

IN THE MATTER OF *The Pension Benefits Act*, C.C.S.M. c. P32, as amended;

AND IN THE MATTER OF The University of Winnipeg Pension Plan.

TO: Mr. Bill Balan, Acting Vice-President, Finance and Administration, University of Winnipeg

COPIES TO:

Mr. Frederick W. Barth, Ph. D.

Mr. Wesley M. Stevens, Ph. D.

Mr. Brent Stearns, Secretary, University of Winnipeg Retirement Association

Ms. Kristine Hansen, President, University of Winnipeg Faculty Association

Mr. Tom Moyle, President, Association of Employees Supporting Education Services

Mr. Jim Murphy, Business Manager, International Union of Operating Engineers

ORDER

I am of the view that based on the facts provided to me it is inappropriate to make an order to appoint a person to act in place of and to perform the duties of the University of Winnipeg as Administrator of The University of Winnipeg Pension Plan. However based on these facts, I hereby make an order that the University of Winnipeg:

- (a) develop and implement a written governance framework for The University of Winnipeg Pension Plan within 120 days of the date of this order;
- (b) confirm to the Superintendent in writing within 30 days of the date of this order that it will develop and implement the written governance framework required by clause (a);
- (c) provide to the Superintendent a copy of the written governance framework required by clause (a) within 30 days of its implementation;
- (d) provide to the continuing DB plan members within 120 days of the date of this order benefits equal to a proportionate share of the surplus determined under paragraph 1.g. of the joint recommendation, adjusted with interest to the date of payment as required by the Act and Regulations;
- (e) pay by a lump sum to the UW Pension Fund the cost of the benefits under clause (d) within 120 days of the date of this order; and
- (f) arrange to have the December 31, 2004 actuarial valuation report amended to reflect clauses (d) and (e) and to file the amended report with the Pension Commission of Manitoba within 120 days of the date of this order.

The decision of the Superintendent in this matter, with findings, is attached.

APPEAL

A person affected by this order may appeal the order to the Pension Commission of Manitoba under subsections 8(6) and 8(7) of *The Pension Benefits Act* if the person files with the Commission a copy of the order together with a written statement setting out the grounds of the appeal and the relief requested within sixty (60) days after being served with the order at the following address:

Mr. Robert Ziegler, Chair
The Pension Commission of Manitoba
1004 – 401 York Avenue
Winnipeg MB R3C 0P8

I. BACKGROUND

On November 8, 2002 Mr. Frederick W. Barth and Mr. Wesley M. Stevens wrote Mr. Robert Ziegler, Chair of the Pension Commission of Manitoba (the "Commission") requesting the University of Winnipeg (the "University") be removed as plan administrator of The University of Winnipeg Pension Plan (the "UW Plan") and trustee of the Pension Trust Fund (the "UW Pension Fund"), and that a new trustee be appointed to administer the UW Plan and UW Pension Fund.

On November 15, 2002, Mr. Brent Stearns, Secretary, University of Winnipeg Retirement Association, wrote to Mr. Ziegler, expressing an interest in the matters raised by Messrs. Barth and Stevens.

I advised Messrs. Barth and Stevens in a letter dated December 10, 2002 that under Section 8 of *The Pension Benefits Act* (the "Act"), the Superintendent, not the Pension Commission, has the authority to appoint an administrator. I therefore requested that they advise how in their view the pension plan, or the manner in which it is being administered, is not in conformity with the Act or the Pension Benefits Regulations (the "Regulations"). Information was provided to me in a letter dated April 2, 2003.

By way of a letter dated December 20, 2002, Debbie Amanda Goldrick-Jones, as President of the University of Winnipeg Faculty Association (UWFA), Janet Sealey as President of the Association of Employees Supporting Education Services (AESES), Michael Alberg, for the International Union of Operating Engineers (IUOE) and Stephen Willetts, as representative for the exempted employees were asked to provide additional information regarding the surplus sharing agreement. Information was received by Stephen Willetts and Janet Sealey by way of letters and attachments dated January 9, 2003 and January 15, 2003 respectively.

I subsequently wrote Messrs. Barth and Stevens on June 6, 2003 asking for their written permission to provide a copy of their April 2, 2003 letter to the University. Not receiving any reply to my letter, on November 10, 2003 I provided Mr. Steven Willetts, Vice-President, Finance and Administration, University of Winnipeg, with a summary of the issues, and the sections of the Act and Regulations which in the view of the Applicants supported the plan is not being administered in conformity with the Act and Regulations. I asked Mr. Willetts to provide comment on each of these issues which I received from him in a letter dated December 11, 2003.

By way of a letter dated November 8, 2005, Messrs. Barth and Stevens were asked to provide additional information regarding these issues which was received by this office in a letter dated November 22, 2005.

By way of letters dated November 8, 2005 and February 24, 2006 to Mr. Willetts, additional documentation and information was requested from the University which was provided by him in letters dated December 9, 2005, February 9, 2006, March 13, 2006 and March 14, 2006.

A further letter was received from Mr. Stearns dated May 29, 2006 concerning these matters and was advised that the University of Winnipeg Retirement Association would

provide further evidence. In a letter dated June 19, 2006, Mr. Stearns was advised that should there be new information that has not yet been brought forward, it be provided to us as soon as possible for review. No further information was received from the Association.

Each issue raised by Messrs. Barth and Stevens have been summarized following which are my findings. The relevant sections of the Act and Regulations are set out in Appendix A. The relevant sections of the UW Plan are set out in Appendix B. The relevant sections of the *Income Tax Act* (Canada) and Income Tax Regulations are set out in Appendix C. The documents that were reviewed are listed in Appendix D.

II. THE 1997 AMENDMENT

A. New or Supplementary Plan

Issue: that the financial articles of the pension plan were altered on December 1, 1997 by amendments to Paragraphs 6.2(d), 7.5 and 7.3(g) ("Amendment 97/1") and result in the creation of a new plan. Amendment 97/1 provided that the employer could dispose of all earnings of assets in surplus. As a new plan, Amendment 97/1 did not comply with section 18(2.1) of the Act. This document was not filed within 60 days as required by the legislation.

1. Finding

Section 1(1) of the Act contains a definition of "pension plan" and "supplemental pension plan". With respect to a "pension plan", the document constituting a pension plan must provide for or contain all the terms and conditions required under the Act including but not limited to, the provisions set out in section 21 of the Act, the administration of the plan, conditions for membership, benefits and entitlements, formulas for determining benefits and contributions to the plan, and interest.

A "supplemental pension plan" is also a pension plan which must contain all the terms and conditions required by the Act as mentioned above, however, it is established for employees whose membership in another pension plan is a condition precedent to membership in the supplemental pension plan.

