

**HEPATITIS C  
CLASS ACTION SETTLEMENT  
1986 - 1990**

**YEAR 10**

**REPORT OF THE JOINT COMMITTEE  
FOR THE PERIOD ENDING DECEMBER 31, 2009**

I N D E X

- 1 Report of the Joint Committee
- A Audited Financial Statements of the 1986-1990 Hepatitis C Fund for year ending December 31, 2009
- B Deloitte & Touche – Report to the Joint Committee
- C RBC Dexia, Trustee and Custodian Hepatitis C Trust Fund – Information Brief – January 2010
- D TD Asset Management Inc.– Annual Certificate of Compliance for year ended December 31, 2009
- E TD Asset Management Inc.– Report
- F TD Asset Management Inc.–Portfolio Review of Trust Fund Assets, dated March 17, 2010
- G TD Asset Management Inc.- Hepatitis C Settlement Trust Fund – Annualized Performance
- H Eckler Ltd.- Report of Activities
- I Eckler Ltd. - Hepatitis C Settlement Trust Fund Investment Summary
- J Annual Report of the Administrator
- K Crawford Administration Proposal for Years 8 to 10
- L Crawford Year 10 Reconciliation
- M Canadian Blood Services 2009 Litigation Notification Program Reconciliation
- N Summary of Joint Committee Work During Tenth Year of Operations (2009)
- O Fees of Joint Committee
- P Report of Fund Counsel
- Q Report and Fees of Referees and Arbitrators for Year ended December 31, 2009

**HEPATITIS C  
CLASS ACTION SETTLEMENT**

**1986 - 1990**

**YEAR 10 (2009)**

**REPORT OF THE JOINT COMMITTEE  
FOR THE PERIOD ENDING DECEMBER 31, 2009**

**I N D E X**

**EXECUTIVE SUMMARY .....1**

**OVERVIEW.....2**

**YEAR 10 (2009) EXPENSES.....3**

**YEAR 11 (2010) BUDGETS .....5**

**DELOITTE & TOUCHE LLP .....6**

**RBC DEXIA INVESTMENT SERVICES .....6**

**TD ASSET MANAGEMENT INC.....7**

**ECKLER LTD. ....8**

**CRAWFORD CLASS ACTION SERVICES.....9**

**PRICEWATERHOUSECOOPERS LLP.....11**

**NAVIGANT CONSULTING INC.....11**

**CANADIAN BLOOD SERVICES .....12**

**HÉMA-QUÉBEC.....12**

**JOINT COMMITTEE.....13**

**FUND COUNSEL .....14**

**REFEREES AND ARBITRATORS .....15**

**THE MONITOR.....16**

## **HEPATITIS C CLASS ACTION SETTLEMENT 1986-1990**

### **EXECUTIVE SUMMARY**

1. The 1986-1990 Hepatitis C Fund (the “Trust Fund”) completed its tenth year of operations on December 31, 2009 (“Year 10 (2009)”).
2. In Year 10 (2009), the Centre received 450 new claims as follows:
  - 102 Primarily Infected Transfused (including claims made on behalf of deceased persons)
  - 12 Primarily Infected Hemophiliac (including claims made on behalf of deceased persons)
  - 1 Secondarily Infected Claim
  - 335 Family Member/Dependent claims
3. The Hepatitis C Claims Centre (the “Centre”) approved for payment approximately \$37 million to approved claimants (prior and new) in Year 10 (2009). Since its inception, the Centre has paid out a total of approximately \$635 million in benefits in response to approximately 12,518 approved claims.
4. During year 10 (2009), the assets held by the Trustee grew by 12% (net of payments out) due in large measure to the correction in the markets after the 2008-2009 financial crisis. The Investment Summary of Eckler Ltd. attached at Schedule H indicates a value of \$938 million held by the Trustee as at December 31, 2009. The total unpaid liability of the provincial governments is approximately \$196 million for a total available to satisfy the claims of class members of approximately \$1.34 billion as at December 31, 2009.

5. Expenses for administration of the Trust Fund for Year (10) totalled approximately \$2.4 million for all service providers.

## OVERVIEW

6. This is the tenth Annual Report of the Joint Committee to the Supreme Court of British Columbia, the Superior Court of Justice for Ontario, and the Superior Court of Quebec (collectively the “Courts”) on the status of the Trust Fund and the administration of the Hemophiliac HCV Plan and Transfused HCV Plan (collectively the “Plans”).

7. The Joint Committee is comprised of Harvey T. Strosberg, J.J. Camp, Bonnie Tough and Michel Savonitto. Mr. Strosberg was appointed by Order of the Superior Court of Justice for Ontario. Mr. Camp was appointed by Order of the Supreme Court of British Columbia. Mr. Savonitto was appointed by the Order of the Superior Court of Quebec. Ms. Tough was appointed by Order of each of the Superior Court of Justice for Ontario, the Supreme Court of British Columbia and the Superior Court of Quebec. This report is prepared by and on behalf of all members of the Joint Committee.

8. Discussion of the activities of the various service providers to the Trust Fund is found under the appropriate headings below and/or in their reports which are attached hereto.

9. Until now, the information necessary to prepare the budgets, to plan and complete the audit and to complete the Annual Report has been collected from service providers beginning at the end of the year being reported on. The result is that the budgets for the calendar year then already in progress have gone before the Courts with the Annual Report in spring or late spring of each year<sup>1</sup>.

10. As a result of a request from the Courts made in January 2010, the Joint Committee has bifurcated the Annual Report into a separate motion for budget approval and the Annual Report. The budgeting process for Year 11 (2010) was accelerated to the extent possible and

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<sup>1</sup> The Year 9 (2008) Annual Report was delayed to late fall due to some unavoidable issues including the health of the Joint Committee member who took the lead on the Annual Report.

motions were brought before the Courts while the audit was ongoing and this Annual Report was being compiled.

11. For future years, the Joint Committee plans to collect the information for the budgeting process in the fourth quarter of the year so that the budgets go before the Courts by the beginning of the year to which they pertain. This will mean that the budgets are projections based on estimates of the previous year's expenditures.

12. The Annual Report will continue to include a significant amount of the information contained in the budget because the Annual Report is the single comprehensive reporting document to the public. Also, because in future years the budgeting will be based on estimates of the previous year's expenditures and not the actual expenditures, reconciliations of accounts will also continue to be included as part of the Annual Report.

#### YEAR 10 (2009) EXPENSES

13. The expenses of each of the service providers supervised by the Joint Committee for Year 10 (2009) are set out below as are the budgets for Year 11 (2010) which have been separately put before the Courts.

14. The following chart summarizes the budget versus actual expenses for the following service providers for Year 10 (2009) exclusive of applicable taxes and not including work done on fund sufficiency matters.

Service Provider	Budget Year 10, (2009)	Actual Year 10 (2009)	Variance from Budget	Note
Administrator - Crawford Class Action Services	\$1,020,000 plus appeals and third party expenses and subject to adjustments for measurable activities	\$1,020,000.00 \$38,211.77 appeals and third party expenses \$31,721.37 increase of measurable activities	None	See paras. 42 to 48. and Tab L
Auditor - Deloitte & Touche LLP Audit services Financial Statements Special Projects	\$74,200.00 \$11,660.00 \$5,300 plus travel expenses	\$86,190.00 on audit and financial statements, including travel Nothing on special projects	(\$5,300)	See paras. 21 to 24



Service Provider	Budget Year 10, (2009)	Actual Year 10 (2009)	Variance from Budget	Note
Trustee RBC Dexia Investment Services	\$125,000.00	\$98,186.39	(\$26,813.61)	See paras. 25 to 27 and Tab C
Investment Manager TD Asset Management Inc.	\$200,000.00	\$165,900.10	(\$34,099.90)	See paras. 28 to 33 and Tab E
Actuarial Services & Investment Review - Eckler Ltd.	\$60,000.00	\$46,519.00	(\$13,481.00)	See paras. 34 to 41
Canadian Blood Services				See paras. 55 to 56 and Tab M
Traceback costs	\$32,000.00	\$31,043.00	(\$957.00)	
Frozen Samples	\$26,691.00	\$26,718.00	\$27.00	
PriceWaterhouseCoopers LLP	\$15,000.00	\$14,903.90	(\$96.10)	See paras. 49 to 51
Navigant Consulting Inc.	\$20,000.00	\$0.00	(\$20,000.00)	See paras. 52 to 54
Joint Committee Fees	\$500,000.00	\$304,832.25	(\$195,167.75)	See paras. 60 and Tabs N and O
Disbursements	\$50,000.00	\$36,932.89	(\$13,069.11)	

15. The total expenses of these service providers combined for general work, not including fund sufficiency, is \$1,900,719.43. Collectively these service providers were under budget for Year 10 (2009) by \$308,957.47.

16. In Year 10 (2009), the following service providers were engaged on fund sufficiency matters:

Service Provider	Budget Year to (2009)	Actual Year 10 (2009)	Variance from Budget	Note
Eckler Ltd. – Actuarial Services – Fund Sufficiency Follow up on 2007 fund sufficiency and Investment Review Guidelines	\$150,000 budget from 2007 fund sufficiency remaining	\$62,586.30	see notes	See paras. 34 to 41
Joint Committee – follow up on 2007 fund sufficiency matters and pre-planning for 2010 fund sufficiency review	\$200,000	\$68,645.86 approved by orders of the Courts		See paras. 60 to 64 Budget proposed, but inadvertently not included in approval order

17. In addition, the following service providers who are not under the supervision of the Joint Committee have provided services in Year 10 (2009) which were paid pursuant to court orders or court approved tariff:

- (a) Fund Counsel fees incurred of approximately \$144,253.50 exclusive of taxes and disbursements (\$171,209.24 including taxes and disbursements);
- (b) Arbitrators and Referees fees incurred of approximately \$45,427.50 exclusive of taxes and disbursements (\$51,971.54 including taxes and disbursements); and
- (c) Court Monitor fees incurred of approximately \$41,320.00 exclusive of taxes and disbursements (\$69,971.47 including taxes and disbursements).

### YEAR 11 (2010) BUDGETS

18. In March and April 2010, the Joint Committee filed motions pertaining to the budgets for services providers for Year 11 (2010). The chart below summarizes the proposed budgets and payment methodology for service providers in Year 11 (2010), exclusive of applicable taxes:

Service Provider	Budget Year 10 (2009)	Budget Year 11 (2010)	Payment Methodology
Crawford Class Action Services (exclusive of third party expenses and adjustment for increase/decrease of certain measurable activities by more than 10% per quarter and/or per annum)	\$1,020,000.00	\$867,000.00	\$72,250.00 monthly
Deloitte & Touche LLP Audit Financial statements Special projects  (exclusive of travel expenses)	\$74,200.00 \$11,660.00 \$5,300.00	\$76,320.00 \$11,978.00 \$15,900.00	\$7,358.16 monthly subject to approval by the Joint Committee
RBC Dexia Investment Services	\$125,000.00	\$125,000.00	up to \$10,471.00 monthly
TD Asset Management Inc.	\$200,000.00	\$200,000.00	up to \$16,667.00 monthly
Eckler Ltd. Actuarial services and investment review Investment Guidelines special project	\$60,000.00	\$60,000.00 \$25,000.00	subject to approval by the Joint Committee
Canadian Blood Services Traceback costs Frozen sample storage	\$32,000.00 \$26,691.00	\$31,664.00 \$26,718.00	\$4,865.16 monthly
PriceWaterhouseCoopers LLP	\$15,000.00	\$15,000.00	subject to approval by the Joint Committee
Navigant Consulting Inc.	\$20,000.00	\$20,000.00	subject to approval by the Joint Committee
Joint Committee	\$550,000.00	\$550,000.00	subject to Court order

19. These proposed budgets do not cover fund sufficiency matters. Fund sufficiency budgets will be the subject of a separate budget and applications for court approval.

20. Given the impending introduction of HST, the overall cost to the Trust Fund will increase to the extent that certain service providers now charge neither a harmonized sales tax nor a provincial sales tax but will be required to charge HST commencing July 1, 2010.

**DELOITTE & TOUCHE LLP**

21. Deloitte & Touche LLP (“Deloitte”) was appointed auditor of the Trust Fund pursuant to orders of the Courts.

22. In addition to the audit of the Trust Fund, Deloitte prepares the financial statements on behalf of the Joint Committee. Attached as Schedule A is a copy of financial statements prepared and audited by Deloitte. Attached as Schedule B is a copy of Deloitte’s Report to the Joint Committee. The Courts approved a budget for Deloitte for the audit and financial reports for Year 10 (2009) of \$85,860 including administration charges but excluding travel expenses and taxes.

23. The total amount invoiced by Deloitte for Year 10 (2009) of \$86,190.00 plus applicable taxes has been submitted for payment pursuant to the 2009 budget approval orders. The Joint Committee recommends approval of these charges.

24. For Year 11 (2010), the Joint Committee is proposing a higher special projects budget for Deloitte. The projects which are being considered include assistance with an independent review of the potential to migrate the CLASS software used in the administration of the Settlement Agreement to a commercially available database platform; and potential for assistance with the Annual Report.

**RBC DEXIA INVESTMENT SERVICES**

25. In Year 6, RBC Dexia Investment Services (“RBC Dexia”) was appointed successor Trustee of the Trust Fund pursuant to the orders of the Courts, on the same terms and conditions under which Royal Trust was originally appointed.

26. Attached as Schedule C is a brief description from RBC Dexia of its Custodial Trustee activities in the year ended December 31, 2009.

27. The Courts approved a budget for RBC Dexia for Year 10 (2009) of \$125,000 plus applicable taxes. The actual charge to the Trust Fund by RBC Dexia for Year 10 (2009) was \$98,186.39<sup>2</sup>. The Joint Committee recommends approval of these charges.

#### **TD ASSET MANAGEMENT INC.**

28. TD Asset Management Inc. (“TDAM”) was appointed Investment Manager of the Trust Fund pursuant to orders of the Courts. Attached as Schedule D is confirmation that TDAM has complied with the court approved Investment Guidelines. The Courts approved a budget for TDAM for Year 10 (2009) of \$200,000 plus applicable taxes.

29. Total fees charged by TDAM for Year 10 (2009) were \$165,900.10 plus GST for a total of \$174,195.11. Attached as Schedule E is the TDAM Report setting out the actual charges for the year ended December 31, 2009. The Joint Committee recommends approval of these charges.

