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 712297

- and -

The Administrator

(On a motion to oppose confirmation of the decision of Wes Marsden, released September 4, 2025)

BEFORE: Justice Benjamin T. Glustein

APPEARANCES: Claimant
Belinda A. Bain, for the Fund Counsel for Ontario (in writing)

HEARD: In writing

DATE: November 26, 2025

REASONS FOR DECISION

Factual Overview and Procedural History

[1] This motion is brought by KK, 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. The Settlement Agreement also provides compensation to certain family members of individuals affected during this period, including children as defined in the agreement.

[3] In 2017, this court approved the HCV Late Claims Benefit 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"). The PIP in this case is TM, who is the Claimant's biological aunt. TM was infected with HCV from a blood transfusion during the period outlined in the Settlement Agreement. She passed away on December 20, 2017.

[5] On or about September 9, 2024, the Claimant submitted an application under the Late Claims Benefit Plan for compensation as a family member under the Settlement Agreement. The Claimant's position was that, because of the unique relationship she shared with her aunt, she qualifies as a "child" of a person infected with HCV pursuant to the Late Claims Benefit Plan.

[6] On September 12, 2024, a court-appointed Late Claims Referee allowed the late claim to proceed but did not decide the Claimant's entitlement to compensation as a "child" of her deceased aunt.

[7] Prior to finalizing its decision, the Administrator sought an opinion from a family lawyer to consider KK's argument that she should be treated as her aunt's "child" given their close and unique relationship. The family lawyer did not find that the Claimant's evidence could establish that she came within the meaning of "a child whom a person has demonstrated a settled intention to treat as a child of his or her family."

[8] In December 2024, the Administrator denied KK's claim on the basis that she was not TM's "child" pursuant to the Late Claims Benefit Plan.

[9] The Claimant appealed the Administrator's decision to a Referee.

The Referee's Decision

[10] Referee Wes Marsden denied the Claimant compensation as he was not satisfied that the Claimant was TM's "child" pursuant to the Late Claims Benefit Plan. He found based on the evidence before him that TM had not demonstrated a "settled intention" to treat the Claimant as a child of her family.

Evidence considered in Referee Marsden's Decision

[11] The Claimant called five witnesses at the hearing before Referee Marsden. These witnesses included her husband and long-time friends. Each of them testified that the Claimant had a strong and loving relationship with TM.

[12] The Claimant's husband testified that her relationship with TM "was more like a mother/daughter relationship." He said that TM helped the Claimant get ready for her wedding and paid for her wedding dress. He testified that the Claimant did not have the same close relationship with her biological parents, who did not attend her wedding. He also said that the Claimant never referred to TM as "mother." He further acknowledged that (i) he never saw TM discipline the Claimant; (ii) TM did not have control over the Claimant's finances; and (iii) the Claimant did not completely rely on TM for her financial needs.

[13] MI, a friend of the Claimant, testified that TM purchased the Claimant's wedding dress and helped pay for the Claimant's university tuition. MI said that the Claimant's visits to TM were of a temporary nature and that, to her knowledge, TM never attempted to formally adopt the Claimant. MI never saw TM discipline the Claimant.

[14] Another friend, AF, testified that the Claimant was closer to TM than to her biological mother and that the Claimant "provided care for TM when her health deteriorated." AF said that the Claimant lived with her parents while she was in school. AF "never heard the Claimant call TM 'mother', however AF believes that the connection was very much like a mother-daughter relationship."

[15] DT testified that TM "referred to the Claimant and her siblings as her own children" and that the Claimant reached out to TM when "she achieved certain milestones." DT also said that "adoption does not go over well in Croatian culture" because "your parents are your parents." DT further testified that the Claimant primarily relied on her biological parents for financial support.