The UW Plan was established effective September 1, 1972. It has been registered and has maintained its qualification for registration under the Act as a pension plan since October 2, 1978. The UW Plan has not been wound up, terminated or deregistered. Further, from time to time the UW Plan has been amended, but those amendments have not created in and of themselves a new pension plan requiring compliance with sections 18(2) or (2.1) of the Act.

Amendment 97/1 contains three provisions: Paragraph 6.2(d), Paragraph 7.3(g), and Paragraph 7.5. It does not contain all the terms and conditions required under the Act necessary to constitute a new pension plan nor a supplemental pension plan pursuant to sections 18(2.1) or 18(3) of the Act.

As Amendment 97/1 is an amendment to the UW Plan and does not create a new plan, it does not breach section 18(2.1) of the Act.

Amendment 97/1 is subject to section 9(2) of the Regulations. The Regulations require that amendments be filed within 60 days after the amendment is made, and the University admits that such was not the case. Although the Superintendent may refuse to register such an amendment, the late filing of an amendment does not prevent the amendment from being registered.

Amendment 97/1 was filed late contrary to section 9(2) of the Regulations. Other amendments either have not been filed within the timeframe set out in section 9(2), or simply were not filed.

Though failure to file amendments in accordance with the legislation may result in the Superintendent's office refusing to register such an amendment, it does not warrant the appointment of a new administrator.

However, it should be noted that the establishment of appropriate mechanisms to oversee and ensure compliance with the legislative requirements and pension plan documents and administrative policies is a key element of good pension governance.

B. Alteration to reduce benefits and increase surplus

Issue: that Paragraph 7.3(g) of Amendment 97/1 altered the indexing of pension benefits to reduce the benefits of members and penalize certain pensioners with the effect of increasing surplus for the University's use. Further, section 21(8) of the Act was breached as all members have the right to a fair process of calculating benefits on an equitable basis. Lastly, an interpretation was given to Paragraph 7.3(g) to claw back benefits to meet the employer's new demand to increase surplus.

1. Finding

Since 1984 the UW Plan has provided supplementary pension benefits to pensioners under Article 7 which has been amended over time. Presently, Paragraphs (a) - (f) of Article 7.3 provide that where the net investment return of the UW Pension Fund as determined by the Actuary exceeds 6%, members' pensions shall be increased based on the lesser of the excess of the net investment return over 6% (the "excess interest") and the increase in the Consumer Price Index (the "CPI") over the 12 month period ending in December of the calendar year (the "CPI increase"). If in a year the excess interest increase is less than the CPI increase and in a subsequent year the excess interest increase is limited by the CPI increase, in the following year the University may modify that year's increase to include part or the entire shortfall in the preceding years excess interest increase.

Amendment 97/1 added Paragraph 7.3(g) and provides an additional increase each July 1st for pensioners who retired prior to January 1, 1998 for the period from 1998 to 2007, so that the cumulative increase is not less than 75% of the increase in the CPI during the period from December 1996 to the December of the year immediately prior to that July 1st. However, the average annual pension increase in this period cannot exceed 4.5%. Amendment 97/1 serves to enhance or increase certain pensioners'

benefits.

Section 21(8) reads that pensioners are "entitled to an annuity in accordance with the terms of the pension plan, *as those terms are at the date of retirement* and that is not less than the pension benefits in respect of service as an employee after January 1, 1984" (italics added). In the decision of *Dinney v. Great-West Life Assurance Co.* [2005] M.J. No. 69, the court found that section 21(8) of the Act required that the right to benefits in accordance with the pension plan vested at retirement and an annuity must be in accordance with the terms of the pension plan as those terms are at the date of retirement. No change following retirement can affect this right. Great-West Life Assurance Company could therefore not reduce the vested benefits by a future amendment.

Section 21(8) protects pensioner's rights to benefits vested at retirement in accordance with the terms of the pension plan at the date of retirement. It does not extend to benefits in which the member is not vested. Members who retired on or after January 1, 1998 have no vested rights under the enhanced indexation provision which is Paragraph 7.3(g).

Further, section 21(8) does not require that all members, including pensioners, receive equal benefits or benefits under an equal formula. An amendment that does not provide for an equitable share of surplus to be distributed to all members and pensioners would not contravene this section or any other provision of the legislation.

In the appeal of the *Association provinciale des retraités d'Hydro-Québec v. Hydro-Québec* [2005] Q.J. No. 1644, the Association provinciale des retraités d'Hydro-Québec (the "Association") was claiming that when Hydro-Québec enters into agreements with respect to the use of surplus for its benefit and that of active members, it must enter into an agreement with pensioners such that an equitable share of the pension plan surplus will be set aside for their benefit. The Québec Court of Appeal dismissed the appeals of the Association in respect of the Québec Superior Court decision dismissing the Association's class action. In summary the court found that neither the Supplemental Pension Plan Act of Quebec, the Civil Code nor the pension plan required the pensioners consent either individually or collectively to validly amend the pension plan and it was not up to the courts to impose such a condition.

It should be noted that while "surplus" can be classified as a benefit, entitlement to a "surplus" is only ascertainable upon a full or partial termination of a plan or arguably when termination of the plan is imminent. The UW Plan is not being terminated in whole or in part and termination of the plan is not imminent, therefore members cannot claim entitlement to surplus and section 21(8) of the Act does not apply.

In *Air Products Canada v. Schmidt* [1994] 2 S.C.R. 611 at page 42 of that judgement Cory, J. indicated that:

Once funds are contributed to the pension plan they are "accrued benefits" of the employees. However, the benefits are of two distinct types. Employees are first entitled to the defined benefits provided under the plan. This is an amount fixed according to a formula. The other

benefit to which the employees *may* be entitled is the surplus remaining upon termination. This amount is never certain during the continuation of the plan. Rather, the surplus exists only on paper. It results from actuarial calculations and is a function of the assumptions used by the actuary. *Employees can claim no entitlement to surplus in an ongoing plan because it is not definite. The right to any surplus is crystallized only when the surplus becomes ascertainable upon termination of the plan.* (italics added)

With respect to Paragraph 7.3(g), there is no evidence to suggest that any members, including pensioners, have experienced a reduction in their benefits due to Amendment 97/1 or that an amendment to the UW Plan has affected their "pension benefits as those terms are at the date of retirement". Further, based on a review of the University's documentation the qualifying pensioners under Paragraph 7.3(g) did receive their basic pension benefit and supplementary pension increases from the UW Pension Fund in accordance with the terms of the UW Plan.

Amendment 97/1 does not breach section 21(8) of the Act.