30. Attached as Schedule F is the portfolio review of the Trust Fund assets. In Year 10 (2009), the portfolio went “out of balance” of the allowable tolerances contained in the Investment Guidelines for the first time in the history of the Trust Fund which triggered TDAM to make recommendations to the Joint Committee. While the current Investment Guidelines set minimum and maximum ranges for each class of asset held by the Trust Fund, they do not call for automatic rebalancing. The Joint Committee had to decide whether to re-balance (which generally, and in this case, means buying more of an under performing asset and selling an over performing asset). After taking investment advice on the matter, the Joint Committee decided to re-balance and TDAM provided options on how to do so. The issue of automatic re-balancing is one of the issues addressed in proposed revisions to the Investment Guidelines. In addition, the

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<sup>2</sup> RBC Dexia’s Year 10 (2009) fees were reported as \$97,747.15 in the Year 11 (2010) budget application in error. The error does not affect either the status of the Year 10 (2009) fees or the Year 11 (2010) budget since the actual fees of \$98,186.39 were under budget and the proposed budget is \$125,000.

short term bond portion of the portfolio tracked slightly outside its allowable tolerance (.4% instead of .2%). This was due to pricing of corporate bonds fluctuating dramatically in 2009 due to heavy demand in the challenging economic environment.

31. The Joint Committee also asked TDAM for a “since inception” breakdown on returns by asset class and that is attached as Schedule G, although TDAM was only able to provide annual returns for the total portfolio for the last two years.

32. The Joint Committee has engaged TDAM in the review of the proposed revised Investment Guidelines undertaken by Eckler Ltd. which has been helpful and is resulting in refinements to the proposed guidelines to ensure that it is feasible to implement at a low cost to the fund (which requires the guidelines to provide timing flexibility to TDAM) and to allow for the opportunity to invest in an anticipated further release of real return bonds with a maturity date of 2046.

33. If revised Investment Guidelines are approved, TDAM projects that its fees for implementing the changes, in particular the disposition of certain maturities of real return bonds and the acquisition of longer term real return bonds, will likely be higher than the current proposed budget for Year 11 (2010). The Joint Committee proposes to re-address TDAM’s Year 11 (2010) budget as part of the finalization of the application to amend the Investment Guidelines, if necessary.

#### **ECKLER LTD.**

34. Eckler Ltd. was retained initially by Class Counsel and subsequently by the Joint Committee to provide actuarial advice in respect of the Trust Fund.

35. Eckler Ltd. also provides advice to the Joint Committee in respect of investments on an as needed basis since the resignation of the Investment Consultants in Year 6 (2005).

36. Attached as Schedule H is the Report of Eckler Ltd. regarding its activities during Year 10 (2009).

37. Attached as Schedule I is an Investment Summary provided by Eckler Ltd.

38. The Courts approved an annual budget for Eckler Ltd.'s actuarial and investment review services of \$60,000 plus applicable taxes for Year 10 (2009).

39. Eckler Ltd. incurred charges of \$46,519.00 plus GST for Year 10 (2009) on general actuarial services and general investment review work not related to sufficiency. The Joint Committee recommends approval of these charges.

40. In addition to its general actuarial and investment services, Eckler also provided services in respect of the 2007 fund sufficiency review and planning for the 2010 fund sufficiency review, and the review of the Investment Guidelines and proposed revisions to the Investment Guidelines. Those accounts total \$62,586.30 and their approval has been sought as part of the budget approval motions currently pending before the Courts.

41. Work on the revisions to the Investment Guidelines is still ongoing. This work is not related to the original reason for review of the Investment Guidelines (which arose out of the 2007 sufficiency review) but is rather related to input from the Federal Government's actuaries about the asset classes to be held by the Trust Fund, and to the input received from TDAM as described above. Accordingly, the Joint Committee has sought, as part of the budget approvals currently pending before the Courts, a special projects budget of \$25,000, plus applicable taxes, relating to Eckler Ltd.'s remaining work on the revisions to the Investment Guidelines.

#### **CRAWFORD CLASS ACTION SERVICES**

42. Crawford Class Action Services ("Crawford") was appointed Administrator by orders of the Courts in March 2000. The Report of the Administrator is attached as Schedule J.

43. By orders of the Courts made in 2008, Crawford's appointment was extended to December 31, 2010 and its budget was also set through December 31, 2010. Attached as Schedule K is the approved budget for Crawford. It provides for a flat fee subject to adjustment in the event that certain Measurable Activities increase or decrease by more than 10% per quarter/per annum, as applicable. In addition to the flat fee subject to adjustments, there is a flow-through of certain out-of-pocket expenditures incurred by the Administrator relating to appeals and expert reports.

44. Schedule L is the Payment Reconciliation for 2009. It reflects the Crawford budget, plus flow-through expenditures of \$38,211.77 for appeal and third party expenditures and \$31,721.37 for adjustments as a result of an increase in Measurable Activities by more than 10%. The Joint Committee recommends approval of these charges in the total amount of \$1,144,429.80 inclusive of GST. Crawford has been paid \$976,084.34 inclusive of GST toward these charges. As at the end of 2008, the Trust Fund had a credit balance of \$20,733.16 owing by Crawford leaving the net amount of \$147,612.30 due and payable to Crawford for Year 10 (2009). The Joint Committee recommends approval of payment of this amount.

45. As is reported in more detail at Schedule O, the Joint Committee meets with several service providers, including the Administrator and the auditors, after the completion of the audit to address any issues which arose during the audit and generally to address any outstanding issues on the administrative front.

46. The auditors advised the Joint Committee that during the audit of Year 10 (2009), it became apparent that the Administrator had paid loss of income claims for persons resident in Manitoba using the Ontario tax rates because of problems with the loss of income software. The Joint Committee addressed this issue with the Administrator. The Administrator confirmed that they had done so because the loss of income software, which is revised each year by PriceWaterhouseCoopers, was incomplete with regard to the Manitoba tax rates when it was delivered. The Administrator did not think it was reasonable to have the Manitoba claimants wait for these payments until the software was completed, so it used the Ontario tax rates to calculate the amounts owing instead. The Administrator made these payments anticipating they would be incorrect to a minor degree and that the differences could be addressed in the following year's payments pursuant to section 7.05 of the Plans.

47. This resulted in an overpayment of 10 claimants in the total amount of \$19,346. The Joint Committee raised the following areas of concern with the Administrator as to how this was handled:

- (a) incorrect payments were made knowing they were incorrect;
- (b) the Joint Committee was not consulted and not informed; and

- (c) the claimants were not told that the payments made were not correct and would have to be adjusted by an offset or addition to a future payment.

48. The Administrator has agreed to engage the Joint Committee earlier if similar issues arise in the future. The Administrator has also contacted six of the ten affected claimants by telephone, advised them of the overpayment amount and that it will be deducted from the pending loss of income payments. The Administrator reports that all claimants contacted so far appeared to understand and none raised an objection to the proposed offset. The total overpayment not yet anticipated to be recovered by set-off is approximately \$8,300. The Joint Committee is addressing this issue with the Administrator.

#### **PRICEWATERHOUSECOOPERS LLP**

49. PriceWaterhouseCoopers LLP provides annual updates for tax calculations on software used to calculate income loss, software maintenance for the software used to calculate loss of income claims, and separate software used to calculate and track loss of income payment caps and holdbacks, and advice, assistance and training to the Administrator with regard to both types of software.

50. The total budget approved for PriceWaterhouseCoopers LLP for Year 10 (2009) by the Courts was \$15,000 exclusive of GST.

51. Actual billings by PriceWaterhouseCoopers LLP for Year 10 (2009) were \$14,903.90, exclusives of taxes. The Joint Committee recommends approval of these charges. The accounts of PriceWaterhouseCoopers LLP for Year 10 (2009) have been paid pursuant to the 2009 approved budget.

#### **NAVIGANT CONSULTING INC.**

52. LECG was retained initially by the Joint Committee and subsequently by the Administrator to provide expert accounting services in respect of a number of complex self-employment loss of income claims and appeals. The Partner responsible, Paula Frederick, who



has performed all of LECG's work for the Trust Fund, has moved her practice from LECG to LAC Ltd. carrying on business as Navigant Consulting Inc. ("Navigant").

53. The Joint Committee budgeted \$20,000 for the cost of Navigant's services in Year 10 (2009). Navigant's services were not required in Year 10 (2009).

54. The Joint Committee is aware that a single large loss of income claim or appeal could result in significant expert accounting expense. At present, the Administrator has identified one potentially large claim for which they may require assistance from Navigant. Accordingly, the Joint Committee has recommended a budget of \$20,000 for Navigant for Year 11 (2010).

#### **CANADIAN BLOOD SERVICES**

55. The efficient and effective conduct of tracebacks is a crucial component of the administration of the Plans. Canadian Blood Services ("CBS") provides the tracebacks required under the Plans. In the last few years, the demand for and costs of such tracebacks has been reduced significantly. Budgeting is currently based on paying a portion of a single staff person at CBS available to do tracebacks for the 1986-1990 Settlement Agreement as they are submitted. The Joint Committee will be revisiting whether the current resources are still required after the first claims deadline passes.

56. The total budget approved for CBS for Year 10 (2009) was \$58,691.00. Actual expenses incurred by CBS in Year 10 (2009) were \$57,761.00. The CBS actual versus budget reconciliation for Year 10 (2009) is attached as Schedule M. CBS has been paid the amount actually expended (less the overage it received for Year 9 (2008)) pursuant to the 2009 approved budget. The Joint Committee recommends approval of these charges.

#### **HÉMA-QUÉBEC**

57. There was no budget approved for Héma-Québec for Year 10 (2009) as Héma-Québec advised that, due to the limited number of requests, Héma-Québec would in the first

instance finance the cost of any individual requests and only seek reimbursement at year end if the total costs incurred were significant.

58. Héma-Québec has advised that it will not seek any reimbursement for Year 10 (2009).

59. No budget has been requested for Héma-Québec for Year 11 (2010).

### **JOINT COMMITTEE**

60. A summary of the work of the Joint Committee in the past year is set out in Schedule N.

61. The total budget for the Joint Committee general work for Year 10 (2009) was \$500,000 for fees and \$50,000 for disbursements, exclusive of taxes. The total fees of the Joint Committee in Year 10 (2009) for regular work were \$304,832.25 exclusive of taxes. The total disbursements of the Joint Committee in Year 10 (2009) were \$36,932.89. A detailed summary by jurisdiction of the fees and disbursements incurred by the Joint Committee in Year 10 (2009) is set out in Schedule O. All accounts were submitted to the Courts for approval before being paid.

62. The Joint Committee has incurred an additional \$58,839.25 in fees and \$9,806.61 in disbursements relating to both 2007 and 2010 fund sufficiency matters. A budget of \$200,000 for fees and \$25,000 for disbursements was sought to be approved in the budget approval order for Year 10 (2009) but left out of the approval orders by oversight. These accounts have been paid based upon individual orders received from the Courts.

63. While the Joint Committee was under budget for Year 10 (2009), it has proposed the budget for general fees and disbursements for Year 11 (2010) remain the same (\$500,000 for fees and \$50,000.00 for disbursements). The Joint Committee anticipates committing more time in Year 11 (2010) on general matters because of the bifurcation of the budgeting and Annual Report (which means that in this calendar year, 2 motions for approval of budgets will be completed as well as one Annual Report); because of increased activity due to the pending first

claims deadline; because of increased activity pertaining to the Administration contract which comes to end at the end of this calendar year; and because of a number of other projects that the Joint Committee is working on to improve administration issues and deal with the software used in the administration of claims. These issues are discussed in more detail in Schedule N.

64. The Joint Committee will propose a budget for the 2010 fund sufficiency matters separately.

### **FUND COUNSEL**

65. Belinda Bain and John Callaghan were appointed as Fund Counsel in the Ontario Class Actions by Order of the Superior Court of Justice for Ontario. Mason Poplaw was appointed Fund Counsel in Quebec Class Actions by Order of the Quebec Superior Court and William Ferguson was appointed Fund Counsel in the B.C. Class Actions by Order of the Supreme Court of British Columbia.

66. Attached as Schedule P is the report of Fund Counsel on their activities and their fees incurred in Year 10 (2009).

67. In Year 10 (2009), the following appeals were dealt with in each jurisdiction:

- (a) Ontario (which covers provinces and territories other than Quebec and British Columbia):
  - (i) 10 appeals were received during the calendar year;
  - (ii) 8 were completed;
  - (iii) 4 were withdrawn;
  - (iv) 28 are pending; and
  - (v) 50 were the subject of requests for judicial confirmation;
- (b) Quebec:

- (i) one appeal was received during the calendar year;
  - (ii) one was completed;
  - (iii) one is pending; and
  - (iv) one is the subject of a request for judicial confirmation;
- (c) British Columbia:
- (i) one appeal was received during the calendar year;
  - (ii) one was completed;
  - (iii) one was withdrawn;
  - (iv) one was mediated;
  - (v) one is the subject of a request for judicial confirmation; and
  - (vi) four are pending.

68. Fund Counsel estimates that the volume of appeal work in Year 11 (2010) will remain the same or decrease slightly.

69. In Year 10 (2009), the total Fund Counsel fees were \$144,253.50 before taxes and disbursements (\$171,209.24 including taxes and disbursements). All accounts were submitted to the appropriate Courts for approval before payment.

#### **REFEREES AND ARBITRATORS**

70. Referees and Arbitrators were appointed for each jurisdiction by court orders.

71. A summary of the work of the Referees and Arbitrators as well as the fees incurred for Year 10 (2009) is set out in Schedule Q.

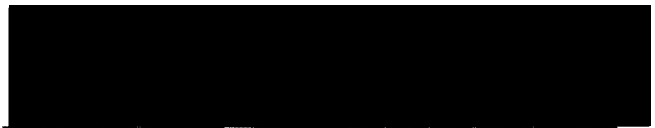
72. In Year 10 (2009), the total fees for the Arbitrators and Referees were approximately \$45,427.50 exclusive of taxes and disbursements (\$51,971.54 including taxes and disbursements). Fees for the Arbitrators and Referees are paid based upon a tariff set by the Courts.

