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ONTARIO SUPERIOR COURT ALLOWS LATE CLAIMS TO STAND IN A CCAA

In *Re Canadian Red Cross Society*, the Ontario Superior Court relied heavily on the Alberta Court of Appeal decision in *Re Blue Range Resources* in addressing questions of jurisdiction relating to the late or irregular filing of claims in a CCAA proceeding. This case was part of a lengthy CCAA process which arose from the tainted blood tragedy of 1998.

The process involved the creation of a trust to satisfy damage claims of victims infected with HIV, Hepatitis C, and Creutzfeld-Jacob Disease. A claims submission process was drafted into the Plan of Compromise with a Plan Implementation Date of October 5, 2001. A Trustee and a Referee were appointed to moderate claims, which were to be submitted to the Referee within four months of the Plan Implementation Date.

As of September 29, 2008, no distributions had been made from the trust in favour of the HIV claimants; the four-month claims period expired on February 5, 2002. Eighty-nine infected persons filed claims before the Claims Bar Date, and the Trustee sought direction from the Court regarding an additional 38 claims that were submitted either late or in an irregular manner. The particular issue with which the Trustee was concerned was whether the Court has the jurisdiction to either extend or relieve the deadline imposed in the Plan.

The Court confirmed that it held a basic supervisory jurisdiction over the administration of the trust and over the CCAA proceedings generally. Looking at the particular application of this jurisdiction in cases of late or irregular filing of claims, the Court considered *Re Blue Range Resources Corp.*, [2000] A.J. No. 1232 (C.A.) to be most influential. The Court, in particular, adopted the criteria set out by Honourable Justice Wittmann to be applied when considering whether or not to accept late claims, including the determination of good faith in the claimant's delay, any relevant prejudice stemming therefrom, the potential for alleviation of any such prejudice, and other factors warranting late filing.

Blue Range Resources has been variously cited for the Court's recognition of the equitable jurisdiction to extend relief in individual cases to those failing to file their claims in time. *Re Red Cross Society* noted various cases that have followed the *Blue Range* precedent. However, the Court in *Re Red Cross Society* found further guidance in *Blue Range*, citing that it was *implicitly* intended in that case that a Plan be read, not as ousting a Court's equitable jurisdiction to relieve against late claims, but as being subject to it. This implied authority could have far reaching consequences for loosely or ambiguously worded provisions.

The Plan in *Re Red Cross Society* provided that the surplus from the HIV trust should be paid to the HCV trust following the disposition of claims filed within the four month claim period. It was argued that this provision intended the closure of claims at the Claims Bar Date as indicated by the payment over of the surplus. This seems a fairly clearly worded provision, but, as being subject to the equitable jurisdiction of the Court it was not read that way. The Court cited Wittmann J.A. with approval:

It necessarily follows that a claims bar order and its schedule should not purport to "forever bar" a claim without a saving provision. That saving provision could be simply worded with a proviso such as "without leave of the court", which appears to be not only what was contemplated but what in fact occurred here.

The Court ultimately found that the Claims Bar Date should be extended and that late claims should be considered by the Trustee and Referee in reference to the Court's particular recommendations for inclusion. The Court stressed that the exercise of such jurisdiction should be sparing, and in each case will be heavily fact dependant.

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