III. PAYMENTS TO AND FROM THE UW PLAN AND UW PENSION FUND

A. Payments out of the plan and to the employer

Issue: that Paragraph 7.5 of Amendment 97/1 permitted payments in the form of "bridge benefits" to be paid from the UW Plan. Section 26(2) of the Act does not permit them to be paid from assets or earnings of the UW Pension Fund.

Payments were made from June 1998 to 2003 with monies transferred from the UW Pension Fund to the University's business operation and then paid to a few individuals. Further, seventeen employees elected to retire under the terms of Paragraphs 6.2(d) and 7.5 of Amendment 97/1, while other qualified members were not deemed eligible.

Further, on the basis that funds from the UW Plan have reverted to, or been recovered by the University, these sections of the Act and Regulations have been breached as the required disclosure has not been provided. Requests in 1998 and 2000 to inspect documents filed with the Superintendent in respect of the funds that have reverted to or been recovered by the University under these sections have been denied.

By decreasing the number of active members (through providing bridge benefits) the University has reduced the amount of member contributions to the UW Pension Fund.

1. Finding

Section 26(2) of the Act prohibits the payment of funds, including surplus, out of a pension plan to an employer unless the Commission consents to the payment in writing. The conditions under which the Commission shall consent to such a payment are set out in section 26(2.1). If the Commission is not satisfied under section 26(2.1), under section 26(2.2) it will not consent unless a judge of the Court of Queen's Bench

determines that the employer is entitled to receive the surplus under the terms of the plan. Additional requirements under section 26(2.1) are contained in the Regulations; specifically sections 7(1) and 7(2) outline the required contents of an application made and the disclosure requirements for members, former members, and any other persons entitled to benefits under the plan etc.

At no time has the University made application to the Commission under section 26(2.1) for a payment to the University out of the UW Plan.

The University's audited financial statements for the period from 1997 to 2004 and the UW Pension Fund statements issued by the pension fund custodian for the period from 1997 to 2004 were reviewed. These statements include information concerning the employee and employer contributions to the plan, benefit payments, pension payments, investment earnings and pension administration expenses. These statements indicate that the 17 members who elected to retire under the early retirement window in question received their pension payments, including bridge payments and supplementary pension increases, from the UW Pension Fund.

Further, section 26(2) does not prevent an employer from utilizing surplus by amending a plan for purposes of improving benefits through for example, an early retirement window or bridge benefit, for all members or defined groups of members. Bridge benefits and the funding of these benefits do not constitute payments of funds, including surplus, out of the plan to an employer. Section 26(2) is not relevant. Other sections of the legislation apply to such an amendment.

Commonly offered under many defined benefit pension plans across Canada from time to time, an early retirement window is a time-limited offering of a special early retirement benefit, payable only on retirement during the time limit. Reasonable age and/or service criteria may be used to define a group of employees who will be eligible to receive the early retirement window option. These enhanced early retirement benefits, which may include bridge benefits, are subject to the funding requirements of the Regulations.

Section 3(8) of the Regulations provides that, where an amendment to a plan affects the cost of benefits provided by the plan or the solvency or funding of the plan, or creates an unfunded liability, a re-evaluation of the plan's financial position must be undertaken. Further, where an actuarial valuation report or cost certificate filed under section 3 reveals that a plan does not have an unfunded liability or solvency deficiency, an actuarial gain may be used to increase benefits.

Not all members of the UW Plan would have qualified for benefits under Amendment 97/1. Only members who meet the defined age and service criteria would be eligible. There is no evidence to suggest that any member who met the defined age and service criteria and who elected to retire was subsequently deemed ineligible by the University.

In regards to an employee's right to receive and inspect information, section 29 of the Act and sections 23(1), (2) and (4) of the Regulations apply. Given that the University had not made application to the Commission under section 26(2.1) for a payment out of the UW Plan, as mentioned above there would be no application or supporting documents to inspect.

In regards to an employee's right to receive information under sections 23(1), (2) and (4) of the Regulations, based on the letter of July 15, 2004 addressed to Wesley Stevens the University has provided copies of the documents required by section 23(2) of the Regulations.

Finally, while the early retirement window may have the effect of decreasing the number of active contributing members under the plan and therefore reducing both the active membership's and the University's current service contribution obligation to the plan, this is not a breach of the Act and Regulations. The Act and Regulations do not require an employer to maintain the number of active members under a plan and the corresponding current service contribution obligation to it.

Amendment 97/1 and the funding of the benefits provided under it do not breach the Act and Regulations.

B. Withholding Required Contributions

Issue: that the UW Plan (1996) and the Trust Agreement (1985) are specific that the employer may not receive any payment from the UW Pension Fund, whether surplus or not. Further, there was no entitlement to surplus, either in direct payment or indirect benefit or gain by means of withholding required employer contributions.

Further, UW Plan Paragraph 4.5 does not provide grounds for the University to withhold its contributions. The University has contravened section 26(2.1) of the Act by withholding its required employer contributions to the UW Plan.

1. Finding

As mentioned above, section 26(2.1) sets out the conditions under which the Commission shall consent to a payment of funds, including surplus, out of a pension plan to an employer. Section 26(2) neither prevents an employer from withholding, nor requires an employer to make application to withhold, its required contributions from the pension plan.

As mentioned, at no time has the University made application to the Commission under section 26(2.1) for a payment to the University out of the UW Plan.

Further, under the Act and Regulations withholding required contributions does not constitute a payment of funds out of a pension plan to the employer. Rather where an actuarial valuation report reveals that a plan does not have an unfunded liability or solvency deficiency, withholding such contributions and applying an actuarial gain or surplus to reduce the employer's required contribution to a pension plan is otherwise known as a "contribution holiday", and other sections of the legislation have relevance.

Contribution holidays are not prohibited by the Act. The Regulations include a definition of "actuarial gain" and section 4(19) deals with the use of actuarial gains. Section 4(19) states that where an actuarial valuation report filed with the Commission reveals that the plan has an actuarial gain, the gain may be applied to reduce the employer's contribution if the plan does not specifically provide that an employer may not reduce the employer contributions by the use of surplus. Based on the actuarial valuation

reports and cost certificates as at December 31, 1996 and December 31, 1999 filed under section 3, the UW Plan had neither an unfunded liability nor solvency deficiency. Further, the reports revealed actuarial gains and surpluses as of those dates.

Whether or not a contribution holiday is permissible then must be decided on the basis of the applicable plan provisions. In determining whether or not a plan permits the use of surplus to make employer contributions, the Superintendent advises that the employer should be guided by the Air Products decision. The Court's decision with respect to an employer's right to take a contribution holiday appeared to turn on this conclusion.