**THE MONITOR**

73. The Monitor was appointed by order of the Ontario Superior Court of Justice.

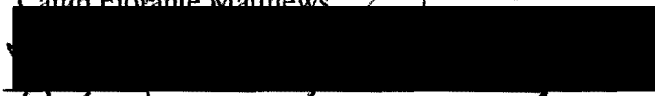
74. In Year 10 (2009), the total fees of the Monitor were approximately \$41,320.00 exclusive of taxes and disbursements (\$69,971.47 including taxes and disbursements). Fees for the Monitor are paid based on court order.

Dated: *Apr. 28, 2010*



J.J. Camp  
Camp Fiorante Matthews

Dated: *Apr. 28, 2010*



Harvey Strosberg  
Sutt's Strosberg LLP

Dated: *Apr. 28, 2010*



Michel Savonitto  
Lapointe Rosenstein Marchand Melançon LLP

Dated: *Apr. 28, 2010*



Bonnie A. Tough  
Tough & Podrebarac LLP

\*Proprietary, personal and financially sensitive information has been excluded from the publicly-disclosed copies of this report.

**SCHEDULE A**  
**TO THE REPORT OF THE JOINT COMMITTEE**  
FOR THE PERIOD ENDING DECEMBER 31, 2009

*Financial Statements of*  
*États financiers du*

**THE 1986 - 1990 HEPATITIS C FUND**  
**FONDS HÉPATITE C 1986 - 1990**

*December 31, 2009*  
*31 décembre 2009*



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## Auditors' Report

To the Joint Committee of the 1986 - 1990 Hepatitis C Fund

We have audited the statement of financial position of the 1986-1990 Hepatitis C Fund as at December 31, 2009 and the statements of expenses and revenue and of cash flows for the year then ended. These financial statements are the responsibility of the Joint Committee of the Fund. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Fund as at December 31, 2009 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

## Rapport des vérificateurs

Au comité mixte du Fonds Hépatite C 1986 - 1990

Nous avons vérifié le bilan du Fonds Hépatite C 1986-1990 au 31 décembre 2009 et les états des résultats et des flux de trésorerie de l'exercice terminé à cette date. La responsabilité de ces états financiers incombe au comité mixte du Fonds. Notre responsabilité consiste à exprimer une opinion sur ces états financiers en nous fondant sur notre vérification.

Notre vérification a été effectuée conformément aux normes de vérification généralement reconnues du Canada. Ces normes exigent que la vérification soit planifiée et exécutée de manière à fournir l'assurance raisonnable que les états financiers sont exempts d'inexactitudes importantes. La vérification comprend le contrôle par sondages des éléments probants à l'appui des montants et des autres éléments d'information fournis dans les états financiers. Elle comprend également l'évaluation des principes comptables suivis et des estimations importantes faites par la direction, ainsi qu'une appréciation de la présentation d'ensemble des états financiers.

À notre avis, ces états financiers donnent, à tous les égards importants, une image fidèle de la situation financière du Fonds au 31 décembre 2009 ainsi que des résultats de son exploitation et de ses flux de trésorerie pour l'exercice terminé à cette date selon les principes comptables généralement reconnus du Canada.

*Deloitte & Touche LLP / s. r. l.*

Chartered Accountants  
Licensed Public Accountants

Comptables agréés  
Experts-comptables autorisés

February 19, 2009

Le 19 février 2009



**THE 1986 - 1990 HEPATITIS C FUND**  
Financial Statements  
December 31, 2009

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**FONDS HÉPATITE C 1986 - 1990**  
États financiers  
31 décembre 2009

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	<u>PAGE</u>	
Statement of Financial Position	1	Bilan
Statement of Expenses and Revenue	2	État des résultats
Statement of Cash Flows	3	État des flux de trésorerie
Notes to the Financial Statements	4 - 12	Notes complémentaires



**THE 1986 - 1990 HEPATITIS C FUND**  
**Statement of Financial Position**  
as at December 31, 2009  
(in thousands of dollars)

**FONDS HÉPATITE C 1986 - 1990**  
**Bilan**  
au 31 décembre 2009  
(en milliers de dollars)

	<u>2009</u>	<u>2008</u>	
<b>ASSETS</b>			<b>ACTIF</b>
Cash	\$ 73	\$ 53	Encaisse
Investments (note 3)	938,336	861,790	Placements (note 3)
Contributions receivable	1,276	947	Apports à recevoir
	<b>\$ 939,685</b>	<b>\$ 862,790</b>	
<b>LIABILITIES</b>			<b>PASSIF</b>
Accounts payable and accrued liabilities	\$ 785	\$ 1,001	Créditeurs et charges à payer
Accrued claims in process of payment	3,983	2,499	Demandes accumulées en cours de paiement
Funding held for future expenses (note 4)	934,917	859,290	Financement pour charges futures (note 4)
	<b>\$ 939,685</b>	<b>\$ 862,790</b>	

APPROVED BY THE JOINT COMMITTEE OF  
THE 1986 - 1990 HEPATITIS C FUND

AU NOM DU COMITÉ MIXTE DU FONDS  
HÉPATITE C 1986 - 1990

  
H.T. STROSBERG  
M. SAUONITTO  
B. TOUGH }  
  
BY PERMISSION

**THE 1986 - 1990 HEPATITIS C FUND**  
**Statement of Expenses and Revenue**  
year ended December 31, 2009  
(in thousands of dollars)

**FONDS HÉPATITE C 1986 - 1990**  
**État des résultats**  
de l'exercice terminé le 31 décembre 2009  
(en milliers de dollars)

	<u>2009</u>	<u>2008</u>	
EXPENSES			DÉPENSES
Claims (note 5)	\$ 37,457	\$ 47,992	Demandes (note 5)
Operating (note 6)	2,429	2,920	Frais d'exploitation (note 6)
	<u>39,886</u>	<u>50,912</u>	
REVENUE	<u>39,886</u>	<u>50,912</u>	REVENUS
EXCESS OF REVENUE OVER EXPENSES	\$ -	\$ -	EXCÉDENT DES REVENUS SUR LES DÉPENSES

**THE 1986 - 1990 HEPATITIS C FUND**  
**Statement of Cash Flows**  
**year ended December 31, 2009**  
(In thousands of dollars)

**FONDS HÉPATITE C 1986 - 1990**  
**État des flux de trésorerie**  
**de l'exercice terminé le 31 décembre 2009**  
(en milliers de dollars)

	<u>2009</u>	<u>2008</u>	
NET INFLOW (OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES:			RENTRÉES (SORTIES) NETTES D'ENCAISSE LIÉES AUX ACTIVITÉS SUIVANTES :
OPERATING			EXPLOITATION
Excess of revenue over expenses	\$ -	\$ -	Excédent des revenus sur les dépenses
Items not affecting cash			Éléments sans incidence sur l'encaisse
Realized gains on investments	(1,319)	(532)	Gains réalisés sur placements
Unrealized (gains) losses on investments	(73,210)	45,027	(Gains) pertes réalisés sur placements
	<u>(74,529)</u>	<u>44,495</u>	
Changes in non-cash operating working capital items			Variation nette des éléments hors caisse du fonds de roulement d'exploitation
Contributions receivable	(329)	(481)	Apports à recevoir
Accounts payable and accrued liabilities	(216)	580	Créditeurs et charges à payer
Accrued claims in process of payment	1,484	1,028	Demandes accumulées en cours de paiement
Funding held for future expenses	75,627	(35,057)	Financement pour charges futures
	<u>2,037</u>	<u>10,565</u>	
INVESTING			INVESTISSEMENT
Purchase of investments	(114,395)	(164,810)	Acquisition de placements
Proceeds on sale of investments	112,378	154,241	Produits de la vente de placements
	<u>(2,017)</u>	<u>(10,569)</u>	
NET CASH INFLOW (OUTFLOW)	<u>20</u>	<u>(4)</u>	AUGMENTATION NETTE (DIMINUTION) DE L'ENCAISSE
CASH, BEGINNING OF YEAR	<u>53</u>	<u>57</u>	ENCAISSE AU DÉBUT
CASH, END OF YEAR	<u>\$ 73</u>	<u>\$ 53</u>	ENCAISSE À LA FIN

**THE 1986 - 1990 HEPATITIS C FUND**  
**Notes to the Financial Statements**  
**year ended December 31, 2009**

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**1. DESCRIPTION OF THE FUND**

The 1986-1990 Hepatitis C Fund (the "Fund") was established to hold and invest funds and administer their payment as compensation to claimants who qualify as class members, all pursuant to the terms of the January 1, 1986 - July 1, 1990 Hepatitis C Settlement Agreement (the "Agreement") made as of June 15, 1999 and the Judgments of the Supreme Court of British Columbia, Superior Court of Justice for Ontario and Superior Court of Quebec (the "Courts").

The maximum obligations to the Fund established as at January 10, 2000 were \$1.203 billion, shared between the Government of Canada (72.7273%) and the governments of the provinces and territories (27.2727%), plus interest accruing thereafter on the unpaid obligations. The Government of Canada has made contributions to the Fund, which totally satisfy its obligation to the Fund. The provincial and territorial governments are required to contribute as and when required for payment of their share of expenses. Provinces and territories may elect to prepay their contributions. To the extent provinces and territories do not prepay their contributions, interest is calculated on their outstanding obligations at treasury bill rates applied quarterly. As at December 31, 2009 those obligations including interest are estimated to be \$195,106,000 (December 31, 2008 - \$204,295,000).

The operations of the Fund are subject to various reviews and approvals by the Courts.

The Fund is a trust that is exempt from income tax under the Income Tax Act.

**2. SIGNIFICANT ACCOUNTING POLICIES**

The financial statements have been prepared in accordance with Canadian generally accepted accounting principles (GAAP) and include the following significant accounting policies:

**FONDS HÉPATITE C 1986 - 1990**  
**Notes complémentaires**  
**de l'exercice terminé le 31 décembre 2009**

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**1. DESCRIPTION DU FONDS**

Le Fonds Hépatite C 1986-1990 (le "Fonds") a été constitué dans le but de conserver et d'investir des fonds et de gérer leur versement sous forme d'indemnités aux requérants admissibles comme personnes inscrites au recours collectif, conformément aux modalités de l'entente de règlement relative à l'hépatite C pour la période allant du 1<sup>er</sup> janvier 1986 au 1<sup>er</sup> juillet 1990 (l'"entente"), datée du 15 juin 1999, et aux décisions de la Cour suprême de la Colombie-Britannique, de la Cour supérieure de justice de l'Ontario et de la Cour supérieure du Québec (les "tribunaux").

Au 10 janvier 2000, les obligations maximales revenant au Fonds s'élevaient à 1,203 milliards de dollars, et elles étaient partagées entre le gouvernement du Canada (72,7273 %) et les gouvernements provinciaux et territoriaux (27,2727 %), plus les intérêts cumulés par la suite sur les obligations impayées. Le gouvernement du Canada a versé des apports au Fonds, lesquels régissent entièrement son obligation envers le Fonds. Les gouvernements provinciaux et territoriaux sont tenus de verser des apports pour régler leur part des charges au moment où elles deviennent exigibles. Les provinces et les territoires peuvent choisir de verser leurs apports à l'avance. Dans la mesure où ils ne versent pas d'apports à l'avance, l'intérêt est calculé trimestriellement sur les obligations impayées aux taux des bons du Trésor. Au 31 décembre 2009, ces obligations, intérêts compris, sont estimées à 195 106 000 \$ (31 décembre 2008 - 204 295 000 \$).

Les activités du Fonds sont assujetties à divers examens et approbations des tribunaux.

Le Fonds est une fiducie exonérée de l'impôt sur les bénéfices en vertu de la Loi de l'impôt sur le revenu.

**2. PRINCIPALES CONVENTIONS COMPTABLES**

Les présents états financiers ont été dressés conformément aux principes comptables généralement reconnus (PCGR) du Canada et en fonction des principales conventions comptables suivantes :

**2. SIGNIFICANT ACCOUNTING POLICIES (continued)**

*Changes in accounting policies*

In September 2008, the Canadian Institute of Chartered Accountants (CICA) issued amendments to several of the existing sections in the 4400 series - *Financial Statements by Not-For-Profit Organizations* which were effected for fiscal years beginning on or after January 1, 2009. Accordingly, the Fund adopted the amended standards for its fiscal year beginning January 1, 2009. The amendments include: a) additional guidance in the applicability of Section 1100, *Generally Accepted Accounting Principles*; b) removal of the requirement to report separately net assets invested in capital assets; c) requirement to disclose revenues and expenses in accordance with EIC 123, *Reporting Revenue Gross as a Principal Versus Net as an Agent*; d) requirement to include a statement of cash flows in accordance with Section 1540, *Cash Flow Statements*; e) requirement to apply Section 1751, *Interim Financial Statements*, when preparing interim financial statements in accordance with GAAP; f) requirement for not-for-profit organizations that recognize capital assets to depreciate and assess these capital assets for impairment in the same manner as other entities reporting on a GAAP basis; g) requirement to disclose related party transactions in accordance with Section 3840, *Related Party Transactions*; and h) new disclosure requirements regarding the allocation of fundraising and general support costs.

The CICA issued amendments to Section 1000, *Financial Statement Concepts*, to clarify the criteria for recognizing an asset.

As of January 2009, the Emerging Issues Committee (EIC) issued EIC 173, *Credit Risk and the Fair Value of Financial Assets and Liabilities*. This EIC requires that an entity's own credit risk and the credit risk of the counterparty should be taken into account in determining the fair value of financial assets and liabilities, including derivative instruments.

These changes did not have any impact on the financial statements, with the exception that a statement of cash flows is now being prepared.

