



Tainted blood-victim Victoria Boddy outside her Lethbridge, Alta. home

BLOOD from a stone

Six years ago, Ottawa set aside hundreds of millions of dollars for Canadians infected by tainted blood. Today, no one seems sure where all the money went. What they do know is that not much of it ended up helping the victims

CANDIS McLEAN

Victoria Boddy of Lethbridge, Alta., is a member of a dying breed. The 47-year-old mother of seven has achieved a grim distinction—of the dozens of hepatitis C victims who testified at the Krever tainted-blood inquiry in the mid-1990s, she is one of the handful still alive. Boddy, like thousands of other Canadians, received the debilitating hepatitis C virus—fatal in 20 per cent of cases and leading to devastating complications in many others—from blood supplied by the Canadian Red Cross. Of the estimated 15,000-20,000 individuals infected from transfusions, as many as 10,000 have died. Among hemophiliacs—a genetic illness whose sufferers often require transfusions, making them most vulnerable to blood mismanagement—whole families have been decimated. To add insult to injury, while lawyers, accountants and consultants have siphoned off millions from compensation funds established by the federal Liberal government, many of the victims have died penniless, because hundreds of millions of dollars the federal government and the provinces promised to victims never reached them. The Liberals are “washing their hands like Pontius Pilate and declaring the hep C issue solved,” says Boddy. But in reality, she says, they still have “blood on their hands.”

Justice Horace Krever, who headed the Commission of Inquiry on the Blood System in Canada, that lasted from 1993 to 1997, called the blood scandal “the worst medical disaster in our history.” Some say Liberal mismanagement of the funds may rival the sponsorship scandal in terms of the amount of tax money that has simply disappeared. The good news is that victims are now proposing a solution that could compensate all hep C victims without costing taxpayers another cent. Nearly everyone involved seems in favour of the solution. Everyone, that is, except the Liberals, who developed the problem-plagued policies in the first place.

Canadians infected with hep C after receiving blood transfusions from plasma imported from prisons and developing countries in the eighties are accustomed to fighting tooth and nail for reparations. But they thought it was a battle already won. After Krever’s inquiry uncovered a pattern of gross negligence and criminality

JESSICA GERGELY

entangling Ottawa and the Red Cross, he recommended a system of no-fault compensation be set up for every victim of tainted blood. Jean Chretien's Liberal government had allowed some payments for patients who had been infected with the AIDS virus, but refused to do anything for those with hep C. Those victims eventually sued the federal government, and received an out-of-court settlement from Ottawa and the provinces for \$1.2 billion.

At the time, the settlement was highly controversial, since it only compensated victims infected by tainted blood within a particular window—between 1986 and 1990, the only time the government admitted it could be held liable for neglecting to screen the blood effectively. Boddy, like many others, was ineligible for compensation because she contracted hep C in 1984. But a *Western Standard* investigation has uncovered a document that suggests Ottawa, with the full compliance of Health Canada's Bureau of Biologics, was knowingly allowing the importation of blood products improperly tested for the hep C virus as late as 1993. In a letter dated February, 1992, the Vienna-based Institute for Blood Derivatives wrote to the Bureau of Biologics in Ottawa that "in compliance with what is requested in your letter of Nov. 15, 1991, anti-HCV testing of source material has been introduced at our company Dec. 2, 1991...[E]ffective January 1, 1993, only human plasma screened for antibodies to hepatitis C virus will be brought onto the Canadian market."

Both the Conservative and NDP have made campaign promises to compensate all victims of tainted blood. Under the Liberal policy, victims like Boddy were left to pay for the illness themselves, a massive financial burden. Unable to continue with her job as an accountant, and faced with a bill of more than \$2,000 a month for drugs, Boddy and her husband have been bankrupted twice. So, naturally, the couple was relieved when in 1998, bowing to public outrage, then-health minister Allan Rock announced the "Care instead of Cash" aid package. After negotiating with the provinces, Ottawa agreed to transfer them a total of \$300 million over 20 years—to be matched by provincial governments—specifically to provide enhanced care for those hep C victims left out of the original legal settlement.