In order for an employer to take a contribution holiday they must be permitted to do so by the terms of the pension plan. When permission is not explicitly given in the plan, it may be implied from the wording of the employer's contribution obligation. Any provision which places the responsibility for the calculation of the amount needed to fund promised benefits in the hands of an actuary should be taken to incorporate accepted actuarial practice as to how that calculation will be made. That practice currently includes the application of calculated surplus funds to the determination of overall current service cost.

Documentation filed with the Superintendent confirms that the University took a contribution holiday from April 1, 2000 to March 31, 2002. The University advises that it relied on Paragraph 4.5 of Article 4. A review of the UW Plan indicates that the actuarial practice for calculating the employer contribution to allow for "contribution holidays" was incorporated into the UW Plan by way of the Amendment effective January 1, 1992 made June 24, 1996 and further amended by Amendment 2000/1.

To determine the validity of Paragraph 4.5, Paragraph 14.1 of Article 14 amended and restated as at January 1, 1992 was reviewed. Paragraph 14.1 deals with the University's power to amend the UW Plan and the parameters around exercising this power at the time all the amendments in question were made. The UW Plan permits the University at any time to supplement, modify or amend the Plan subject to key parameters which include the requirements that no part of the assets of the UW Pension Fund may revert to or be recoverable by the University or be used or diverted to purposes other than for the benefit of members and beneficiaries. Further, Paragraph 14.1 does not obligate the University to obtain advice from the Pension Committee respecting amendments.

While an amendment cannot cause assets of the UW Pension Fund to revert to or be recoverable by the University or be used or diverted to purposes other than for the benefit of members and beneficiaries, as confirmed in *Air Products Canada v. Schmidt*, employees can claim no entitlement to surplus in an ongoing plan because it is not definite. Further, the court found that to permit a contribution holiday does not reduce the corpus of the fund, it does not have the effect of reducing any benefits which had accrued to the employees, and it does not amount to applying the monies contained in it to something other than the exclusive benefit of the employees.

The Superintendent holds the view that the University had the power to amend the UW Plan, an on-going pension plan, in accordance with Paragraph 14.1, to amend Article 4 to allow for contribution holidays when the original provisions would not permit such a

holiday.

The University further advises that the change to Paragraph 4.5 to incorporate the actuarial practice for calculating the employer contribution by way of the Amendment effective January 1, 1992 made June 24, 1996 was explained to the Pension Committee as follows in material that was prepared for a Committee meeting held June 24, 1996:

"The recommended amendment to Article 4 'University contributions' is of a particular significance. The pension plan benefits are funded on a 50/50 basis by plan members and the University, as required by the articles of the plan. While the wording of the current Article 4 is not in compliance with the Income Tax Regulations, the variance is not in respect to the plan's principle of equal contributions (subject to the University being responsible if a plan deficiency developed).

In a defined benefit pension plan, the amount of contributions paid by plan members and the plan sponsor are only an approximation of the amount that is required to assure the funding of future benefits. As a result, triennial actuarial valuations are required to ensure that funding levels are neither excessive nor inadequate."

Paragraph 4.5 was added to comply with the federal registration requirements for defined benefit pension plans. Subparagraph 8502(b)(iii) of the Income Tax Regulations and subsection 147.2(2) of the *Income Tax Act* (Canada) combine to require that all employer contributions to a defined benefit provision must be "eligible contributions". Subsection 147.2(2) defines what will be considered to be an "eligible" employer contribution and further states that the contribution must be based on an actuarial valuation report. If an employer contribution is made to a defined benefit provision of a pension plan that is not an eligible contribution, that contribution would place the plan's registration under the *Income Tax Act* (Canada) in a revocable position.

All defined benefit pension plans, including pension plans established by Canadian universities for their employees, are required to comply with the federal funding rules including subsection 147.2(2). All employer contributions must be made based on the advice of an actuary. Employer contributions cannot be made if an excess surplus exists and cannot be made to the pension plan until such time as the excess surplus has been eliminated.

If any employer contributions are made to the plan that do not comply with the federal funding rules, the pension plan's registration under the *Income Tax Act* (Canada) would be in a revocable position. The Income Tax Regulations then require that all pension plans include a provision allowing the return of employer and employee contributions to the contributor where those contributions are determined to be "ineligible contributions" according to the federal funding rules and where necessary to avoid revocation of the registration of the pension plan.

The Regulations accommodate the return of "ineligible contributions" in such circumstances. Subject to the prior written consent of the Commission, section 7(3) of the Regulations permits the contributions that would otherwise cause the revocation of

the plan's registration under the *Income Tax Act* (Canada) to be returned to the contributor. Paragraph 4.4 of the UW Plan includes provisions to address the requirements of section 7(3) of the Regulations and the Income Tax Regulations.

Section 7(3) of the Regulations applies to "ineligible contributions" and not a contribution holiday or a refund of surplus under Act section 26(2). To date the University has not made a written request to the Commission under section 7(3) of the Regulations.

There has been no breach of section 26(2.1) of the Act. Further, the University's right to take a contribution holiday is supported by the provisions of the UW Plan and it is not in breach of the Act and Regulations in taking the contribution holiday under the UW Plan from April 1, 2000 to March 31, 2002.

C. Trust Contributions – Employee Contributions

Issue: that as the UW Plan is a trust employee contributions are impressed with a trust on deduction. A transfer of funds from the UW Pension Fund to the University, or gain by the University or benefit from these contributions, is prohibited by section 28(1) of the Act without the consent of all the beneficiaries of the UW Pension Fund. Amendment 97/1 caused part of the UW Pension Fund to revert to, or be recovered by the University, and allowed the University to transfer funds from the UW Pension Fund to its business account, or gain benefit from contributions to the UW Plan in contravention of this section.

1. Finding

Section 28(1) does not impress an enduring trust on employee contributions. This section deems the employee's contributions to a pension plan from the point of deduction or receipt by the employer to be held by the employer in trust for payment into the pension plan. Once paid into the pension plan, the deemed trust provisions under the Act cease to operate.

As confirmed in *Dinney v. Great-West Life Assurance Co.*, sections 28(1) and 28(3) impose an obligation on an employer to hold moneys due to the pension plan, both the employer's and the employee's contributions, according to the terms of the plan "in trust" for payment into the pension plan. However, the reach of these sections is over once these moneys are paid into the plan.

There is no evidence to suggest that funds were paid from the UW Pension Fund to the University or that employee required contributions were not remitted to the UW Pension Fund.

Section 28(1) of the Act has not been breached.