[16] JL testified that "TM considered the Claimant and her siblings as her own children." She said that TM "counselled the Claimant on her education, housing and relationships." In JL's view, the "Claimant had the biggest role in TM's health care." JL testified that "TM required dialysis in the early 1990s" before being diagnosed with HCV, but that the "Claimant never actually moved in with TM and that she never witnessed TM disciplining the Claimant." JL also said that TM would "occasionally discuss the children's best interests with the Claimant's biological mother and that her mother had a voice." To JL's understanding, TM was "never named as an official guardian by the courts."

[17] Referee Marsden also considered the Claimant's testimony at the hearing. The Claimant said that she considered TM to be a "second mother" to her and that she felt closer to TM than she did to her biological mother. She said that TM helped her with school and provided "guidance in her field of study at university." The Claimant maintained that it was not possible for TM to adopt her because of Croation cultural norms. She said that TM was gentle, loving, and never yelled at her.

[18] The Claimant testified that TM "purchased her food and clothing while growing up and that she went on vacations with her parents." The Claimant lived with her parents in her family home until 2009, when she purchased a home with her husband. TM never had complete financial responsibility for the Claimant, with the exception of extended stays at TM's summer cottage. TM was on a fixed income. While the Claimant took care of TM at the end of her life, they never resided together "on a permanent basis."

[19] The Claimant testified that her mother carried out "unconventional disciplinary measures."

[20] Also in evidence was the testimony of some witnesses that the "Claimant's biological mother was a somewhat 'cold' person and not really immersed in the Claimant's life."

Referee Marsden's Reasons

[21] Referee Marsden found that the Claimant's primary residence was at her parents' house. She lived with her parents into adulthood, until she bought a house with her spouse. He also found that the Claimant's parents were present in her life and that they had primary financial responsibility over her.

[22] Referee Marsden applied the evidence to the factors in the Supreme Court of Canada's decision in *Chartier v. Chartier*, [1999] 1 S.C.R. 242, to determine if the Claimant was TM's child under the Settlement Agreement. Applying the *Chartier* test, Referee Marsden held that for TM to have stood in the place of the parent, she would have had to demonstrate a "settled intention" to treat the Claimant as her own child.

[23] Referee Marsden also considered *Watts v. Watts*, 2011 ONCJ 104, 99 R.F.L. (6th) 225, including academic commentary by Professor Carol J. Rogerson, to determine that TM did not assume the role of the natural parent in this case and that she did not act in substantial substitution for the parent. He found that the Claimant was not a child for the purposes of the Late Claims Benefit Plan.

Issue

[24] The legal issue before me is whether the Referee's conclusion - that the Claimant does not qualify as a "child" of TM (the PIP) contains an error of law or jurisdiction, or a patent and material error of fact. If no such error is found, the Administrator's denial of compensation should be upheld.

Standard of Review

[25] 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.[1]

[26] As set out above, I adopt the approach taken by Anderson J. in *Jordan*, wherein he stated 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

[27] The Claimant submits that Referee Marsden misapplied the Supreme Court's test in *Chartier*. She submits that Referee Marsden erred in law by treating a "settled intention to treat a child as one's own" as requiring substantial or exclusive substitution for the natural parent's role. She argues that in cases where stepparents join a family, continued involvement of both biological parents does not negate the stepparents' role.

[28] The Claimant further submits that Referee Marsden improperly relied on *Watts* and academic commentary by Professor Carol J. Rogerson. She submits that relying on *Watts* improperly elevated the standard set out in *Chartier*.

[29] The Claimant also submits that Referee Marsden mischaracterized the factual record. She says that he overemphasized evidence on TM's contribution to discipline and financial support.

[30] Further, the Claimant submits that Referee Marsden failed to properly weigh evidence that her relationship with TM was understood by the family and community as parental and that in letters to TM, the Claimant had referred to her as "mother." She also claims that Referee Marsden ignored evidence of TM's role in milestones in her life and reduced their relationship to "love and affection."

