the purpose of assisting persons affected by haemophilia, in such proportions and in such amounts as the Trustee in its absolute discretion so determines.

22. **Financial Year**

The financial year of the Trust Fund shall end on the 31<sup>st</sup> day of December in each and every year.

23. **Notice**

Any notice, request, statement, consent, approval, authorization, acknowledgement, appointment, refusal or direction which any party hereto may desire or be required to give to any other party hereto with regard to any matter or thing contained in this Agreement or the Distribution Scheme, shall be in writing and shall either be personally served upon such other party or an officer thereof or sent by telecopier (fax) or mailed by prepaid registered post addressed:

if to the Trustee:

The Hon. Peter Cory  
Counsel  
Osler Hoskin & Harcourt  
P.O. Box 50  
1 First Canadian Place  
Toronto, ON  
M5X 1B8

Fax: 416-862-6666

and to

Lenczner Slight Royce Smith Griffin  
2600 - 130 Adelaide Street West  
Toronto, Ontario  
M5H 3P5

Attention: Michael Royce  
Fax: 416-865-9010

if to the Notice Group:

(concerning CJD Claims)

Siskind Cromarty Ivey & Dowler LLP  
P.O. Box 2520, Stn. B  
680 Waterloo St.  
London, Ont. N6A 3V8

Attention: Charles Wright  
Fax: (519) 672-6065

(concerning HCV Fund)

Klein Lyons  
500-805 West Broadway  
Vancouver British Columbia  
V5Z 1K1

Attention: David Klein  
Fax: (604) 874-7180

and to

Goodman & Carr  
Suite 2300  
200 King Street West  
Toronto, Ont. M5H 3W5

Attention: David Harvey  
Fax: (416) 595-0567

and to

Lauzon Belanger  
511 Place D'Armes  
Bureau 200  
Montreal, Québec  
H2Y 2W7

Attention: Michel Bélanger  
Fax: (514) 844-7009

(concerning HIV Claims)

Beaton, Derrick & Ring  
Suite 100  
525 Artillery Place  
Halifax, Nova Scotia  
B3J 1J2

Attention: Dawna Ring  
Fax: (902) 423-3544

and to

Kenneth Arenson  
Barrister at Law  
179 John Street  
Suite 401  
Toronto, Ont. M5T 1X4

Fax: (416) 593-6606

The Public Guardian & Trustee

The Public Guardian & Trustee  
595 Bay Street  
Suite 800  
Toronto, Ontario  
M5G 2M6

**24. Enurement and Binding**

This Agreement shall enure to the benefit of and be binding on the parties hereto and the Beneficiaries and their respective heirs, executors, administrators, legal personal representatives, successors and assigns.

**25. Counterparts**

This Agreement may be executed in two (2) counterparts, both of which shall be considered one and the same agreement, and each of which shall be deemed an original.

**26. Interpretation**

- (a) Except as expressly otherwise provided in this Agreement, whenever the words "capital" and "income" appear, they shall be interpreted without reference to the provisions of the Income Tax Act.
- (b) Unless otherwise defined herein capitalized terms shall have the meaning ascribed to them in the Plan of Arrangement.
- (c) The headings in this Agreement are for convenience only and do not form part of this Agreement.
- (d) In the Agreement words importing the singular number include the plural and vice versa.
- (e) This Agreement shall be interpreted, construed, administered and enforced according to the laws in force from time to time in the Province of Ontario.
- (f) The Distribution Protocols appended as Schedules "A" and "B" to this Agreement shall for all purposes form part of and be read as part of this Agreement, provided however, that if any conflict appears between the provisions of this Agreement itself and such schedules, the provisions of this Agreement shall apply.



- (g) In the event of conflict between the Plan of Arrangement and this Agreement, the Plan of Arrangement will prevail.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first written above.

**THE CANADIAN RED CROSS SOCIETY**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**SIGNED, SEALED AND  
DELIVERED** in the presence of

The Honourable Peter Cory

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Trustee

**DATED:**

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**THE CANADIAN RED CROSS SOCIETY**

**- and -**

**The Honourable Peter Cory**

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**TRUST AGREEMENT**

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**MICHAEL MCCARTHY et al**  
Plaintiffs

- and -

**THE CANADIAN RED CROSS SOCIETY et al**  
Defendants

Court File No.98-CV-14334

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**JUDGMENT**

**GOODMAN AND CARR LLP**  
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