Last fall, tired of waiting to hear something from the province, Boddy sent

them a bill for the \$72,000 she had spent on medications since 1999. But Alberta Health sent back a form letter explaining that the additional federal and provincial funds were being used for lab tests and nurses, though, presumably, those expenses should have been covered by Alberta Health. It looked like Boddy was on her own again. And she's not the only one. Six years after the Liberals promised the combined federal-provincial infusion of \$600 million for victims not covered by the original compensation package, it appears that not one penny has reached any of the 5,000 victims it was intended to help.

There's little question about what the federal government was trying to accomplish when it set up the additional funding for victims excluded from the original compensation package. In a 2001 letter obtained by *Western Standard*, Anne McLellan, federal minister of health at the time, told Tony Clement, then Ontario's minister of health, that she wanted to "clarify and reaffirm" the intent of the agreement the feds signed with the Ontario government. "The agreement is clear in that the money should be used specifically for those individuals who have acquired hep C through blood, and specifically to support their medical care and supplement ongoing services provided by the provinces..." she wrote. Yet eligible recipients in every province say they never received any such aid. "The public thought victims were at least going to be taken care of, but there is no evidence the funds were ever used to provide help," says Mike McCarthy, past vice-president of the Canadian Hemophilia Society. "We've written to Anne McLellan asking her to audit the fund, but nothing has been done."

Alberta and three other provinces agreed to the deal on the condition they be able to use the funds for all hep C victims (not just tainted blood victims). And Candace Toews, public affairs officer with Alberta Health, says that, since 2001, the Albertan program—the Dedicated Revenue Fund for Hep C—has financed five studies of the disease and two treatment clinics in Edmonton, while a multidisciplinary hep C clinic is scheduled to open in Calgary this fall. But sufferers say that scientific studies and a handful of clinics are not what they need, nor is it what they were promised. The huge gap between their

A SCANDAL AT THE HIGHEST LEVELS OF GOVERNMENT

Over the past five years, a special RCMP Blood Task Force has been investigating the importation of high-risk plasma from the U.S. during the 1980s, a case which may ultimately reach as high as the current Canadian prime minister and the U.S. presidency.

The imported plasma, used in the manufacture of blood products, led to thousands of Canadians becoming infected with AIDS and hepatitis C. Using a legal loophole that allows imported plasma to meet lower screening standards if it is not intended for sale in Canada and the U.S., Montreal-based Continental Pharma-Cryosan purchased plasma from prisons, developing nations such as Colombia and Congo, and low-income pockets in the United States. This was despite the fact that the Red Cross had stopped buying from prisons in 1971, due to high hep C infection rates, and the World Health Organization had placed a ban on many of the other importation practices used by Continental. Officials at Continental were fined in 1980 after pleading guilty to falsely labelling blood from Russian cadavers as Swedish blood. But the company would go on to sell products to Japan, Italy, Spain, Switzerland, Iran, Iraq, as well as Toronto's Connaught Laboratories.

Two years ago, the RCMP laid 32 criminal charges against the heads of the Canadian Red Cross, Health Canada and others for criminal negligence and other offences (the cases have not yet gone to trial). To date, no charges have been laid against elected officials, but they still may be.

Much of the blood came from prisons in Arkansas. The governor of Arkansas at the time, Bill Clinton, had installed Leonard Dunn, his Democratic party chairman, to oversee collection. Some have alleged that the two conspired to secretly funnel the rest of the money into Democratic party coffers. Hotbeds of HIV, hep C and syphilis, convicts were allowed to donate up to 60 times a year in exchange for US\$7 for every unit of blood, which would be sold for US\$50. The state reported it made →

TAINTED BLOOD

\$900,000 in revenue selling prisoner blood to companies like Continental. But, in 1999, CBC's "The Fifth Estate" interviewed the doctor at Cummins Prison in Grady, Arkansas, who estimated that his prison alone had made half-a-million dollars a year in blood sales. Mike Galster, an orthopedic technician and author of *Blood Trail*, who blew the whistle on the prison blood program, estimates that as much as US\$5 million worth of plasma was sold to Canada alone. Sales of Arkansas prison blood went on until 1994, when the prison's last remaining customer, Connaught, finally stopped buying.