[31] The Claimant further submits that Referee Marsden ignored cultural context in his assessment and that he failed to interpret the Settlement Agreement in a remedial and purposive manner.

[32] Before Referee Marsden, the Claimant submitted that TM's HCV resulted in significant

[1] 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.

harm, including the emotional and physical consequences of being infertile. She argued that this harm violated TM's rights under the *Canadian Charter of Rights and Freedoms* and international human rights declarations and conventions. Because these issues were not addressed in the Claimant's grounds of appeal, I do not consider Referee Marsden's findings on these issues.

Fund Counsel's Position

[33] Fund Counsel submits that the evidence relied upon and presented at the hearing for this matter does not support the finding that TM had a settled intention to treat the Claimant as her child.

[34] Fund Counsel's position is that the Claimant has mischaracterized Referee Marsden's use of the fact that the Claimant's biological parents were not "absent." She submits that the Claimant's parents not having been absent is important in the fact specific analysis required by the Supreme Court in *Chartier*.

[35] Fund Counsel further notes that it is important to the analysis that TM was the Claimant's aunt, not her step-parent. Fund Counsel submits that parental responsibility remained with the Claimant's biological parents. She says that TM's role was ultimately that of a beloved aunt, not a parent.

[36] Fund Counsel submits that the Claimant has mischaracterized the test required in this case by focusing on TM's role in providing love, guidance, care, and companionship. In Fund Counsel's submission, this is not the test. The test is whether the PIP had demonstrated a settled intention to take on parental responsibility to raise the child as her own.

Disposition on Appeal

[37] For the reasons outlined below, I confirm the disposition of the Referee's decision and dismiss the Claimant's motion.

Reasons and Legal Analysis

[38] Section 3.07 of the Late Claims Benefit Plan permits "Family Members", including children, to make a claim for compensation under the Settlement Agreement:

> **3.07 Late Claim by Family Member**
> A person referred to in clause (a) of the definition of Family Member in Section 1.01 claiming to be a Family Member of a HCV Infected Person who has died and who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan or a person referred to in clause (a) of the definition of Family Member in Section 1.01 claiming to be a Family Member of a deceased HCV Infected Person whose Late Claim is accepted by the Administrator under this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:
>
> (a) proof as required by Sections 3.05(1)(a) and (b) (or, if applicable, Sections 3.05(3)(Tran) or 3.05(3)(Hemo) or 3.05(4)) and 3.05(5)(Tran) or 3.05(5)(Hemo) and 3.05(6), unless the required proof has been

previously delivered to the Administrator; and

(b) proof that the claimant was a Family Member of the HCV Infected Person referred to in clause (a) of the definition of Family Member in Section 1.01.

[39] The definition of "Family Member" under section 1.01 of the Late Claims Benefit Plan reads as follows:

> **"Family Member" means:**
> (a) the Spouse, **Child**, Grandchild, Parent, Grandparent or Sibling **of a HCV Infected Person;**
> […]
>
> [Emphasis added.]

[40] Section 1.01 of the Late Claims Benefit Plan defines "Child" as:

> **"Child" includes**:
> (a) an adopted child;
> (b) a child conceived before and born alive after his or her parent's death; and
> (c) **a child to whom a person has demonstrated a settled intention to treat as a child of his or her family**;
>
> but does not include a foster child placed in the home of a HCV Infected Person for valuable consideration
>
> [Emphasis added.]

[41] The Claimant is not TM's adopted or biological child. Thus, according to section 1.01 of the Late Claims Benefit Plan, to qualify as a "child" and make a successful claim for compensation under the Settlement Agreement, TM must be a person that a PIP has "demonstrated a settled intention to treat as a child of his or her family."

[42] The Late Claims Benefit Plan does not provide its own definition of what constitutes a "settled intention" to treat a person as a member of their family. Accordingly, Referee Marsden correctly turned to the common law to answer this question.