**2. PRINCIPALES CONVENTIONS COMPTABLES (suite)**

*Modifications comptables*

En septembre 2008, l'Institut canadien des comptables agréés (ICCA) a publié les changements à plusieurs chapitres dans la série 4400, intitulée *Présentation des états financiers des organismes sans but lucratif* qui sont rentrés en vigueur pour les états financiers des exercices ouverts à partir du 1<sup>er</sup> janvier 2009. Par conséquent, le Fonds a adopté ces changements aux normes au cours de son exercice débutant le 1<sup>er</sup> janvier 2009. Les changements comprennent : a) les lignes directrices fournies dans l'application du chapitre 1100; intitulé *Principes comptables généralement reconnus*; b) le retrait de l'exigence de présenter séparément l'actif net investi en immobilisations; c) l'exigence de fournir les revenus et les dépenses en vertu du CPN-123, intitulé *Présentation du montant brut ou du montant net des produits selon que l'entité agit pour son propre compte ou à titre d'intermédiaire*; d) l'exigence de fournir un état des flux de trésorerie conformément au chapitre 1540, intitulé *États des flux de trésorerie*; e) l'exigence d'appliquer le chapitre 1751, intitulé *États financiers intermédiaires* lors de la préparation des états financiers intermédiaires selon les PCGR; f) l'exigence des organismes sans but lucratif de comptabiliser les immobilisations corporelles afin d'amortir et de déterminer la dépréciation de ces immobilisations corporelles de la même manière que d'autres entités qui font rapport conformément aux PCGR; g) l'exigence de présenter les opérations entre apparentés conformément au chapitre 3840, intitulé *Opérations entre apparentés*; h) nouvelles exigences de divulgation en ce qui concerne les coûts alloués au financement et au soutien général.

L'ICCA a publié les changements au chapitre 1000, intitulé *Fondements conceptuels des états financiers*, qui précisent les critères pour comptabiliser un actif.

En janvier 2009, le Comité sur les problèmes nouveaux (CPN) a émis l'abrégié CPN-173 intitulé *Risque de crédit et juste valeur des actifs financiers et des passifs financiers*, selon lequel la juste valeur des instruments financiers (y compris les instruments financiers dérivés) doit tenir compte du risque de crédit de la contrepartie en ce qui concerne les actifs et du risque de crédit de l'entité en ce qui concerne les passifs.

Ces modifications n'ont pas eu d'incidence importante sur les états financiers si ce n'est qu'un état des flux de trésorerie est maintenant préparé.

**THE 1986 - 1990 HEPATITIS C FUND**  
**Notes to the Financial Statements**  
**year ended December 31, 2009**

**2. SIGNIFICANT ACCOUNTING POLICIES (continued)**

*Financial instruments*

All financial assets are required to be classified as held-for-trading, held-to-maturity, loans and receivables or as available-for-sale. All financial liabilities are required to be classified as held-for-trading or as other liabilities.

The classification depends on the purpose for which the financial instruments were acquired or issued, their characteristics and the Fund's designation of said instruments at the time of initial recognition. Settlement date accounting is used and transaction costs related to investments are expensed as incurred.

Classifications made by the Fund:

Cash	Held-for-trading
Investments	Held-for-trading
Accounts receivable	Loans and receivables
Accounts payable and accrued liabilities	Other liabilities

*Held-for-trading*

These financial assets are measured at fair value at the balance sheet date. Fair value fluctuations including interest earned, interest accrued, gains and losses realized on disposal and unrealized gains and losses are included in investment earnings.

*Loans and receivables*

These financial assets are measured at amortized cost using the effective interest rate method, less any impairment.

*Other liabilities*

These financial liabilities are recorded at amortized cost using the effective interest rate method.

*Investment earnings*

Realized and unrealized gains (losses) together with interest and dividend revenue constitute the investment earnings of the Fund, and are deferred, pending their allocation to pay expenses.

**FONDS HÉPATITE C 1986 - 1990**  
**Notes complémentaires**  
**de l'exercice terminé le 31 décembre 2009**

**2. PRINCIPALES CONVENTIONS COMPTABLES (suite)**

*Instruments financiers*

Tous les actifs financiers doivent être classés soit comme détenus à des fins de transaction, détenus jusqu'à leur échéance, prêts et créances ou disponibles à la vente. Tous les passifs financiers doivent être classés soit comme détenus à des fins de transaction ou autres passifs.

Le classement des instruments financiers dépend de l'objet visé lorsque les instruments financiers ont été acquis ou émis, de leurs caractéristiques et de leur désignation par le Fonds au moment de leur comptabilisation initiale. La comptabilisation à la date de règlement est utilisée et les coûts de transactions relatifs aux placements sont passés en charge lorsqu'ils sont encourus.

Classements effectués par le Fonds :

Encaisse	Détenus à des fins de transaction
Placements	Détenus à des fins de transaction
Débiteurs	Prêts et créances
Créditeurs et frais courus	Autres passifs

*Détenus à des fins de transaction*

Ces actifs financiers sont comptabilisés à la juste valeur à la date du bilan. Les fluctuations de la juste valeur qui incluent les intérêts gagnés, les intérêts courus, les gains et les pertes réalisés sur cession et les gains et pertes non réalisés sont inclus dans les revenus de placements.

*Prêts et créances*

Les actifs financiers sont comptabilisés au coût amorti selon la méthode du taux d'intérêt effectif, moins toute dévaluation.

*Autres passifs*

Les passifs financiers sont comptabilisés au coût amorti selon la méthode du taux d'intérêt effectif.

*Revenus de placements*

Les gains et les pertes réalisés et non réalisés ainsi que les intérêts et les revenus de dividendes forment le revenu de placement du Fonds et sont reportés, jusqu'à ce qu'ils soient affectés au paiement des charges.

**2. SIGNIFICANT ACCOUNTING POLICIES (continued)**

*Liabilities and funding for future payments*

These financial statements do not present liabilities for payments to be made to class members in future years nor the related future funding requirements of provincial and territorial governments.

*Revenue recognition*

The Fund follows the deferral method of accounting for contributions. Revenue is recognized as expenses are incurred and shares of such expenses are allocated to governments, as set out in the Agreement. To the extent that contributions are paid to the Fund in advance of expenses being incurred and allocated, the contributions and the investment earnings thereon are deferred and recorded as funding held for future expenses. Accordingly, the funding held for future expenses includes:

- a) Funding contributed in payment of the Government of Canada obligation;
- b) Contributions prepaid by provinces and territories, if any; and
- c) Investment earnings for the period.

As expenses are incurred and allocated, amounts are deducted from the balance of the funding held for future expenses and are recognized as revenue.

Where provincial and territorial governments have not prepaid contributions and expenses are allocated to them, such amounts are requisitioned by the Fund and are recognized directly as revenue of the Fund.

*Claims*

A claim is recognized as an expense in the period in which the claim approval process has been completed.

*Operating expenses*

Operating expenses are recorded in the period in which they are incurred. Operating expenses are subject to approval by the Courts.

**2. PRINCIPALES CONVENTIONS COMPTABLES (suite)**

*Obligations et financement pour paiements futurs*

Ces états financiers ne présentent aucune obligation pour des paiements futurs devant être faits aux personnes inscrites aux recours collectifs, ni aucune exigence connexe future en matière de financement des gouvernements provinciaux et territoriaux.

*Constatation des revenus*

Le Fonds comptabilise les apports selon la méthode du report. Les revenus sont comptabilisés à mesure que les charges sont engagées, et une tranche de ces charges est attribuée aux gouvernements, comme le prévoit l'entente. Lorsque les apports sont versés au Fonds avant que les charges ne soient engagées et réparties, les apports et le revenu de placement en découlant sont reportés et constatés à titre de financement pour charges futures. Par conséquent, le financement pour charges futures comprend ce qui suit :

- a) Apport sous forme de paiement de l'obligation du gouvernement du Canada;
- b) Apports versés à l'avance par les gouvernements provinciaux et territoriaux, le cas échéant;
- c) Revenus de placement de la période.

À mesure que les charges sont engagées et réparties, les montants sont déduits du solde du financement pour charges futures et comptabilisés dans les revenus.

Lorsque les apports ne sont pas versés à l'avance par les gouvernements provinciaux et territoriaux et que des charges leur sont attribuées, ces montants leur sont demandés par le Fonds puis comptabilisés directement dans les revenus.

*Demandes*

Les demandes sont constatées à titre de charges dans la période au cours de laquelle le processus d'approbation des demandes a été mené à terme.

*Frais d'exploitation*

Les frais d'exploitation sont constatés dans la période au cours de laquelle ils sont engagés. Ils sont assujettis à l'approbation des tribunaux.



**THE 1986 - 1990 HEPATITIS C FUND**  
**Notes to the Financial Statements**  
**year ended December 31, 2009**

**FONDS HÉPATITE C 1986 - 1990**  
**Notes complémentaires**  
**de l'exercice terminé le 31 décembre 2009**

**2. SIGNIFICANT ACCOUNTING POLICIES (continued)**

*Use of estimates*

The preparation of financial statements in conformity with Canadian GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Significant estimates include the fair value of investments and accrued liabilities. Actual results could differ from these estimates.

*Foreign currency*

Transactions denominated in foreign currencies are translated into Canadian dollars at the rates of exchange prevailing at the dates of the transactions. Investments and cash balances denominated in foreign currencies are translated at the rates in effect at year-end. Resulting gains or losses from changes in these rates are included in investment earnings.

**3. INVESTMENTS**

Investments are summarized as follows:

	<u>2009</u>		<u>2008</u>		
	Fair Value	Cost	Fair Value	Cost	
	<u>Juste valeur</u>	<u>Coût</u>	<u>Juste valeur</u>	<u>Coût</u>	
Cash	\$ 144	\$ 144	\$ 106	\$ 106	Encaisse
Investment earnings receivable	2,333	2,333	2,454	2,454	Revenus de placement à recevoir
Fixed income	854,930	571,876	795,290	570,758	Titres à revenu fixe
Equities	80,929	114,494	63,940	112,193	Actions
	<u>\$ 938,336</u>	<u>\$ 688,847</u>	<u>\$ 861,790</u>	<u>\$ 685,511</u>	

**2. PRINCIPALES CONVENTIONS COMPTABLES (suite)**

*Utilisation d'estimations*

Dans le cadre de la préparation des états financiers, conformément aux PCGR du Canada, la direction doit établir des estimations et des hypothèses qui ont une incidence sur les montants des actifs et des passifs présentés et sur la présentation des actifs et des passifs éventuels à la date des états financiers, ainsi que sur les montants des produits d'exploitation et des charges constatés au cours de la période visée par les états financiers. Les estimations importantes comprennent la juste valeur des placements et des charges à payer. Les résultats réels pourraient varier par rapport à ces estimations.

*Devises étrangères*

Les opérations libellées en devises étrangères sont converties en dollars canadiens aux taux de change en vigueur aux dates auxquelles les opérations sont effectuées. Les placements et l'encaisse libellés en devises sont convertis aux taux en vigueur à la fin de l'exercice. Les gains ou les pertes de change découlant de la variation de ces taux sont inclus dans le revenu de placement.

**3. PLACEMENTS**

Les placements se résument ainsi :

**THE 1986 - 1990 HEPATITIS C FUND**  
**Notes to the Financial Statements**  
**year ended December 31, 2009**

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**3. INVESTMENTS (continued)**

*Determination of fair value*

Fixed income includes debt obligations of governments and corporate bodies paying interest at rates appropriate to the market at the date of their purchase. Bonds are recorded at prices based upon published bid prices. The fixed income portfolio's sensitivity to a change in market rates is represented by the duration of the portfolio. As at December 31, 2009, the average duration of the bonds and debentures in the portfolio, weighted on fair value, was 13.9 years (December 31, 2008 - 14.77 years).

Pooled fund units are valued at prices based on the market value of the underlying securities held by the pooled funds.

*Investment risk*

Investment in financial instruments renders the Fund subject to investment risks. These include the risks arising from changes in interest rates, in rates of exchange for foreign currency, and in equity markets both domestic and foreign. They also include the risks arising from the failure of a counterparty to a financial instrument to discharge an obligation when it is due.

The Fund has adopted investment policies, standards and procedures to control the amount of risk to which it is exposed. The investment practices of the Fund are designed to avoid undue risk of loss and impairment of assets and to provide a reasonable expectation of fair return given the nature of the investments. The maximum investment risk to the Fund is represented by the fair value of the investments.

**FONDS HÉPATITE C 1986 - 1990**  
**Notes complémentaires**  
**de l'exercice terminé le 31 décembre 2009**

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**3. PLACEMENTS (suite)**

*Détermination de la juste valeur*

Les titres à revenu fixe proviennent de titres de créance de gouvernements et de sociétés qui versent des intérêts à des taux conformes à ceux du marché à la date d'achat. Les obligations sont comptabilisées à des prix offerts publiés. La sensibilité du portefeuille de titres à revenu fixe aux variations des taux d'intérêt du marché correspond à la durée du portefeuille. Au 31 décembre 2009, la durée moyenne des obligations et des débentures du portefeuille, pondérée selon la juste valeur, était de 13,9 ans (31 décembre 2008 - 14,77 ans).

Les fonds communs sont évalués selon la valeur marchande des titres sous-jacents détenus par les fonds communs.

*Risque de placement*

Les placements dans des instruments financiers placent le Fonds face à des risques liés aux placements. Ceux-ci incluent les risques provenant des variations dans les taux d'intérêts ainsi que ceux provenant du danger éventuel qu'une des parties engagées par rapport à un instrument financier ne puisse faire face à ses obligations.

Le Fonds a adopté des politiques, des normes et des méthodes pour contrôler le niveau de risque auquel il s'expose. Les habitudes du Fonds en ce qui concerne les placements ont pour but d'éviter tout risque inutile de perte et d'insuffisance d'actif et de fournir une espérance raisonnable quant à leur juste rendement, étant donné la nature des placements. Le maximum de risque auquel s'expose le Fonds se trouve dans la juste valeur des placements.