Clinton isn't the only world leader in the spotlight. At the time, Connaught was a wholly-owned subsidiary of the Canadian Development Corporation (CDC). Prime Minister Paul Martin, then a private citizen and businessman, was appointed by the Liberal government to sit on the board from 1981 to 1987. Little is known about how much the CDC and Martin knew about their subsidiary importing infected blood and their involvement in it. When the Canadian Hemophilia Society tried obtaining, through the Access to Information Act, minutes of board meetings from the years 1983 to 1987, they were told the records could not be found. Martin has told Parliament he has "no recollection" whether tainted blood issues were ever discussed among CDC directors.

Mike McCarthy of Sebringville, Ont., is the lead plaintiff in a \$1.1-billion lawsuit against the Canadian federal government, charging Ottawa with negligence for allowing the blood into the country. He says that about half of the Canadians who received the tainted blood from the Arkansas prison have died. "There needs to be accountability for the decisions and actions of the CDC during this time," McCarthy says. "If they supported importing blood from prisoners, they have to be held accountable." ❧

— CANDIS McLEAN

expectations regarding coverage of out-of-pocket expenses and the reality is due to a breakdown in communication, Toews says. "In its initial 1998 press release, the federal government made it sound as though everything was going to be paid for, down to the last piece of gauze, but we have followed the agreement we negotiated down to the letter."

Many aren't buying the explanation. "I know a program was developed so I would not have to suffer these expenses and I know that is not what the program is being used for," says Boddy. "Monitoring and treatment is spotty at best, which does not help the patient at all." David Harvey, the lawyer representing the group of tainted-blood victims excluded from the \$1.2-billion settlement, says he's heard from numerous individuals who haven't received any money to help with their medical bills. On May 26, he sent a letter to Auditor General Sheila Fraser, requesting that she audit the funds to ensure the provinces spent them for the purpose intended. "If \$300 million wasn't used for enhanced care, what was it used for?" asks Harvey.

There are also problems with the fund for those infected inside the 1986-1990 window. Crawford Adjusters Canada of Kitchener, Ont., in charge of managing the compensation fund, reports that as of March 2003, three years into the compensation program, \$301 million had been paid in benefits in response to 7,500 claims (the company will not divulge how many of those claims were made by victims and how many were made by families of sufferers who have died). These payouts varied from \$10,000 to several hundred thousand dollars for those most extremely stricken with hep C, with an average payout of \$40,000. There are a further 1,300 claims in process. After accumulated interest, the fund's capital has declined over three years from the original \$1.2 billion to \$1.05 billion (a recent report in the *Globe and Mail*, which put the figure at \$794 million, neglected to include financial commitments from the provinces).

The 2001 annual report for the 1986 to 1990 Class Action Settlement Fund, prepared by Crawford, states that out of the fund's capital, \$67 million has been paid to lawyers, including \$54 million for their services in the class action lawsuit, but

offers no explanation of how those fees were dispersed. Bruce DeVenne, a Sackville, N.S., hep C sufferer, says, "This is an annual report on where our money is going, yet they toss in '54 million in start-up fees' like a Henny Youngman one-liner, with no breakdown and no intention of supplying said breakdown." When Bonnie Tough, one of the four lawyers on the joint committee managing the fund (at an additional cost of \$2.3 million over



three years), was asked by the *Western Standard* for an accounting of where, exactly, the \$54 million went, she replied simply: "That is not public information."

In total, over three years, auditors, trustees, investment managers, actuaries, administrators and consultants billed \$32 million (before taxes) to dole out \$300 million to victims. In other words, it cost one dollar in administration for every 10 dollars distributed to hep C sufferers.

In 2002, the courts overruled a request by Quebec lawyers to collect \$15 million in fees (on top of the \$54 million), determining that \$6.6 million was a more appropriate amount. In 2001, Ottawa appealed another \$20 million in fees (again, over and above the original \$54 million) claiming it was excessive, but the Ontario Court of Appeal upheld the bill.