[43] On this appeal, the Claimant submits that the Referee misapplied the legal principles as outlined in *Chartier* and *Watts*[2], which she says are relevant to the determination of her case.

[44] In *Chartier*, the Supreme Court of Canada held that "[w]hether a person stands in the place of a parent must take into account all of the factors relevant to that determination, viewed objectively. What must be determined is the nature of the relationship": *Chartier* at para. 39.

[45] To determine if the nature of the relationship is parental such that a person stands in the

[2] In the Claimant's notice of motion, she refers to this case as *Watts v. Benozio*. There is no such decision cited in Referee Marsden's decision and I believe that the intended reference is to *Watts v. Watts* based on the context. For example, the Claimant writes that she disagrees with the academic commentary by Professor Rogerson referred to by the Referee from this decision. In the Referee's decision, he cites *Watts v. Watts*, and Professor Rogerson's commentary within that decision.

place of a parent, courts must consider intention, which may be expressed formally and through actions: *Chartier* at para. 39. The Supreme Court outlined, at para. 39, those relevant factors in defining a parental relationship "include, but are not limited to" the following:

> […] whether the child participates in the extended family in the same way as would a biological child; whether the person provides financially for the child (depending on ability to pay); whether the person disciplines the child as a parent; whether the person represents to the child, the family, the world, either explicitly or implicitly, that he or she is responsible as a parent to the child; the nature or existence of the child's relationship with the absent biological parent. […]

[46] It is not the case that every adult-child relationship will be deemed to be one where the adult is standing the place of a parent: *Chartier* at para. 40. Each case must be determined on its own unique facts; it must be established on the evidence of the case whether the adult acted so as to stand in the place of a parent: *Chartier* at para. 40.

[47] *Chartier* remains good law on the test to determine if a person has a settled intention to treat the child as their own. The Court of Appeal for Ontario has continued to follow these principles.

[48] In *McGuire v. Bator*, 2022 ONCA 431, 74 R.F.L. (8th) 255, the court outlined that for an appellant to establish an entitlement to child support, they must prove that the respondent had a "settled intention to treat the child as his own": *McGuire* at para. 17. The court held that the "long-standing factors for the court to consider" are listed in paragraph 39 of *Chartier*: *McGuire* at para. 17.

[49] In *D.L. v. E.C.*, 2023 ONCA 494, the court followed the principles outlined in *Chartier* to determine if a person had a settled intention to treat a child as his or her own: at para. 13.

[50] In *Le v. Norris*, 2024 ONCA 741, 6 R.F.L. (9th) 253, the court again referred to the factors outlined at paragraph 39 of *Chartier* in their assessment of whether someone had a "settled intention" to treat a child as their own. The court outlined that the question of whether a party "demonstrated a settled intention is [a] highly fact specific" exercise developed by *Chartier*: *Le* at paras. 36, 37

[51] The Claimant submits that Referee Marsden erred in his interpretation of *Chartier*. In the Claimant's submission, Referee Marsden improperly held that the test to establish a settled intention to treat a child as one's own requires that there be a substantial or exclusive substitute for the natural parent's role. I do not agree with this characterization of Referee Marsden's reasons

[52] In his reasons, Referee Marsden referred to the factors from paragraph 39 of *Chartier* (which I set out at para. 45 above. In addition to considering the nature and existence of the child's relationship with the biological parent, he also considered whether the child participates in the family in the same way a biological child would, and whether the adult provided financially for the child.

[53] Referee Marsden made the following factual findings in his decision at paragraph 38:

(a) The Claimant relied heavily on and resided with her biological parents, who were not absent;
(b) The Claimant would exceptionally, as opposed to regularly, visit TM's

house or cottage for extended periods of time; and

(c) TM did not meaningfully contribute financially to the Claimant's life.

[54] At paragraph 38 of his reasons, Referee Marsden notes that his analysis "[placed] minimal weight on the financial contribution factor" outlined in the paragraph above because of TM's fixed income, which would have limited her ability to provide financial support to the Claimant.