**THE 1986 - 1990 HEPATITIS C FUND**  
**Notes to the Financial Statements**  
**year ended December 31, 2009**

**FONDS HÉPATITE C 1986 - 1990**  
**Notes complémentaires**  
**de l'exercice terminé le 31 décembre 2009**

**3. INVESTMENTS (continued)**

*Investment risk (continued)*

a) Concentration risk

Concentration risk exists when a significant proportion of the portfolio is invested in securities with similar characteristics or subject to similar economic, political or other conditions. The relative proportions of the types of investments, in the portfolio are as follows:

	<u>2009</u>	<u>2008</u>
	% of Fair Value	% of Fair Value
	% de la juste valeur	% de la juste valeur
Investment earnings receivable	1	1
Fixed income		
Government of Canada	83	83
Corporate	2	3
Provinces of Canada	1	1
Fixed income pooled fund units	4	5
	<u>90</u>	<u>92</u>
Equities		
Canadian		
Pooled fund units	5	4
Foreign		
U.S. pooled fund units	2	1
International pooled fund units	2	2
	<u>9</u>	<u>7</u>
	<u>100</u>	<u>100</u>

b) Foreign currency risk

Foreign currency exposure arises from the Fund's holdings of non-Canadian denominated investments, as follows:

	<u>2009</u>	<u>2008</u>
	(in thousands of dollars)	(en milliers de dollars)
Equities		
U.S. pooled fund units	\$ 16,534	\$ 13,308
International pooled fund units	19,511	17,818
	<u>\$ 36,045</u>	<u>\$ 31,126</u>

**3. PLACEMENTS (suite)**

*Risque de placement (suite)*

a) Risque de concentration

Le risque de concentration existe lorsqu'une part importante du portefeuille est investie dans des titres ayant des caractéristiques semblables ou qui sont soumis à des conditions similaires d'ordre économique, politique ou autre. Les proportions relatives des types de placements du portefeuille sont les suivantes :

<u>2009</u>	<u>2008</u>
% of Fair Value	% of Fair Value
% de la juste valeur	% de la juste valeur
Revenus de placement à recevoir	
Titres à revenu fixe	
Gouvernement du Canada	83
Sociétés	3
Provinces du Canada	1
Parts de fonds communs à revenu fixe	5
	<u>92</u>
Actions	
Canadiennes	
Parts de fonds communs	4
Étrangères	
Parts de fonds communs américains	1
Parts de fonds communs internationaux	2
	<u>7</u>
	<u>100</u>

b) Risque de change

Le risque de change découle de la possession, par le Fonds, de placements qui ne sont pas libellés en dollars canadiens, comme l'indique le tableau suivant :

<u>2009</u>	<u>2008</u>
(in thousands of dollars)	(en milliers de dollars)
Actions	
Parts de fonds communs américains	13,308
Parts de fonds communs internationaux	17,818
	<u>31,126</u>

**THE 1986 - 1990 HEPATITIS C FUND**  
**Notes to the Financial Statements**  
**year ended December 31, 2009**

**FONDS HÉPATITE C 1986 - 1990**  
**Notes complémentaires**  
**de l'exercice terminé le 31 décembre 2009**

**4. FUNDING HELD FOR FUTURE EXPENSES**

**4. FINANCEMENT POUR CHARGES FUTURES**

	<u>2009</u>	<u>2008</u>	
	(in thousands of dollars) (en milliers de dollars)		
Balance, beginning of year	\$ 859,290	\$ 894,347	Solde au début
Changes during the year			Variation au cours de l'exercice
Investment earnings	105,480	922	Revenus de placement
Amounts recognized as revenue	(29,853)	(37,979)	Montants constatés comme revenu
Additional funding received	-	2,000	Financement additionnel reçu
Balance, end of year	<u>\$ 934,917</u>	<u>\$ 859,290</u>	Solde à la fin
Comprised of:			Composé de :
Funding contributed by the Government of Canada	\$ 933,413	\$ 856,949	Financement contribué par le gouvernement du Canada
Contributions prepaid by provincial governments	<u>1,504</u>	<u>2,341</u>	Apports versés à l'avance par des gouvernements provinciaux
	<u>\$ 934,917</u>	<u>\$ 859,290</u>	

**5. CLAIMS**

**5. DEMANDES**

Claims recognized as expenses of the Fund during the current year consist of the following:

Les demandes comptabilisées dans les charges du Fonds au cours de l'exercice comprennent ce qui suit :

	<u>2009</u>	<u>2008</u>	
	(in thousands of dollars) (en milliers de dollars)		
Approved by the Administrator of the Fund			Demandes approuvées par l'Administrateur du Fonds
Disbursed	\$ 35,973	\$ 46,964	Décassements
Net change in accrued claims in process of payment	<u>1,484</u>	<u>1,028</u>	Variation nette des demandes accumulées en cours de paiement
	<u>\$ 37,457</u>	<u>\$ 47,992</u>	

The claims include payments totalling \$NIL (December 31, 2008 - \$480,000) for HIV secondary claimants.

Les demandes incluent des paiements au total de nul \$ (31 décembre 2008 - 480 000 \$) pour les requérants infectés indirectement par le VIH.

**THE 1986 - 1990 HEPATITIS C FUND**  
**Notes to the Financial Statements**  
**year ended December 31, 2009**

**FONDS HÉPATITE C 1986 - 1990**  
**Notes complémentaires**  
**de l'exercice terminé le 31 décembre 2009**

**6. OPERATING EXPENSES**

**6. FRAIS D'EXPLOITATION**

	<u>2009</u>	<u>2008</u>	
	(in thousands of dollars) (en milliers de dollars)		
Administrator	\$ 1,144	\$ 1,262	Administrateur
Legal (claims' appeal costs, Fund counsel)	271	335	Frais juridiques (frais des demandes en appel, avocats du Fonds)
Joint committee	445	464	Comité mixte
Investment management	174	191	Gestion des placements
Audit and related services	91	88	Honoraires de vérification et de services connexes
Custodial trustee	101	104	Frais de garde
Actuarial	146	367	Honoraires d'actuariat
Traceback fees	55	57	Frais de recherche
Medical and other consulting	2	52	Frais médicaux et autres frais de consultation
	<u>\$ 2,429</u>	<u>\$ 2,920</u>	

**7. CAPITAL MANAGEMENT**

**7. GESTION DU CAPITAL**

The Fund's objectives when managing capital are to hold, invest and administer funds as described in Note 1.

Les objectifs du Fonds quant à la gestion de son capital est de conserver, d'investir et de gérer des fonds tel que décrit à la note 1.

Deloitte & Touche - Report to the Joint Committee

*\* Provided to Judges but not filed \**

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**SCHEDULE D**  
**TO THE REPORT OF THE JOINT COMMITTEE**  
FOR THE PERIOD ENDING DECEMBER 31, 2009


**1986-1990 HEPATITIS C SETTLEMENT TRUST FUND**

**Annual Certificate of Compliance**

**For the year ended: December 31, 2009**

We are in compliance with your Investment Policy Guidelines as set out in Schedule 5 to the Judgment of the Honourable Mr. Justice Warren K. Winkler of October 22, 1999.

Compliance verified by:

  
\_\_\_\_\_  
Ed Orfao, CA, CFA  
Vice President & Director  
Portfolio Management

Date: January 20, 2010



**SCHEDULE E**  
**TO THE REPORT OF THE JOINT COMMITTEE**  
FOR THE PERIOD ENDING DECEMBER 31, 2009



# Asset Management

TD Asset Management Inc.  
TD Canada Trust Tower  
161 Bay Street, 34<sup>th</sup> Floor  
Toronto, Ontario M5J 2T2

January 22, 2010

VIA FAX

Dawn Kelly-Bertrand  
Deloitte & Touche  
800-100 Queen Street  
Ottawa, Ontario  
K1P 5T8

Dear Dawn:

Re: Audit for 1986-1990 Hepatitis C Settlement Trust Fund- Accounts 45050, 45060, 45065

In response to the client's audit request, please find the following documents enclosed:

- Portfolio Statement as at December 31, 2009 for account numbers 45050, 45060 & 45065.

In response to your request, please note the following:

1. There were no unsettled trades for accounts 45050 or 45065 as at December 31, 2009. There were outstanding trades for account number 45060. Please see the attached document for details.
2. Please note that 2009 Annual Financial Reports will not be available until April 2010 at which point, we will forward a hard copy to your attention.
3. We also confirm that there were no outstanding or unsettled option transactions as at December 31, 2009.
4. Below is the list of management fees (including GST) billed for the year ending December 31, 2009. Please note that the total fees for the year ended December 31, 2009 are \$174,195.11.

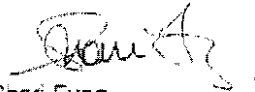
Account	Account Name	31-Mar-09	30-Jun-09	30-Sep-09	31-Dec-09	Total
45050	1986-1990 Hepatitis C Settlement Trust Fund-RRB	\$6,694.40	\$9,079.66	\$9,388.81	\$9,611.13	\$36,774.00
45060	1986-1990 Hepatitis C Settlement Trust Fund-STF	\$13,563.09	\$13,004.42	\$12,796.37	\$12,861.04	\$52,024.92
45065	1986-1990 Hepatitis C Settlement Trust Fund-Other	\$19,332.18	\$20,816.24	\$22,291.53	\$22,956.24	\$85,396.19
Total		\$41,589.67	\$42,900.32	\$44,476.71	\$45,228.41	\$174,195.11

5. Bid prices for the Real Return Bonds as at December 31, 2009 are included below.

Security Description	Bid Price
Government of Canada Real Return - 4.25% due December 01, 2021	\$181.9152
Government of Canada Real Return - 4.25% due December 01, 2026	\$183.7021
Government of Canada Real Return - 4.00% due December 01, 2031	\$183.4459

Should you require additional information, please contact me at (416) 944-5414 or the client's Relationship Manager, Debbie Fong at (416) 308-4131.

Sincerely yours,



Shari Fong  
Associate, Institutional Client Service

cc: Doreen Hume  
Sharon Matthews  
Debbie Fong

Enclosures

**SCHEDULE H**  
**TO THE REPORT OF THE JOINT COMMITTEE**  
**FOR THE PERIOD ENDING DECEMBER 31, 2009**

## **REPORT OF ECKLER LTD. ACTIVITIES**

The firm of Eckler Ltd. was engaged to provide the Trust Fund with continuing actuarial advice during the period from January to December, 2009. During this fiscal year Eckler Ltd. provided continuing assistance to the Joint Committee on a number of issues including, reviewing TD asset reports; reviewing Royal Trust asset statements, checking Royal Trust quarterly interest calculations/allocations, reconciling various asset statements, reviewing/updating investment results, preparation of investment summary for the Joint Committee, updating payment amounts for the change in the Pension Index for 2010, review of investment policy, various discussions with counsel (including planning for the 2010 sufficiency review), and other miscellaneous items.

**SCHEDULE I**  
**TO THE REPORT OF THE JOINT COMMITTEE**  
**FOR THE PERIOD ENDING DECEMBER 31, 2009**



# Hepatitis C Settlement Trust Fund

## Investment Summary as at December 31, 2009

March 2010

**Eckler**

CONSULTANTS + ACTUARIES

A MEMBER OF ABELICA GLOBAL

# Overview

- > **Total assets consist of two main components:**
  - An Investible Fund, split into two portfolios
    - Long Term Fund investing in real return bonds, equities and other bonds
    - Short Term Fund investing in short term bonds
  - A Notional Fund, consisting of amounts owed by the provincial governments
- > **Investible assets are managed by TD Asset Management, either passively or on an indexed basis**
- > **RBC Dexia are the custodians of the investible assets**
- > **Our analysis is based on statements provided by both RBC Dexia and TD Asset Management as well as previous performance analyses done by Towers Perrin**
- > **In particular**
  - All dollar amounts, including asset values and cashflows, are taken from RBC Dexia accounts
  - Returns are derived from the TD quarterly statements and have not been independently verified
- > **TD Asset Management is required to certify that it has complied with the investment guidelines specified by the trustees. We have not verified that this has taken place or that the guidelines have been complied with.**



# Asset Summary

(\$,000's)

Fund	Portfolio	Strategy	Bench- mark	Dec-09			Dec-08		
				Value	Asset Alloc	Fund Alloc	Value	Asset Alloc	Fund Alloc
Long term	Real Return Bonds	Passive	80.0%	732,665	85.6%		675,966	86.1%	
	Universe Bonds	Index	6.0%	42,168	4.9%		42,085	5.4%	
	Canadian Equity	Index	7.0%	44,128	5.2%		35,339	4.5%	
	US Equity	Index	3.5%	16,846	2.0%		13,585	1.7%	
	EAFE Equity	Index	3.5%	19,957	2.3%		18,506	2.4%	
	Cash		0.0%	85	0.0%		27	0.0%	
			<b>100.0%</b>	<b>855,848</b>	<b>100.0%</b>	<b>75.4%</b>	<b>785,508</b>	<b>100.0%</b>	<b>73.3%</b>
Short Term									
	Short Term Bonds	Index		82,428			80,496		
	Cash			59			78		
				<b>82,487</b>		<b>7.3%</b>	<b>80,574</b>		<b>7.5%</b>
Total Invested Assets *				<b>938,336</b>		<b>82.7%</b>	<b>866,082</b>		<b>80.8%</b>
Provinces Notional Assets (net of prepayments/include outstanding payments)				<b>196,285</b>		<b>17.3%</b>	<b>205,153</b>		<b>19.2%</b>
Total Assets				<b>1,134,621</b>		<b>100.0%</b>	<b>1,071,235</b>		<b>100.0%</b>

\* Total Invested Assets includes prepayments from Alberta and Yukon

Split of Invested Assets between:	Dec-09	Dec-08
Long Term Fund	91.2%	90.7%
Short Term Fund	8.8%	9.3%
Total Invested Assets	100.0%	100.0%

Totals may not add due to rounding

**Eckler**

# Comments on Asset Summary

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As of December 31, 2009

- > **Weighting for real return bonds is currently 5.6% above their benchmark of 80% of the Long Term Fund**
  - This has decreased from December 31, 2008 (6.1% above benchmark)
  
- > **Universe bonds are 1.1% below their benchmark of 6%**
  - This underweight has increased from a 0.6% underweight as at December 31, 2008
  
- > **Equities are below their benchmark by 4.5%**
  - This is due to the significant fall in the equity markets in 2008
  - At December 31, 2008 they were 5.4% below their benchmark
  
- > **PT Notional Funds are net of prepayments by Alberta and Yukon**
  - See further detail on page 7
  
- > **As a percentage of the Invested Assets, the Long Term Fund has increased from 90.7% to 91.2%, while the Short Term Fund has decreased from 9.3% to 8.8% during the fiscal year**

# Asset Development

(\$,000's)

	Invested Assets <sup>1</sup>			Total Invested Assets	Provinces' Notional Assets <sup>1</sup>	Total Assets
	Real Return Bond Fund	Other Long Term Funds	Short Term Fund			
Initial, at December 31, 2008	675,985	109,523	80,574	866,082	205,153	1,071,235
Investment Income (realized and unrealized)	81,367	16,726	3,089	101,183	837	102,019
Inflow: Recoveries from Provinces	-	-	9,704	9,704	(9,704)	0
Additional prepayments	-	-	-	-	-	-
Outflow: Benefit Payments	-	-	(35,988)	(35,988)	-	(35,988)
Expenses	-	-	(2,645)	(2,645)	-	(2,645)
Transfers between funds	(24,666)	(3,086)	27,753	-	-	-
<b>Closing, at December 31, 2009</b>	<b>732,686 <sup>2</sup></b>	<b>123,163 <sup>2</sup></b>	<b>82,487</b>	<b>938,336</b>	<b>196,285</b>	<b>1,134,621</b>

1. Invested Assets include PT prepayments; Provinces' Notional Assets are net of prepayments and include outstanding payments
2. These figures differ slightly from those on page 3 because of allocation of cash balances
3. Based on RBC Dexia statements
4. Totals may not add due to rounding

# Comments on Asset Development

- > **Total invested assets (i.e. excluding PT assets) have increased since December 31, 2008 by \$72.3m**
  - As a result of positive investment returns and the "federal" 8/11ths share of the total payouts
- > **The notional PT assets have decreased by \$8.9m**
  - As a result of their 3/11ths share of the total payout exceeding interest credits at T-bill rates.
- > **Total assets (i.e. including PT assets) have increased by \$63.4m**
- > **Benefits are paid from the Short Term Fund**
- > **From June 2002 onwards all recoveries from the provinces were allocated to the Short Term Fund**
  - This practice is expected to continue in the future
- > **TD Asset Management made net transfers from the Long Term Fund to the Short Term Fund of \$28m**
  - \$22m from real return bonds in June and December 2009
  - \$6m from other long term funds - spread over the period

**PT Assets** (\$,000's)

	Gross PT Assets	Less: prepayments		Net PT Assets
		Yukon	Alberta	
Initial, at December 31, 2008	207,582	16	2,412	205,153
Interest Credits	845	-	9	837
Additional Prepayments	-	-	-	-
3/11th share of benefits/expenses	(10,541)	(1)	(836)	(9,704)
<b>Closing, At December 31, 2009</b>	<b>197,886</b>	<b>16</b>	<b>1,585</b>	<b>196,285</b>

**Notes:**

Ontario's prepayments were used up by August 2002.