D. Trust Contributions – Employer Contributions

Issue: that as the UW Plan is a trust any sum required to be paid as an employer contribution, is impressed by section 28(3) with a trust. A transfer of funds from the UW

Pension Fund to the University, or gain by the University or benefit from its contributions, is prohibited by section 28(3) without the consent of all the beneficiaries of the UW Pension Fund.

1. *Finding*

Section 28(3) does not impress an enduring trust on employer contributions. This section deems the employer's contributions when due under the pension plan to be held by the employer in trust for payment into the pension plan. Once paid into the pension plan, the deemed trust provisions under the Act cease to operate.

There is no evidence to suggest that contributions required under the Act and Regulations to be paid by the University were not paid into the UW Pension Fund in accordance with section 28(3) of the Act.

Amendment 97/1 does not breach section 28(3) of the Act.

IV. CONFLICT OF INTEREST

Issue: that the University and its officers have taken a series of actions, including actions related to the issues set out above, which were not in the best interests of all or a majority of beneficiaries of the trust and cannot be defended as acts taken in good faith. By these actions, the University breached Section 28.1 of the Act, specifically subsection 28.1(5), and as a result the UW Plan now suffers a solvency deficiency. Other such actions include:

- a. the distribution of money to members on the basis of "member liability" which benefited active members but penalized pensioners,
- b. the pensioners did not agree to any part of a deal in which the University President announced the intention to distribute an additional \$6.4 million from the trust to members,
- c. pensioners could not participate fully in discussions respecting the new Trust Agreement because they lacked funding,
- d. the new Trust Agreement includes a clause that the beneficiaries of the Pension Plan indemnify the University against "material breaches of trust",
- e. deletion of the Investment Fund, and
- f. the University Pension Advisory Committee has not been called to receive or approve an Actuarial Valuation requested by the University President from the Plan Actuary or to consider the draft of the Valuation.

1. Finding

With respect to the actions listed (a) through (f), these are not actions required of the University as employer or as administrator by the Act or Regulations. These actions do not constitute breaches of the Act or Regulations.

Subsection 28.1(2) requires that the administrator of a pension plan shall exercise the care, diligence and skill in the administration of the plan and in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person. Further, subsection 28.1(5) requires that the administrator must not knowingly permit any conflict between the administrator's own interest and the administrator's duties and powers in respect of the plan and the pension fund.

The Act however recognizes that an employer may wear "two hats" in respect of pension plans. Indeed, the Act recognizes that an employer may be an administrator and it is self evident that the two roles may come into conflict from time to time. An employer that assumes the role of administrator becomes a fiduciary and is a fiduciary for all purposes in respect of the pension plan. Once the plan and fund are in place, the employer becomes an administrator for the purposes of management of the fund and administration of the plan. All functions associated with the operation or administration of a pension plan and management of a pension fund are performed by the employer as administrator and therefore as fiduciary.

Not all functions associated with management or administration of a pension plan or fund are automatically assumed to be made by the employer as administrator. The employer retains certain rights and powers in respect of the pension plan as employer even while serving as the administrator. The fact that the employer decides to establish a pension plan in the first place, for example, indicates that not all decisions concerning the plan can be characterized as a fiduciary decision. Further, an employer could never use the power to amend the plan in a way that was to its benefit, as opposed to the benefit of the employees.

Paragraph 14.1 assumes this power rests with the University as employer as it created parameters around the exercise of a power of amendment. Subject to these parameters, the employer has the right to create, make certain types of amendments or alter the pension plan, while Paragraph 14.2 reserves the University the right to terminate the pension plan.

An employer is able to act in a self-interested fashion when the task is not one related to the plan's administration or operation as it is required to by the pension documentation or relevant law.

As mentioned above, the Superintendent is of the view that the University had the power to amend Article 4 of the UW Plan in accordance with Paragraph 14.1, to specifically allow for contribution holidays when the original provisions would not permit such a holiday.

Further, based on Paragraph 4.5 the University's right to take a contribution holiday is supported by the provisions of the UW Plan and it is not in breach of the Act and

Regulations in taking the contribution holiday under the UW Plan from April 1, 2000 to March 31, 2002.

In its making of the Amendment effective January 1, 1992 made June 24, 1996, Amendment 97/1, Amendment 2000/1, and its taking of the contribution holiday under the UW Plan from April 1, 2000 to March 31, 2002, the University did not breach subsections 28.1(2) and (5) of the Act.

However, while the University did not breach the legislation in relation to the contribution holiday, it is clear that the University is not exercising the care, diligence and skill prescribed by the Act in relation to certain aspects of the UW Plan's governance structure and processes.

It is widely accepted by regulators and the pension community that pension plan governance is the structure and processes by which a pension plan is administered and monitored to ensure that the general standard of care set out in section 28.1 is fulfilled. Good governance contributes to positive pension plan performance, demonstrates due diligence on the part of the plan administrator, and it is essential for achieving fiduciary and other obligations. Further, it minimizes risks and maximizes efficiency, promotes consistent administration of the plan in the best interests of members and beneficiaries, and requires control mechanisms that encourage good decision-making, proper and efficient practices, clear accountability, and regular review and evaluation performance.

Analysis indicates that the University as administrator does not have clear knowledge of its duties. There appears to be some role confusion created by the two "hats" worn by the University – as employer and as administrator – which can create the potential for miscommunication and differing expectations in respect of the Plan and its governance as between the University and members. It is noteworthy that at times some of the members of the Board of Regent (the "Board") themselves felt that that they are, at times, in a conflict and uncertain of their role.

At the June 24, 2002 Board meeting an exchange took place where one Board member said "...that the Board has competing legal obligations (its obligation to the Pension Plan and its members and its obligation to the University). The Board needs to have the power to decide which competing obligation to carry out. This gives away a power we cannot give away." While another member said that "...the Board's primary concern is the long-term viability of the University."

While the UW Plan has a Pension Committee which is constituted under Paragraph 18.1 of the Plan, the role it plays is unclear. Respecting certain proposed amendments to the UW Plan (including the taking of a "contribution holiday"), letters were written to the pensioners both by the University's President and the Pension Committee. It is unclear what "hat" the President and the Pension Committee were wearing when they were communicating with the pensioners.

In October 2004 the Canadian Association of Pension Supervisory Authorities (CAPSA), released CAPSA *Guideline No. 4: Pension Plan Governance Guidelines and Self-Assessment Questionnaire*. In a letter dated January 13, 2005, the Superintendent notified all plan sponsors, including the University, of the release of

CAPSA's Governance Guidelines and that pension plan administrators were expected to voluntarily take measures necessary to follow the guidelines.