In the meantime, even those hep C victims eligible for compensation have

received only pennies on the dollar for income lost due to their inability to work. Victims can only collect a maximum of \$70,000 a year for lost income. DeVenne says he used to earn \$43,000 a year, but receives only \$15,000 in income replacement. Only in June did the joint committee overseeing the fund apply to the courts to lift all caps on compensation, a move some observers say may have something to do with the inquiries being made to the



JESSICA GERBEY

Tainted blood-victim Victoria Boddy has had no help paying for \$72,000 in drugs

committee by DeVenne and this magazine. Indeed, the Ontario compensation fund set up in 2000 for victims who contracted E. coli bacteria from drinking tainted water in Walkerton, Ont., which is also administered by Crawford, has incurred significantly fewer expenses. Both funds have been operational for three years, though there have been 9,000 approved claims on the Walkerton fund, as opposed to 7,500 claims on the hep C fund, and \$50 million have been paid to the victims of the bad water, versus \$300 million paid out to tainted-blood victims. On costs, the two funds are miles apart. Lawyers' fees for the Walkerton class action suit were only \$4 million, a fraction of the \$54 million paycheck that attorneys collected for

the tainted-blood suit, though admittedly the battle for compensation for hep C victims was a much more protracted battle. At the same time, the Walkerton fund has incurred \$500,000 in operating fees (not including administration fees paid by the province of Ontario) less than two per cent of the \$32 million it has cost to operate the hepatitis C fund. Harvey Strosberg, a class action lawyer for both funds in Windsor, Ont. notes that the hep C settlement was a more complicated matter, involving victims across all provinces.

Peter Stoffer, NDP member of parliament for Lower Sackville, N.S., believes the hep C compensation debacle amounts to a scandal even worse than the sponsorship program. "This \$1.2-billion fund is not subject to freedom of information searches or investigation by the auditor general," he says. "Professionals got rich. The fund should have been handled by the government, not an arm's-length private agency. The Liberals love doing this; just as with the Millennium Fund, they're saying, 'We don't have to answer to anyone.'" Stoffer is demanding the auditor general conduct a special inquiry into the affair.

Hep C sufferers who have tried to get to the bottom of the matter have been rebuffed. James Kreppner, a Toronto tainted-blood victim, says he has met with lawyers on the fund's joint committee to request that victims' representatives be allowed to sit in, at least as observers, on committee meetings. They rejected the idea out of hand, he says. "What would have been the hurt to them? Are they trying to hide things?" asks Kreppner.

Dr. Grant Hill, Conservative MP for Macleod, Alta., and a former health critic, says he's furious about the way the provinces have been "letting so many folks die," as many previously uncompensated victims who had finally hoped to get some help from Rock's "Care instead of Cash" program, have found themselves left out in the cold again. "When they've told people outside the [qualifying] window over and over that there's nothing for them, they've just given up," says Hill. He favours a solution proposed by a number of victims—that part of the initial \$1.2-billion "window" settlement be shared with the rest of the tainted-blood victims. So far, Hill points out, only \$300 million of that fund have been distributed to eligible recipients. "It's believed the remainder

must be kept on hand for young people who have the virus in their system and will get ill later in life, and that's legitimate," says Hill. "But if they were to distribute, say, \$300 million to those outside the window, there would still be money left over for a security blanket."

By most estimates, there remain probably no more than 5,000 individuals still waiting for compensation of some kind. And, of the original 22,000 people the government estimated contracted hep C between 1986 and 1990, only 9,000 have made claims on the \$1.2-billion compensation package. Combined, the two groups would total fewer than 15,000 hep C sufferers. According to Harvey, who has produced an actuarial study evaluating the potential liability of the fund, there is more than enough money left in the trust fund to help them all. In the meantime, powerful new drug cocktails have the ability to suppress the virus to undetectable levels in nearly half of those sufferers who take them, further reducing the number of expensive compensation claims.

Meanwhile, victims like Boddy are forced to continue their fight. Last month Boddy became the lead plaintiff in *Adrian vs. Canada (Minister of Health)*, a class action lawsuit now proceeding through the Alberta court system (the original lead plaintiff succumbed to complications of hepatitis C). The suit argues discrimination under the Charter of Rights and Freedoms, claiming that one group of victims has been treated differently than another group. The feds have tried to have the suit dismissed but, on May 3, the Alberta Court of Appeal determined the action could proceed. "The government is prepared to put millions into lawyers fighting us rather than helping us," says Boddy. Victims' groups across the country are now preparing to either join the Alberta action or launch actions of their own. For Boddy, and the others, it's a race against time. She's facing a growing list of complications from the virus, including cirrhosis of the liver, diabetes, permanent kidney damage, a nonfunctioning digestive system, and she's currently being tested for non-Hodgkin's Lymphoma, a type of cancer. She swallows painkillers by the fistful, she says. But, she still manages to joke, the thing most likely to kill her is government red tape. **WS**