Totals may not add due to rounding.

# Investment Returns

Fund	Portfolio	Fiscal Year ending		
		Dec-07	Dec-08	Dec-09
Long term	Real Return Bonds	2.0%	1.0%	12.3%
	Universe Bonds	3.6%	6.5%	5.0%
	Canadian Equity	10.2%	-33.7%	34.5%
	US Equity	-10.8%	-21.4%	7.0%
	EAFE Equity	-5.9%	-29.0%	12.0%
	Total	2.2%	-2.4%	12.7%
Short Term	Short Term Bonds	4.1%	8.8%	4.1%
Total Invested Assets		2.3%	-1.6%	12.0%
Notional PT Assets		4.2%	2.5%	0.4%
Total Assets		2.7%	-0.8%	9.8%

Quarterly Returns Fiscal Dec 2009			
Mar-09	Jun-09	Sep-09	Dec-09
4.0%	1.9%	2.3%	3.6%
1.4%	1.1%	2.7%	-0.2%
-1.7%	19.8%	10.4%	3.5%
-9.3%	6.9%	6.7%	3.5%
-12.1%	15.8%	10.4%	-0.2%
3.0%	2.9%	2.9%	3.3%
1.7%	0.5%	1.6%	0.4%
2.9%	2.7%	2.8%	3.1%
0.2%	0.1%	0.1%	0.1%
2.4%	2.2%	2.3%	2.5%

## Notes:

- The 2007, 2008 and 2009 annual and quarterly returns for the component portfolios are as reported by TD Asset Management in their quarterly investment reports. Eckler has not independently verified these.
- Aggregated annual and quarterly returns (Total Long Term, Total Invested Assets and Total Assets) are calculated by Eckler taking into account the relative market values, cashflows and investment returns of the component portfolios.
- Eckler returns are calculated on an approximate basis, using average cashflows; they may differ slightly from returns calculated by a performance measurement service using daily cashflows.

## Comments on Investment Returns

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- > The overall return of 9.8% for the 2009 calendar year is the result of positive returns from all the component portfolios.
- > Canadian equities produced the best returns in 2009 of 34.5%.
- > US and EAFE equity returns also improved significantly over the negative returns in 2008, but these were adversely affected by the strengthening of the Canadian dollar.
- > Real Return Bond have shown a very good return, as a result of the fall in real return bond yields.
- > The PT notional fund is charged interest at the 3 month T-bill rate; In 2009, these rates were significantly lower than the returns on the invested assets.

# Tracking Error

		Fiscal Year ending			4 years to Dec 2009	Target tracking error	
		Dec-07	Dec-08	Dec-09		1 year	4 years
Universe Bonds	Actual	3.6%	6.5%	5.0%	4.77%	0.20%	0.10%
	Index	3.7%	6.4%	5.4%	4.88%		
	t/e	<b>-0.1%</b>	<b>0.1%</b>	<b>-0.4%</b>	<b>-0.11%</b>		
Canadian Equity	Actual	10.2%	-33.7%	34.5%	4.25%	0.30%	0.15%
	Index	10.2%	-33.9%	34.5%	4.19%		
	t/e	<b>0.0%</b>	<b>0.2%</b>	<b>0.0%</b>	<b>0.06%</b>		
US Equity	Actual	-10.8%	-21.4%	7.0%	-3.63%	0.30%	0.15%
	Index	-10.8%	-21.5%	7.0%	-3.64%		
	t/e	<b>0.0%</b>	<b>0.1%</b>	<b>0.0%</b>	<b>0.01%</b>		
EAFE Equity	Actual	-5.9%	-29.0%	12.0%	-1.47%	0.60%	0.30%
	Index	-5.7%	-29.2%	11.9%	-1.52%		
	t/e	<b>-0.2%</b>	<b>0.2%</b>	<b>0.1%</b>	<b>0.05%</b>		
Short Term Bonds	Actual	4.1%	8.8%	4.1%	5.24%	0.20%	0.10%
	Index	4.1%	8.6%	4.5%	5.28%		
	t/e	<b>0.0%</b>	<b>0.2%</b>	<b>-0.4%</b>	<b>-0.04%</b>		



## Comments on Tracking Error

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- > **Universe Bonds had a negative tracking error outside the target range for both 1 year and 4 years ending 2009.**
- > **Short Term Bonds had a negative tracking error outside the 1 year target range for 2009, but was inside the 4 year target range for the four years ending 2009.**
- > **All other portfolios met their tracking error target over both one and four years.**

**SCHEDULE J**  
**TO THE REPORT OF THE JOINT COMMITTEE**  
FOR THE PERIOD ENDING DECEMBER 31, 2009

## **1986-1990 Hepatitis C Claims Centre**

### **Annual Report for the Period Ending December 31, 2009**

#### **Appointment**

Crawford and Company Canada Inc. has been administering the 1986-1990 Hepatitis C Class Action Settlement since our appointment by the Courts March 9, 2000. We are fast approaching our 10<sup>th</sup> anniversary.

#### **Activities of Year 10**

1. Complied with all Administrator duties as outlined in Article Five of the Settlement Agreement.
2. Worked in collaboration with the auditors from Deloitte to complete the year-end audit process.
3. Met with the Joint Committee in April providing updated statistics and presented ideas for streamlining our processes which we initiated with the Loss of Services.
4. Provided data reconciliation for fund sufficiency purposes.
5. Completed a file review for the Joint Committee to determine reasons for late registrations.
6. Continued to work in collaboration with Canadian Blood Services, Héma-Québec, British Columbia Center for Disease Control, provincial hepatitis c programs, and medical experts.
7. Updated the [www.hepc8690.ca](http://www.hepc8690.ca) website monthly and as needed.
8. Downsized the human resources aspect to match the workload.
9. Prepared files for Fund Counsel, Referees, and Arbitrators and attended seven (7) in person hearings and three (3) by conference call.

#### **Key Claims Evaluation Statistics as of December 31, 2009**

Funds disbursed	\$631,926,149.83
Claims received	15,386
Claims approved	12,518
Claims denied	2,308
Claims in progress	560
Appeals	428
Decisions Rendered	300
Mediated/Withdrawn/Rescinded/Archived	98
Traceback requests initiated	4,661

Crawford continues to meet or exceed all service performance criteria.

**SCHEDULE N**  
**TO THE REPORT OF THE JOINT COMMITTEE**  
FOR THE PERIOD ENDING DECEMBER 31, 2009

## **SUMMARY OF JOINT COMMITTEE WORK DURING TENTH YEAR OF OPERATIONS (2009)**

### **Overview**

1. The Joint Committee has a mandate to implement the 1986-1990 Hepatitis C Settlement Agreement and Plans, to supervise the ongoing administration of claims, to oversee the performance of the Trust Fund investment portfolio, to oversee services providers and to undertake the triennial fund sufficiency review.
2. In Year 10 (2009), approximately \$37 million in claims were paid. Operating expenses of administration and all service providers were approximately \$2.4 million. The total amount of claims paid over the life of the settlement now total approximately \$635 million.
3. The most pressing issues in Year 10 (2009) pertained to forward looking issues as the Settlement Agreement approaches the milestone of the first claims deadline followed by the 2010 fund sufficiency review. Year 10 (2009) was also a more active year for the Joint Committee on general administrative matters than many previous years.
4. Year 11 (2010) is expected to be busier than Year 10 (2009). The Joint Committee anticipates that the most pressing issues in Year 11 (2010) will be adapting the current administrative processes to deal with claims brought after June 30, 2010 which will require a court order before they can be processed, the 2010 fund sufficiency review, and the administration contract which expires on December 31, 2010.

## **Portfolio Oversight**

5. The Joint Committee continued to closely monitor the sufficiency of the Trust Fund, the performance of the portfolio of assets held by the Trust Fund, and whether the portfolio components are meeting benchmark targets and disbursements out of the Trust Fund.
6. For the first time since its inception, the Trust Fund fell out of balance due to the performance of some of the asset classes, notably foreign equities. This required the Joint Committee to determine whether it should be rebalanced, which in this case meant selling real return bonds to buy equities. The Joint Committee sought advice from Eckler Ltd. and TD Asset Management Inc. ("TDAM") and was advised that the disciplined and proven approach is to rebalance. The Joint Committee directed TDAM to rebalance the portfolio to accord with the current Investment Guidelines.
7. The results of the 2007 fund sufficiency review prompted the Joint Committee to review the Investment Guidelines (as will be discussed more fully below). The Joint Committee added the issue of rebalancing to the mandate for review. The recommendation of Eckler Ltd. was to amend the Investment Guidelines to require rebalancing (ie: automatic rebalancing) as the market studies demonstrate that it results in better long term performance of invested funds. The Joint Committee has accepted that recommendation.
8. The other recommendations from Eckler Ltd. pertain to better matching of asset duration with liabilities and slight adjustments to the asset classes. The Federal Government has provided the Joint Committee with its analysis and the Joint Committee is working with Eckler Ltd. and TDAM to finalize the proposed amendments to the Investment

Guidelines. The Joint Committee will be seeking approval from the Courts to implement these recommendations and others pertaining to the Investment Guidelines.

9. In Year 10 (2009), the Trust Fund closed at \$938 million, up from \$866 million the previous year, after having paid out \$37 million in claims and approximately \$2.4 million in administration and service provider expenses. The investment portfolio is largely in fixed income instruments, with the greatest portion of the fixed income instruments being real return bonds. A small portion, (9.5% at December 31, 2009) is held in equities. The value of the Trust Fund increased by approximately 12% in Year 10 (2009).

#### **Provincial Territorial Sharing Proportions**

10. The Provincial and Territorial Governments (“PT Governments”) obligations are, for the most part, not held as part of the Trust Fund. The obligations of the PT Governments are described as “notional” because they are only called upon to make contributions when claims are made, and they are obligated to contribute in accordance with ratios contained in the Funding Agreement.
11. Those ratios, known as sharing proportions, were originally determined in accordance with provincial and territorial shares of the national population. The Funding Agreement provides that those sharing proportions may be reviewed and revised based on the experience in the administration of the settlement as to the actual home provinces of the claimants. The Administrator collects information as to both the province or territory of residence at the time of the transfusion or receipt of blood product and the province or territory of residence when the claim is made.

12. In Year 10 (2009) the PT Governments undertook such a review. The Trust Fund's actuaries, Eckler Ltd., analyzed the results of the review in consultation with the Joint Committee. The major concern of the Joint Committee was that the review and any revisions not affect the historical sharing proportions or the historical contributions of the PT Governments (since no review had been done since the Settlement Agreement was implemented). The PT Governments agreed their review would apply prospectively. The proposed new sharing proportions were developed by the PT Governments and they were implemented in late 2009.

#### **Fund Sufficiency Review**

13. In Year 10 (2009), the Joint Committee responded to inquiries of the Federal Government pertaining to the 2007 fund sufficiency review, and began to prepare for the 2010 fund sufficiency review.
14. Since 2002, the actuarial position of the Trust Fund has been that its assets and the notional obligations of the PT Governments are greater than the expected liabilities of the Settlement Agreement. The difference has grown with each sufficiency review, although the various elements of the calculation have fluctuated in both directions.
15. The Joint Committee anticipates that the 2010 fund sufficiency review, which takes place after the first claims deadline has passed, will attract scrutiny by the Federal Government because of the increasing gap between the assets and liabilities (the so-called surplus, although there can be no true surplus until one is declared by the Courts).



16. To date, Eckler Ltd., in consultation with and at the ultimate direction of the Joint Committee, has used an aggregate methodology for its actuarial analysis of fund sufficiency. In 2004 and 2007, the Federal Government employed a seriatim model for its actuarial analysis. For reasons described in the Eckler Ltd. reports, it has not been considered appropriate or necessary to use a seriatim approach while a significant portion of the class was unknown (class members who have not yet applied or approved for payment). However, for the actuarial analysis after the first claims deadline, Eckler Ltd. will, at least in part, employ a seriatim approach, because most class members should be known. However, even having most, if not all, of the class members identified does not entirely eliminate the need to resort to an aggregate approach to deal with some future damages issues.