In a letter dated November 8, 2005 the University was requested to provide its written pension plan governance framework. In response and attached to a letter dated December 9, 2005 the University provided By-Law No. 1/2000, By-Law No. 5/97, By-Law No. 3/97 and a document entitled "Investment Policies for the Defined Benefit Portion of the University of Winnipeg Pension Plan".

The CAPSA guidelines include key pension plan governance principles which should be addressed in a pension plan's written governance framework. The Principles are:

- Fiduciary responsibility
- Governance objectives
- Roles and responsibilities
- Performance measures
- Knowledge and skills
- Access to information
- Risk management
- Oversight and compliance
- Transparency and accountability
- Code of conduct and conflict of interest
- Governance review

Based on the documents provided by the University these principles either have not been thoroughly addressed or not addressed at all. A written governance framework which thoroughly addresses such principles that is implemented and reviewed regularly is not only a mechanism to satisfy legal and regulatory requirements, it serves to ensure the effective and efficient administration and investment of the pension plan and fund.

While the University therefore did not breach the legislation in relation to the contribution holiday, the University should be ordered to develop and implement a written governance framework for the UW Plan.

V. Amendment 2001/1

Issue: In 2000, the University entered into an agreement (the "2000 agreement") with various parties to share the surplus revealed in the December 31, 1999 actuarial valuation.

As a consequence Amendment 2001/1 effective January 1, 2000 was made to the UW Plan on the recommendation of the UW Plan's Pension Committee with the support of the UW Plan's Finance Committee and was filed with the Pension Commission. Attached to Amendment 2001/1 were two documents: Schedule "A" (the "Authorizing Resolution") which is the minutes of the December 4, 2000 meeting of the University's Board of Regents, and a document entitled "Resolution of Outstanding Substantive Pension Issues" (the "joint recommendation"). The joint recommendation states that

the parties voting in favour of the agreement included the Pension Committee, UWFA, AESSES, IUOE, and the exempt employee groups.

Paragraph 1.l. of the joint recommendation sets out how the members' share of the surplus determined under paragraph 1.g. will be used. These paragraphs read as follows:

- 1.g The Members' surplus as at December 31, 1999 will be 50% of actuarial surplus (50% of \$13.113 million = \$6.556 million) plus 50% of the investment reserve (50% of \$9.426 million = \$4.713 million) for a total of \$11.269 million, less 50% of the reserve for the shortfall in future matching contributions which would need to be established because the DB plan membership would become a closed group.
- 1.l. The "Members' share of the surplus at December 31, 1999, as arrived at under 1.g. will be used as follows:
 - pay for the distribution of \$3 million as already agreed;
 - effect the transfer to the DC (defined contribution) plan as described above;
 - with respect to continuing DB (defined benefit) plan members, as may be determined."

Subsequently information was provided to the Superintendent indicating that the University and its pension stakeholders had reached a proposed agreement to resolve certain outstanding pension issues at the University on February 27, 2003. The proposed agreement included a provision, Section 1.b., which stated that there will be no further distribution to the defined benefit members identified in the third bullet of paragraph 1.l. of the joint recommendation of a proportionate share of surplus as determined under paragraph 1.g.

The February 27, 2003 agreement was approved, ratified and confirmed by way of a written agreement dated September 23, 2004 between the University, UWFA, AESSES, IUOE, and the University of Winnipeg Retirement Association. As a result, Amendment 2004-B to the UW Plan was implemented and filed by the University with the Pension Commission.

The University has advised that it is of the view that the Authorizing Resolution does not form a part of Amendment 2001/1 and therefore it has the legal authority to amend the agreement to remove reference to the surplus distribution to the group identified in the third bullet of paragraph 1.l. as the "continuing DB plan members". The University advises in its letter dated January 21, 2004 that

"The December 4, 2000 Board Resolution contained both pension and non pension related items. Pension items that had immediate implication were put into the form of Amendment 2001/1. Pension items that did not have immediate implication and were not intended to be made part of the Plan at that time were deferred to a future date for finalization and during which deferral time the University Board of Regents amended its resolution. The University believes that the Board of Regents has a

right to reverse or amend its own resolutions prior to implementation should circumstances warrant reconsideration. As indicated in my letter of October 29, 2003, the University and other pension stakeholder groups have reached an agreement that supersedes the December 4, 2000 Board Resolution. The agreement reached by the University and other pension stakeholder groups was approved by the Board of Regents at its March 2003 meeting."

1. Finding

Amendment 2001/1 states:

AND WHEREAS by resolution of the Board of Regents passed at a duly constituted meeting held on December 4, 2000, a copy of the minutes of which are attached hereto as Schedule "A" (the "**Authorizing Resolution**"), the Board of Regents approved the Plan Recommendations of the Pension Committee and delegated to the Executive Officer of the Pension Committee the power to cause the Plan to be amended in order to carry out the intent and achieve the objects of the Plan Recommendations;

By authority conferred upon me by the Board of Regents of the University of Winnipeg, I hereby certify, as Executive Officer of the Pension Committee of the University of Winnipeg, and not in my personal capacity, that the foregoing constitute amendments to The University of Winnipeg Pension Plan which are enacted in accordance with the Authorizing Resolution passed by the Board of Regents of the University of Winnipeg at a meeting duly held and constituted at Winnipeg, Manitoba, on the 4th day of December, 2000, which amendments shall have effect as of and from the 1st day of January, 2000, subject only to the approval of the Pension Commission of Manitoba and Canada Customs and Revenue Agency and ratification by the Board of Regents of the University of Winnipeg.

The Board passed a resolution respecting the 2000 agreement. According to section 12(4) of *The University of Winnipeg Act*, the Board may act either by by-law or resolution. Amendment 2001/1 to the UW Plan attached the Board's resolution as Schedule "A" or the "Authorizing Resolution". On the basis of that resolution being attached to the Amendment, the Board's resolution was "incorporated by reference" into the UW Plan. Even if it was not attached, the resolution itself is "a portion of a document under which a plan is constituted", as per section 9(2) of the Regulations.

According to section 9(2) there is a recognition that when an amendment to a pension plan is made, that "either the plan or a portion of a document under which a plan is constituted is amended" the employer is to file a certified copy of the amendment. There is a certified copy of the Board's resolution respecting the entitlement of the continuing DB plan members to a proportionate share of the surplus at December 31, 1999.

There were no conditions attached to the entitlement of the continuing DB plan members to a proportionate share of the surplus at December 31, 1999. Only the form of the benefit to be paid remained to be decided. However, sometime after the 2000

agreement was made it was determined that the continuing DB plan members would receive benefits in the form of a monetary (cash) payment. A monetary (cash) payment is a "pension benefit credit" as defined in the Act. A "pension benefit credit" represents the value at a particular time of not only the pension benefits, but any other benefits provided under the plan to which the employee has become entitled as of that time. The continuing DB plan members' proportionate share of the surplus at December 31, 1999 constitutes a benefit which has a value.