[55] Referee Marsden did not err in applying the law to the presented facts. It was reasonable for him to conclude that the most significant factor in his *Chartier* analysis was the Claimant's relationship with her biological parents.

[56] The Court of Appeal held that the circumstances of each case will dictate how an adjudicator determines which "factor will figure more predominantly in the analysis of whether a person has 'a settled intention' to treat a child as his or her own": *D.L.*, at para. 14. This statement is consistent with the Supreme Court's pronouncement in *Chartier* that whether a person intends to stand in the place of a parent can be determined either formally or through actions: at para. 39. *Chartier* indicates that each case should be decided on its own unique facts. The circumstances of a given case may make a particular factor more significant.

[57] I find no error of law or jurisdiction or misapprehension of the evidence in Referee Marsden's assessment of the Chartier factors in this case.

[58] Based on the evidence presented, it was open to Referee Marsden to conclude, as he did, that the Claimant's parents were present in her life: they provided for her, took her on trips, and housed her until she completed university and moved into the home she bought with her spouse.

[59] The fact that the Claimant's parents were not absent is not the only reason that Referee Marsden held that TM did not stand in the position of a parent to the Claimant. Referee Marsden's decision does not say that TM did not have a settled intention to treat the Claimant as her child because the Claimant's parents were not absent. Rather, his decision examines TM's role in the Claimant's life alongside the fact that the Claimant's parents were not absent.

[60] For instance, Referee Marsden notes that the Claimant did not reside with her aunt. The Claimant's extended visits to her aunt's house were the exception, not the norm. Arguably, this fact weighs against a finding that the child participates in the extended family in the same way as would a biological child: *Chartier*, at para. 39.

[61] The Claimant submits that Referee Marsden erred in principle by importing the standard from *Watts*, a family law case, into the class action context and therein improperly elevated the legal threshold required to establish that she is TM's child under the Late Claims Benefit Plan.

[62] I disagree with the Claimant that Referee Marsden improperly relied on *Watts* or artificially elevated the legal threshold. The Referee is not required to only consider case law originating in a class action context. *Chartier* itself is not a class action decision.

[63] It was appropriate for Referee Marsden to use *Watts* to determine how *Chartier* has been interpreted in lower courts. Informed by *Watts*'s reference to Professor Rogerson's analysis of the *Chartier* line of cases, Referee Marsden considered whether the Claimant was entitled to a benefit for the "loss of guidance, care and companionship as opposed to obligations imposed on someone."

[64] *Watts* cites Professor Rogerson, who, in determining how to assess parental status, distinguishes between a "child who has been made to be dependent upon a step-parent by actions

of the adults" and the "mere willingness of the step-parent to share with children and to assist with their financial, emotional and physical needs": *Watts* at para 22, citing Professor Rogerson. The court in *Watts* also embraced Professor Rogerson's assessment that the division of labour between adults in the domestic sphere will mean that "inevitably the step-parent will perform certain aspects of the role previously performed by the natural parent" but that this does not on its own create a settled intention: *Watts* at para 22, citing Professor Rogerson.

[65] Based on the evidence, and his reading of the *Watts* decision, Referee Marsden concluded that TM had not demonstrated a settled intention to act as a parent to the Claimant.

Conclusion

[66] The findings in Referee Marsden's decision were open to him on the law and the evidence. In his analysis, he found that the Claimant was not a "child" of TM, for the purposes of the Late Claims Benefit Plan. In my view, his analysis demonstrates no error in principle, absence or excess of jurisdiction, or patent misapprehension of the evidence.

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

[68] The court extends its greatest sympathies to the Claimant and her family for what is no doubt a heavy loss. As mentioned above in my decision, this legal finding is in no way a comment on the close relationship the Claimant enjoyed with TM.

Justice Glustein

Released: November 26, 2025