17. In order to address these two major aspects to the 2010 fund sufficiency review, and other outstanding issues, the Joint Committee held three days of meetings in March 2009. A representative group of the Joint Committee met with Eckler Ltd. representatives to discuss in depth changes to the way the fund sufficiency review is coordinated between the Joint Committee and Eckler Ltd, the medical modelling personnel and the Administrator.

During these March meetings, the Joint Committee discussed the following issues with Eckler Ltd.:

- (a) the degree of certainty or lack thereof on the various inputs into the actuarial assessment and how that impacts planning and the identification of an actuarial surplus. Those key factors include:

- (i) cohort size – that has been uncertain to date. We assume the passage of the first claims deadline will increase certainty on cohort size;
  - (ii) discount rate;
  - (iii) medical model changes;
  - (iv) holdback still in existence on loss of income payments; and
  - (v) age and disease status of the class.
- (b) standards from other industries such as insurance and pensions as to the identification of a true and safe surplus and how it can be actuarially ascertained;
- (c) migration from the aggregate approach to the seriatim approach;
- (d) the investment strategy and the need for review due to the mismatch between durations of investments and timing of claims;
- (e) brainstorming on post 2010 options from an actuarial perspective; and
- (f) potential for inflation or deflation on the Plans.
18. During these March meetings, Dr. Frank Anderson met with the Joint Committee and addressed:
- (a) the current (2007) Canadian Association for the Study of the Liver (“CASL”) guidelines, in particular:
    - (i) rate of diagnosis (35% undiagnosed);

- (ii) treatment recommendations – the recommendation is that all persons with active disease be treated;
    - (iii) how treatment recommendations vary by genotype;
  - (b) current standards of treatment;
  - (c) treatments which are still in the experimental phase;
  - (d) treatment outcomes;
  - (e) current understanding of liver cell cancer and HCV; and
  - (f) fibroscan technology (diagnostic tool).
- 19. Also during these March meetings, the Joint Committee held a planning session which included discussions concerning:
  - (a) convening a joint session with the Courts;
  - (b) communications planning for the first claims deadline;
  - (c) options for dealing with the Settlement Agreement post 2010;
  - (d) whether the 2010 fund sufficiency review should be bifurcated into: first, a hearing on the determination of a true surplus; and second, what to do with the surplus if there is one;
  - (e) issues to improve the benefits paid under the Settlement Agreement;

- (f) the loss of income cap at \$300,000 currently subject to court approval to pay a higher amount;
- (g) service provider costs and budgeting;
- (h) reporting from the Administrator;
- (i) CLASS software issues; and
- (j) the 2010 expiry of the Crawford contract on administration.

#### **Administrator**

20. The Joint Committee met with the Administrator in April 2009 after reviewing the 2008 audit and then again as needed throughout the year, by conference call and in person.

Issues addressed include:

- (a) the bilingual capacity of the Administrator given the end of Josée Lynch's position and the assumption of that position by Nancy Killam. The Joint Committee was satisfied that appropriate bilingual capacity was in place and agreed to move to amend the Administrator's terms of appointment;
- (b) the volume of appeals and how appeals are handled, including whether it is necessary for Administrator's appeal coordinator to attend all appeals in person;
- (c) review of Health Canada Negative Traceback denials (see below);
- (d) areas of the Settlement Agreement about which complaints are received. Those areas, and the actions taken to address them are:

- (i) for loss of income and loss of services claim, the claimants must fill out forms each year including having a doctor sign off on a disability level which has usually not claimed, and for loss of income claims, the provision of income tax returns. The Joint Committee worked with the Administrator to revise the standard operating procedures (“SOP”) to discontinue the practice of having a doctor sign a form to confirm a disability level that is consistent with the previous year. The Joint Committee felt however that income tax returns should still be provided on an annual basis;
  - (ii) Level 6 cost of care – the SOP which provided that if a family member is provided the care, it was limited to 20 hours per week at \$12 per hour. The SOP was revised so that if a doctor indicated that the family member is providing appropriate care and more than 20 hours was needed, that amount could be claimed, subject to the cap of \$50,000 in cost of care expenses per year. The hourly rate in the SOP was also raised to \$20 effective January 1, 2010;
  - (iii) out of pocket expenses – there is an issue as to whether the work done by the Administrator to review and pay them is out of proportion to the dollar value of the benefits paid. The Joint Committee and the Administrator are working on solutions to this issue;
- (e) discussion about migrating the CLASS software to a commercially available database; and

(f) the Administrator's activity levels and budget.

21. An administration contract is in place until the end of 2010 which provides for remuneration of Crawford on a fixed fee basis subject to adjustment based on certain predetermined volumes of activities.

### **Traceback Issues**

22. As has been previously reported, some class members are approved before their tracebacks are finalized because the Court Approved Traceback Protocol requires the Administrator to make a decision on approval after a traceback has been outstanding for 180 days. In these circumstances the traceback requested by the Administrator is terminated but a traceback conducted under the rules of Health Canada continues "in the background". If that traceback yields results, the Administrator is notified. In some cases, those Health Canada Traceback results require the Administrator to then deny previously approved claims. Where that occurs, the claimants are advised that no further funds will be paid but the funds paid to the claimants to date are not required to be refunded.
23. The number of preliminary approvals that have been terminated by the completed Health Canada Negative Tracebacks declined significantly initially and has since remained fairly consistent at the lower level. The following charts shows the amounts paid on claims terminated:

Year	Amount Paid to Health Canada Negative Traceback Claimants
4	\$1,282,000 (26 claimants)
5	\$840,000 (13 claimants)
6	\$404,000 (3 claimants)
7	\$231,000 (1 claimant)
8	\$538,000 (3 claimants)
9	\$207,723.88 (5 claimants)
10	\$385,568.59 (5 claimants)

24. The total paid to date to persons later determined to be Health Canada Negative Traceback claimants is \$6,949,173.20 of total claims paid of approximately \$635,000,000, or 1.1%.

25. At the end of Year 10 (2009) there were still 90 claims for which the traceback process had not yet been started because the claims were deficient in some respect which impacts the ability to commence the traceback.

#### **Communications Pertaining to First Claims Deadline**

26. The first claims deadline contained in sections 3.08 of the Transfused Plan and 3.07 of the Hemophiliac Plan provides that no claims may be made after June 30, 2010 unless the applicant reached their age of majority within 1 year of applying or applied within 3

years of learning of their infection with HCV, and a court orders that their application may proceed.

27. In 2009, the Joint Committee continued work begun in 2008 to develop a communications strategy and public outreach program in advance of the June 30, 2010 first claim deadline. The key issue prompting such a plan was the concern that the Settlement Agreement is for the benefit of the class members and if some class members do not know about it in time to apply, that purpose will be defeated for those class members. Although claims volumes are much below the epidemiological estimates, claimants are still applying some 9 years after the Settlement Agreement was implemented, raising concerns that claimants could make themselves known for the first time after the first claims deadline.
28. In addition, for the December 31, 2010 fund sufficiency review and subsequent reviews, it will be desirable to know that the class size is relatively fixed as that variable has had the greatest impact on the actuarial reviews of the sufficiency of the fund. The assumption that the class size is known will not be sound if claimants still continue to make claims pursuant to the extension provisions which will apply to a subset of late claimants. Cohort size has been one of the major areas of uncertainty, and therefore risk, in assessing fund sufficiency.
29. As a result of meetings with communications firms and its own understanding of the Settlement Agreement and the class members, the Joint Committee grappled with these complicating factors:



- (a) although the theoretical number of class members was established through epidemiological estimates, those estimates have varied over time and are just theoretical – there is no method to actually count the number of class members (this is profound for the transfused class members but not significant for the hemophiliac class members); and
- (b) for those class members who have not come forward, the following are likely reasons:
  - (i) class members do not know they are infected (the disease can remain asymptomatic or can be asymptomatic until late in the disease progress);
  - (ii) class members who know they are infected may not know about this Settlement Agreement; and
  - (iii) class members who know they are infected and know about this Settlement Agreement may not know about the first claims deadline.

30. In order to obtain more information about this, the Joint Committee asked the Administrator to review primarily infected and secondarily infected claims made in recent years (2006, 2007, 2008 and the first half of 2009) in order to determine whether the claims files disclose reasons as to why those claims were made so many years after the Centre started accepting claims and making payments. The theory behind this approach was that claims made “late” can serve as a proxy for those which have not been made yet in terms of the reason for the delay in making the claim.

31. The Administrator's report identified that 60 of 186 claims reviewed had a recent diagnosis. That reason was the most common theme. The next largest group was "no reason identifiable" (50 claimants). Of the remaining, the reasons vary but include things like ill health, learning of the Settlement Agreement relatively late, and having made an initial contact with the Administrator but not actually making the application for some time.
32. As a result of this, the Joint Committee concluded that some class members may not yet be diagnosed and others may not be aware of the Settlement Agreement and/or the first claim deadline.
33. In addition, the first claims deadline has never been highlighted in a formal notice.
34. In August 2010 the Joint Committee issued requests for proposals ("RFPs") to four firms who have experience with class actions and with notice and communications issues. The RFPs asked for communications programs focused on reaching persons who may have been transfused in the class period but who have not yet been tested for HCV to be tested and to contact the Administrator if the test is positive; and persons who were transfused during the class period and had been diagnosed with HCV but who have not yet made an application. The Joint Committee asked for proposals within two budgets: \$500,000 or \$1,000,000.
35. Each firm submitted a proposal. The Joint Committee reviewed and analyzed those proposals and then met with each of the four firms during a day long series of meetings. The Joint Committee identified certain strengths in each of the proposals. After having reviewed the proposals and having met with the firms, the Joint Committee decided to

recommend a combination of the portions of the proposal made by Crawford Class Action Services “Crawford” and the Bruneau Group working with Bluesky Strategy Group (the “Bruneau Group”).

36. The combined costs of these proposals was about \$1,220,000. The Joint Committee brought an application for approval. At an informal meeting with all judges present, the Courts indicated that they had wide jurisdiction to approve applications after the first claims deadline, and so a proposal as comprehensive and costly as that being proposed by the Joint Committee was not necessary. The Courts indicated a willingness to approve an all inclusive budget of \$200,000 for communications and each Court has subsequently issued an order accordingly.
37. The Joint Committee is currently overseeing the implementation of the \$200,000 communications programme including the Crawford elements and those elements of the Bruneau Group strategy that can be implemented for \$200,000.

#### **Financial Matters and Budgetary Process**

38. The Joint Committee is responsible for making recommendations to the courts pertaining to the appointments of service providers, negotiating budgets for service providers, obtaining court orders pertaining to approval of their budgets, instructing service providers and receiving and assessing advice and reports from service providers. The service providers to which this description applies include:
  - (a) the administrator;
  - (b) the trustee;

- (c) the investment managers;
- (d) the investment consultants;
- (e) the auditors;
- (f) the actuaries;
- (g) physicians who assist in medical modelling; and
- (h) epidemiologists.

39. Generally speaking, expenses by service providers have declined over time, in some cases quite markedly. However, that was not the case in Year 9 (2010) for Joint Committee fees on general matters.

40. While Joint Committee fees were under budget for Year 10 (2009) at actuals of \$304,832.50 compared to a budget of \$500,000.00, they increased over the prior year after years of declining (Year 9 (2008) - \$222,080.50).

41. The reasons for this were many. Significant efforts were directed by the Joint Committee at:

- (a) assessing the Settlement Agreement as we approach 2010, including what is working and what is not working;
- (b) planning for the first claims deadline;
- (c) reviewing and revising the Investment Guidelines;

- (d) working with the Administrator on revising SOPs to smooth administrative issues and problem areas for claimants;
- (e) communications in anticipation of the first claims deadline including: reviewing and assessing communications efforts to date; issuing an RFP on communications; reviewing the proposals; selecting a proposal, refining the proposal, preparing motion material;
- (f) audit, budgeting and annual report – during the third quarter of the year health issues prevented the Joint Committee member who had previously led the audit, budgeting and the annual report from doing so. The Joint Committee determined that Sharon Matthews and Heather Rumble Peterson would divide this work between them; and
- (g) arranging and preparing for a joint meeting with the courts which took place in January 2010.

42. For Year 11 (2010), the Joint Committee anticipates fees on general matters may be higher than Year 10 (2009) because there are ongoing significant matters being addressed including:

- (a) bifurcation of the budgeting and annual report processes which will require significant overlap in work at least during the transition year and 2 budget cycles in Year 11 (2010) in order to move the budget to the last quarter of the year prior to the year to which the budget applies;

- (b) seeking advice on the migration of the CLASS software to a commercially viable platform from independent consultants;
  - (c) working with the Administrator to revise claims processes from and after July 1, 2010 (when, in accordance with the Settlement Agreement, court approval will be required to permit late claims to proceed through the application process);
  - (d) continued work on the proposals to revise the investment guidelines given the comments of the Federal Government received in January 2010;
  - (e) negotiating a revised contract with the Administrator (current contract expires December 31, 2010);
  - (f) working with the Administrator on ongoing claims administration issues such as the level of medical proof required under the plans, the approved diagnostic measures, and updating the administration of those issues with the medical science; and
  - (g) overseeing the execution of the approved communications plan.
43. The Joint Committee has proposed a budget for Year 11 (2010) of \$550,000 for fees and disbursements, plus applicable taxes.
44. For fund sufficiency review matters in Year 10 (2009), both those pertaining to the December 31, 2007 review (which had been before the courts since November 2008 but was awaiting the Federal Government's review and comment, and the pre-planning for the 2010 fund sufficiency review), the Joint Committee proposed a budget of \$200,000 in

fees and \$25,000.00 in disbursements for Fund sufficiency review related matters. The actual fees incurred by the Joint Committee for fund sufficiency review matters in Year 10 (2009) was \$58,839.25 and the disbursements incurred were \$9,806.61. Due to an oversight the order approving budgets did not include a line for the Joint Committee fund sufficiency review but all accounts were paid only after separate court approval.

45. The Joint Committee will be preparing separate motions for approval of the 2010 fund sufficiency review work which will include a budget for the Joint Committee fees pertaining to this work.