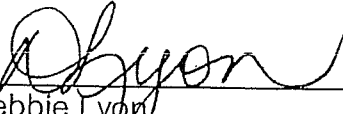
By virtue of section 26(5) of the Act a member's pension benefit credits are protected and cannot be adversely affected. Any attempt therefore by the University to amend the UW Plan or enter into another agreement to eliminate that benefit is prohibited by section 26(5) of the Act.

Therefore, the University should be ordered to provide benefits to the continuing DB plan members equal to a proportionate share of the surplus determined under paragraph 1.g. of the joint recommendation, adjusted with interest to the date of payment as required by the Act and Regulations.

Given that the benefits to the continuing DB plan members were to be provided in the form of monetary (cash) payments rather than pension benefits and that such a distribution should not in any way impair further the UW Plan's solvency, the University should be further ordered to pay by a lump sum to the UW Pension Fund the cost of the continuing DB plan members' proportionate share of the surplus determined under paragraph 1.g. of the joint recommendation, adjusted with interest to the date of payment as required by the Act and Regulations.

Lastly, the University should be ordered to arrange to have the December 31, 2004 actuarial valuation report amended to reflect the payment to the UW Pension Fund of the above-mentioned cost and the monetary (cash) payments to the continuing DB plan members.

Dated at Winnipeg, Manitoba this 17th day of November, 2006.



Debbie Lyon
Superintendent of Pensions

APPENDIX A

The relevant sections of *The Pension Benefits Act* and Regulations are:

Definitions

1(1) In this Act:

"**pension benefit credit**" means the value at a particular time of the pension benefits and any other benefits provided under the pension plan to which the employee has become entitled as of that time;

"**pension plan**" means a superannuation or pension fund or plan organized and administered to provide a pension benefit for employees, and includes,

- (a) a unit benefit plan under which pension benefits are determined with reference to remuneration of an employee for each year of service, or for a selected number of years of service,
- (b) a money purchase plan under which pension benefits are determined at the retirement of an employee with reference to the accumulated amount of the aggregate contributions paid by or for the credit of the employee,
- (c) a flat benefit plan under which the pension benefits are expressed either as a fixed amount in respect of each year of employment or as fixed period amount, and
- (d) a deferred profit sharing pension plan other than a profit sharing plan as defined in paragraph 147(1)(b) of the Income Tax Act (Canada);

but does not include a retirement compensation arrangement as defined in the Income Tax Act (Canada) that provides pension benefits in excess of the maximum benefit permitted by that Act and the regulations made thereunder.

Grounds for order

8(2) The superintendent may make an order in accordance with subsection (3)

- (a) where a notice is given under clause (1)(b) and the recipient fails to respond within 10 days from the date of receipt of the notice;
- (b) where, in the opinion of the superintendent, a pension plan or the manner in which it is being administered is not in conformity with this Act or the regulations;

(c) where, in the opinion of the superintendent, an employer or the insurer, administrator or trustee of a pension plan or any other person has committed a breach of a provision of this Act or the regulations; or

(d) where the insurer, administrator or trustee of a pension plan cannot be located or is insolvent and there is no other person to undertake the winding-up of the pension plan.

Registration of plans established after July 1, 1976

18(2) Subject to subsection (5), every employer who establishes a pension plan for employees in Manitoba on or after July 1, 1976 in respect of employment in Manitoba shall, unless under the terms of the plan the employer is not required to make contributions to or under the plan,

(a) file a copy of the pension plan with the commission for registration within 60 days after the establishment of the plan; and

(b) while the plan is in force, maintain its qualification for registration as required by this Act.

New plan established after June 24, 1992

18(2.1) An employer who establishes a new defined benefit pension plan and submits it for registration after June 24, 1992 shall

(a) specify, in the plan document and every other document governing the plan, the ownership of any surplus assets of the plan for the purpose of determining their disposition;

(b) include in the plan or attach evidence showing, to the satisfaction of the superintendent, that a majority of the members of the plan have agreed in writing to the ownership of any surplus assets of the plan as specified under clause (a); and

(c) provide, in the plan document, a mechanism satisfactory to the superintendent for resolving disputes between members of the plan and the employer respecting the disposition of surplus assets of the plan.

Filing of supplemental plans

18(3) Where an employer has established a supplemental pension plan associated with a pension plan required to be filed for registration under subsection (1) or (2), whether or not the employer contributes to the supplemental pension plan, the employer shall file a copy of the supplemental pension plan with the commission for registration and subsection (1) or (2), as the case requires apply thereto mutatis mutandis.

Requirements respecting deferred life annuities

21(1) A pension plan filed for registration in accordance with section 18 shall provide contractually

(a) that, where a member of the pension plan has completed service for a continuous period of 10 years or has been a member of the pension plan for a continuous period of 10 years, whichever occurs first, and the member terminates his or her membership in the plan while employed in Manitoba, there vests in the member immediately on that termination an entitlement to receive a deferred life annuity in respect of the period of membership from on or after the qualification date, as the case may be, but before January 1, 1985; and

(b) that upon termination of his employment or termination of his membership in the pension plan on or after the date on which he attains the age of 45 years, a member of the pension plan who is entitled to a deferred life annuity under a provision of the pension plan that is required under clause (a) is not entitled to withdraw any part of his contributions to or under the pension plan (except voluntary additional contributions) in respect of service after July 1, 1976, or if he has service prior to July 1, 1976 with the employer in a designated province, in respect of that service after the qualification date for that designated province, and such contributions shall be applied under the terms of the plan towards the provision of the deferred life annuity required to be provided to the member under a provision of the pension plan that is required under clause (a).

Amount of pension payable

21(1.1) The pension payable pursuant to a pension plan under subsection (1) in respect of employment in Manitoba or in a designated province, other than the portion of the pension accruing from voluntary additional contributions, shall be not less than

(a) for employment on and after the qualification date but before January 1, 1985, the pension that is provided for that employment under the terms of the pension plan at the date of termination of membership; and

(b) for employment before the qualification date, where the pension plan was amended on or after the qualification date but before January 1, 1985, the pension that is provided for that employment under the terms of the amended pension plan.