**SCHEDULE O**  
**TO THE REPORT OF THE JOINT COMMITTEE**  
**FOR THE PERIOD ENDING DECEMBER 31, 2009**



**YEAR 10 JC FEES**

**Joint Committee Fees and Disbursements Incurred in the Period from  
January 1, 2009 to December 31, 2009**

**GENERAL**

	<b>British Columbia</b>	<b>Quebec</b>	<b>Ontario (Hemophiliac)</b>	<b>Ontario (Transfused)</b>	<b>Total</b>
<b>General Fees</b>	99,675.00	67,867.25	70,302.50	66,987.50	<b>\$304,832.25</b>
<b>General Disbursements</b>	17,709.12	6,019.28	4,698.87	8,505.62	<b>\$36,932.89</b>
<b>GST</b>	5,865.51	3,694.33	3,750.07	3,774.66	<b>\$17,084.57</b>
<b>SST</b>	6,977.25	n/a	n/a	n/a	<b>\$6,977.25</b>
<b>Total</b>	<b>\$130,226.88</b>	<b>\$77,580.86</b>	<b>\$78,751.44</b>	<b>\$79,267.78</b>	<b>\$365,826.96</b>

**SUFFICIENCY-RELATED**

	<b>British Columbia</b>	<b>Quebec</b>	<b>Ontario (Hemophiliac)</b>	<b>Ontario (Transfused)</b>	<b>Total</b>
<b>Sufficiency Fees</b>	11,991.25	8,151.00	4,200.00	34,497.00	<b>\$58,839.25</b>
<b>Sufficiency Disbursements</b>	167.74	668.81	n/a	8,970.06	<b>\$9,806.61</b>
<b>GST</b>	607.96	440.99	210.00	2,173.35	<b>\$3,432.30</b>
<b>SST</b>	839.40	n/a	n/a	n/a	<b>\$ 839.40</b>
<b>Total</b>	<b>\$13,606.35</b>	<b>\$9,260.80</b>	<b>\$4,410.00</b>	<b>\$45,640.41</b>	<b>\$68,717.56</b>

**TOTAL FEES AND DISBURSEMENTS  
(GENERAL PLUS SUFFICIENCY-RELATED)**

	<b>British Columbia</b>	<b>Quebec</b>	<b>Ontario (Hemophiliac)</b>	<b>Ontario (Transfused)</b>	<b>Total</b>
<b>Fees</b>	111,666.25	76,018.25	74,502.50	101,484.50	<b>\$363,671.50</b>
<b>Disbursements</b>	17,876.86	6,688.09	4,698.87	17,475.68	<b>\$46,739.50</b>
<b>GST</b>	6,473.47	4,135.32	3,960.07	5,948.01	<b>\$20,516.87</b>
<b>SST</b>	7,816.65	n/a	n/a	n/a	<b>\$7,816.65</b>
<b>Total</b>	<b>\$143,833.23</b>	<b>\$86,841.66</b>	<b>\$83,161.44</b>	<b>\$124,908.19</b>	<b>\$438,744.52</b>

**SCHEDULE P**  
**TO THE REPORT OF THE JOINT COMMITTEE**  
FOR THE PERIOD ENDING DECEMBER 31, 2009

## **REPORT OF FUND COUNSEL**

1. The duties and responsibilities of Fund Counsel are defined by Section 7.01 of the January 1, 1986 - July 1, 1990 Hepatitis C Settlement Agreement. These duties and responsibilities include:
  - (a) defending decisions made by the Administrator;
  - (b) defending and advancing the interests of the Trust Fund;
  - (c) receiving financial statements and actuarial and other reports relating to the financial sufficiency of the Trust Fund from time to time;

if deemed necessary or desirable by Fund Counsel, making applications to courts pursuant to Section 10.01 of the Settlement Agreement.
2. John Callaghan and Belinda Bain have been appointed as Fund Counsel for the Ontario Class Actions by Order of the Ontario Superior Court of Justice. Mason Poplaw was appointed Fund Counsel for the Quebec Class Actions by Order of the Quebec Superior Court. William Ferguson was appointed Fund Counsel for the British Columbia Class Actions by Order of the British Columbia Supreme Court.
3. During the fiscal period January 1, 2009 to December 31, 2009, Fund Counsel were primarily involved in defending decisions made by the Administrator on appeals instituted by claimants. The appeals are conducted either as References or Arbitrations. Appeals can be conducted in writing or in person. In each case, written submissions are delivered to the claimant and the Referee/Arbitrator in advance of the appeal. When the appeal is conducted in person, Fund Counsel attends the hearing. The hearing is held where the claimant resides.
4. If the appeal is conducted by way of Reference, the Referee's decision is final and binding within 30 days of the release of the decision unless a claimant opposes confirmation within the 30 day period. If confirmation of the Referee's decision is opposed by the claimant, the Referee's decision is reviewed by the Court.
5. In addition to the appeals, Fund Counsel have also handled claims where court approval was necessary for payments involving minors or a mentally incompetent adult.
6. Fund Counsel also receive and review financial statements and other reports relating to the financial sufficiency of the Trust Fund.

7. Below is a report of the activities of each Fund Counsel in relation to the appeals conducted:

(a) **Ontario Fund Counsel**

Ontario Fund Counsel handles appeals from Claimants in Alberta, Manitoba, Ontario, Saskatchewan, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Yukon Territory, The Northwest Territories and Nunavut.

Number of total appeals received from the beginning to Dec 31, 2009	286
Number of appeals received from January 1, 2009 to December 31, 2009	10
Number of total completed appeals (decisions rendered) from the beginning to December 31, 2009	194
Number of completed appeals (decisions rendered) from January 1, 2009 to December 31, 2009	8
Number of total withdrawals from the beginning to December 31, 2009	36
Number of withdrawals from January 1, 2009 to December 31, 2009	4
Number of total rescissions of denial from the beginning to December 31, 2009	18
Number of rescissions of denial from January 1, 2009 to December 31, 2009	0
Number of total Mediated Appeals from January 1, 2009 to December 1, 2009	7
Number of Mediated appeals from January 1, 2009 to December 31, 2009	0
Number of Archived Appeals	5
Number of pending Appeals as of December 31, 2009 (subtotal-see below)	28
Number of total requests for judicial confirmation from the beginning to December 31, 2009	50
Number of requests for judicial confirmation from January 1, 2009 to December 31, 2009	2
Number of total judicial decisions from the beginning to December 31, 2009	***35
Number of judicial decisions from January 1, 2009 to December 31, 2009	***2

Number of Appeals Justice Winkler has sent back to Referee up to December 31, 2009	4
Number of Appeals that have been sent back that now have Final Decision from Justice Winkler	1
Number of Appeals sent back by Justice Winkler that have been withdrawn by claimant up to December 31, 2009	1
<b>Total Number of pending Appeals as of December 31, 2009 including Appeals sent back to Referee by Justice Winkler</b>	<b>26</b>

\*\*\* These numbers of the judicial decisions do not include the decisions from Justice Winkler sending them back to the Referee to be reheard.

*Archived* – Represents appeals where the Claimant cannot be located before a decision has been rendered or the Arbitrator or Referee has agreed to an indefinite adjournment.

Ontario Fund Counsel incurred fees of **\$98,955.50** plus GST on fees of **\$4,947.78**. With respect to disbursements, Ontario Fund Counsel incurred disbursements in the total sum of **\$13,548.12**, **\$10,059.60** of which related to travel expenses and **\$1,600.00** to expert expenses. With taxes, the total amount of fees and disbursements incurred is **\$118,095.59**.

(b) **Quebec Fund Counsel**

Particulars of the appeals are as follows:

Number of total appeals received from the beginning to December 31, 2009:	75
Number of appeals received from January 1, 2009 to December 31, 2009:	0
Number of total completed appeals (decisions rendered) from the beginning to December 31, 2009:	59
Number of completed appeals (decisions rendered) from January 1, 2009 to December 31, 2009:	1
Number of total withdrawals from the beginning to December 31, 2009:	10
Number of withdrawals from January 1, 2009 to December 31, 2009:	0

Number of total mediated appeals from the beginning to December 31, 2009:	1
Number of mediated appeals from January 1, 2009 to December 31, 2009:	0
Number of total rescissions of denial from the beginning to December 31, 2009:	5
Number of rescissions of denial from January 1, 2009 to December 31, 2009:	0
Number of pending appeals as of December 31, 2009:	1
Number of total requests for Judicial confirmation from the beginning to December 31, 2009:	18
Number of requests for Judicial confirmation from January 1, 2009 to December 31, 2009: (Notice filed after deadline- Court reviewing)	1
Number of total Judicial decisions from the beginning to December 31, 2009:	16
Number of requests for Judicial confirmation withdrawn by claimant to December 31, 2009	1
Number of judicial decisions from January 1, 2009 to December 31, 2009:	0

Quebec Fund Counsel has incurred fees of **\$16,048.00** and disbursements of **\$1,750.63** including **\$15.55** for travel expenses. There will no costs incurred with respect to expert fees in 2009. With taxes, the total amount of fees and disbursements incurred in Quebec is **\$18,703.88**.

(c) **British Columbia**

Particulars of the appeals are as follows:

B.C. Fund Counsel has incurred fees of **\$29,250.00** and disbursements of **\$1,574.16**, there were no travel or expert expenses. With taxes, the total amount of fees and disbursements incurred in B.C. is **\$34,409.77**.

Number of total appeals received from the beginning to December 31, 2009:	67
Number of appeals received from January 1, 2009 to December 31, 2009:	1
Number of total completed appeals (dec rendered) from the beginning to December 31, 2009:	47
Number of completed appeals (dec rendered) from January 1, 2009 to December 31, 2009:	1

Number of total withdrawals from the beginning to December 31, 2009:	13
Number of withdrawals from January 1, 2009 to December 31, 2009:	1
Number of total rescissions from the beginning to December 31, 2009:	0
Number of rescissions from January 1, 2009 to December 31, 2009:	0
Number of total mediated appeals from the beginning to December 31, 2009:	1
Number of mediated appeals from January 1, 2009 to December 31, 2009:	1
Number of Archived Appeals	2
Number of pending appeals as of December 31, 2009:	4
Number of total request for judicial confirmation from the beginning to December 31, 2009:	19
Number of requests for judicial confirmation from January 1, 2009 to December 31, 2009:	1
Number of total judicial decisions from the beginning to December 31, 2009:	18
Number of judicial decisions from January 1, 2009 to December 31, 2009:	1

Appeals that are pending generally fall into one of the following categories:

- (a) Appeals that have been requested but not yet commenced. Some Arbitrators and Referees schedule a pre-appeal conference call before a date for the appeal is set. This can result in the delay in scheduling a date for the appeal. Often, claimants require additional time to collect evidence before commencing the appeal. Fund Counsel generally consent to a reasonable period of delay for the benefit of the claimant.
- (b) Appeals that have been commenced but not yet concluded. Appeals are often adjourned to allow the claimant an opportunity to collect and provide additional evidence. Fund Counsel generally consent to these adjournments. The Referee/Arbitrator usually monitors the adjournment to ensure that the appeal resumes in a reasonable period of time.

- (c) Appeals that have been concluded and the decision from the Arbitrator or Referee is pending.

Pursuant to the Court Approved Protocol for Arbitration/References and subject to the discretion of the Referees and Arbitrators, Fund Counsel endeavour to conduct the appeals in the simplest, least expensive and most expeditious procedure. When practical and reasonable to do so, evidence from witnesses is introduced in writing or by telephone to eliminate the expense of having the witness testify in person. However, in some appeals, it is preferable to have the witness testify in person and on these occasions the expense is unavoidable.

- 8. Fund Counsel anticipates that the time required to handle appeals during this fiscal year will either remain the same or decrease slightly. This will depend upon the number of appeals which raise complicated medical and other issues and which might require expert evidence.



**SCHEDULE Q**  
**TO THE REPORT OF THE JOINT COMMITTEE**  
**FOR THE PERIOD ENDING DECEMBER 31, 2009**

## Annual Report 2009

### Prepared for:

The Joint Committee of the Hepatitis C 86-90 Trust Fund

### Prepared by:

Reva Devins Associate Chair, Ontario Roster of Arbitrators and Referees

## Duties and Responsibilities of Arbitrators and Referees

1. Under the terms of the Court approved settlement, Arbitrators and Referees are responsible for determining all appeals brought by claimants seeking review of the decision of the Administrator. An appeal may proceed by Arbitration or Reference, either by an in person hearing or by review of the written material submitted by the parties. Arbitrators and Referees are to conduct their review using the simplest, least expensive and most expeditious procedure.
2. Upon conclusion of the appeal, the Arbitrator or Referee must release their decision within thirty days of completion of an oral hearing or within thirty days following receipt of final written submissions. Reasons for Decision are released in writing to the individual claimant and to Fund Counsel representing the Administrator. In all decisions, the Arbitrator or Referee must state the facts and conclusion without identifying the claimant; decisions are then posted on the Website.

## Roster of Arbitrator/Referees

3. There are currently 16 Court appointed Arbitrator/Referees: one in each of Alberta, Saskatchewan, Manitoba, Nova Scotia and Quebec, 3 in British Columbia, and 7 in Ontario, including a French speaking Arbitrator/Referee who conducts all French language appeals outside of Quebec and British Columbia.

## Appeal Activity

4. The number of appeals assigned to Arbitrators and Referees has dramatically declined. No new cases were opened in Quebec and less than ten opened in Ontario. There were correspondingly fewer decisions rendered by the Arbitrator/Referees.

## Financial Activity to December 31, 2009

5. The fees and expenses incurred by the Arbitrators and Referees are summarized below:

	<u>British Columbia</u>	<u>Quebec</u>	<u>Ontario (includes all remaining provinces)</u>
Fees:	\$27,702.50	\$ 2,250.00	\$ 15,475.00
Disbursements:	\$1,011.16	\$ 20.82	\$ 1,365.25
Taxes:	\$2,841.19	\$ 292.37	\$ 1,013.25
<b>TOTALS</b>	<b>\$31,554.85</b>	<b>\$2,563.19</b>	<b>\$17,853.50</b>

In the past fiscal year, 0 cases were approved for payment in excess of the tariff rate: none in Quebec or Ontario and 0 in British Columbia.

## Proposed Budget

6. As in previous years, the number and complexity of appeals pursued by claimants will determine the fiscal needs of Appeal administration. Consequently, absent a reliable predictor of incoming Appeals, the proposed budget for Arbitrators and Referees should be based on expenses, fees and related expenses incurred in the preceding year. We would therefore recommend that the 2010 Budget be set at an amount equal to that actually paid in 2009. Any additional amounts, if required, would be subject to Court approval.