Requirements respecting deferred life annuities for 1985

21(2) Every pension plan shall provide

(a) that, where a member of the pension plan has completed service for a

continuous period of two years or has been a member of the pension plan for a continuous period of two years, whichever occurs first, and the member terminates his or her membership in the plan while employed in Manitoba, there vests in the member immediately on that termination an entitlement to receive a deferred life annuity in respect of the period of membership from on or after January 1, 1985, as the case may be; and

(b) that upon termination of his employment or termination of his membership in the pension plan on or after the date on which a member becomes entitled to a deferred life annuity under a provision of the pension plan that is required under clause (a), the member is not entitled to withdraw any part of his contributions to or under the pension plan (except voluntary additional contributions) in respect of service after January 1, 1985, and such contributions shall be applied under the terms of the plan towards the provision of a deferred life annuity required to be provided to the member under a provision of the pension plan that is required under clause (a).

Amount of pension payable

21(2.1) The pension payable pursuant to a pension plan under subsection (2) in respect of employment in Manitoba or in a designated province, other than the portion of the pension accruing from voluntary additional contributions, shall be not less than

(a) for employment on and after January 1, 1985, the pension that is provided for that employment under the terms of the pension plan at the date of termination of membership; and

(b) for employment before January 1, 1985, where the pension plan was amended on or after that date, the pension that is provided for that employment under the terms of the amended pension plan.

Entitlement on winding up of plan

21(2.2) Subject to this Act, on the termination or winding up of a pension plan there vests in each member of the pension plan, immediately and unconditionally, the entitlement to receive a pension in respect of his or her membership in the plan on and after the qualification date.

Exemption from clauses (1)(b) and (2)(b)

21(2.3) Where

(a) a pension plan provides a benefit or allocates surplus assets in respect of a person entitled to a benefit and the benefit or surplus asset allocation is in excess of the maximum benefit or contribution limit applicable to the pension plan under the *Income Tax Act* (Canada); or

(b) the commuted value of the benefits under a pension plan is in excess of the maximum limit that can be transferred to another pension plan or to a registered retirement savings plan under the *Income Tax Act* (Canada);

the amount of the benefit, surplus asset allocation or commuted value that is in excess of the maximum limit is exempt from the requirements of clauses (1)(b) and (2)(b) and shall not be treated as a deferred life annuity for purposes of this Act.

No surrender or commutation

21(3) Notwithstanding any provision of a pension plan,

(a) a deferred life annuity prescribed by subsection (1) is not capable of surrender or commutation during the lifetime of the employee, if the employee first became entitled to the deferred life annuity after he had attained the age of 45 years, and, except in accordance with subsections 31(2) and (4) and section 31.1, does not confer upon any employee, personal representative or dependant, or any other person, any right or interest in the deferred annuity capable of being surrendered or commuted during the lifetime of the employee;

(b) the deferred life annuity prescribed by subsection (2) is not capable of surrender or commutation during the lifetime of the employee and, except in accordance with subsections 31(2) and (4) and section 31.1, does not confer upon any employee, personal representative or dependant, or any other person, any right or interest in the deferred annuity capable of being surrendered or commuted during the lifetime of the employee;

(c) the pension benefits provided under the terms of the pension plan in respect of service after the qualification date are not, on or after the date of the retirement of the employee, capable of surrender or commutation during his lifetime and, except in accordance with subsections 31(2) and (4) and section 31.1, do not confer upon any employee, personal representative or dependant, or any other person, any right or interest in such pension benefits capable of being surrendered or commuted during the lifetime of the employee; and

(d) an employee shall not withdraw any part of his contributions, not including voluntary additional contributions, paid under the plan in respect of service in Manitoba or in a designated province on or after the qualification date, other than after

(i) the termination of his employment, or

(ii) the termination or winding up of the plan,

prior to his attaining retirement age and in circumstances where he is not subject to clause (1)(b).

Exceptions to subsecs. (1), (2) and (3)

21(4) Notwithstanding subsections (1), (2) and (3), a pension plan

(a) may provide for vesting after a shorter membership or service qualification than prescribed in clause (1)(a) or (2)(a), as the case may be;

(b) may provide for locking in at a time earlier than required under clause (1)(b) or (2)(b), as the case may be;

(c) may, in the case of a former member who retired, died or terminated employment before January 1, 1998 or in the case of a member who died before that date, provide for payment to the former member or the surviving spouse or common-law partner of the deceased member or deceased former member of an amount equal to the commuted value of the deferred life annuity or pension benefit credit to which the former member or the spouse or common-law partner is entitled, if

(i) the annual amount that would be payable to the member or former member at normal retirement age is less than 4% of the YMPE for 1997, or

(ii) the pension benefit credit is less than 4% of the YMPE for 1997; and

(d) shall, in the case of a former member who retired, died or terminated employment on or after January 1, 1998 or a member who died on or after that date, provide for payment to the former member or the surviving spouse or common-law partner of the deceased member or deceased former member of an amount equal to the commuted value of the deferred life annuity or pension benefit credit to which the former member or the spouse or common-law partner is entitled, if

(i) the annual amount that would be payable to the member or former member at normal retirement age is less than 4% of the YMPE in the year in which the member died or the former member died, retired or terminated employment, or

(ii) the pension benefit credit is less than 4% of the YMPE in the year in which the member died or the former member died, retired or terminated employment.

Partial commutation permitted

21(5) Notwithstanding subsections (1) and (3), where a pension plan so

provides, an employee to whom clause (1)(a) or (1)(b) applies may receive in partial discharge of his rights under the plan as a lump sum, upon or after termination of employment or membership in the pension plan prior to his attaining normal retirement age as defined by the plan, an amount that in total does not exceed 25% of the commuted value of the deferred life annuity prescribed by subsection (1) in respect of service as an employee prior to January 1, 1985.

Alternative settlements

21(6) Notwithstanding subsections (1) and (3), but subject to section 23, if a pension plan so provides, a person who is entitled to a deferred life annuity under subsection (1) may, before the commencement of payment of such life annuity, elect to receive,

(a) a deferred life annuity the amount of which is reduced or increased by reason of early or deferred retirement, by provision for the payment of an optional annuity to a survivor or to the estate of the employee, or by variation of the terms of payment of such annuity to any person after the employee's death; and

(b) a payment or series of payments by reason of a mental or physical disability as prescribed by the regulations;

partly or wholly in lieu of the deferred life annuity prescribed by subsection (1).

Normal retirement age

21(7) Every pension plan shall provide that normal retirement and eligibility for pension shall occur at an age specified in the pension plan but nothing in the pension plan shall compel retirement at that or at any other age and the provision of a normal retirement age in a pension plan is not discrimination because of age within the meaning of *The Human Rights Act*.

Vesting on retirement at normal retirement age

21(8) Every pension plan shall provide that a member of the pension plan who retires on or after reaching the normal retirement age for the pension plan is entitled to an annuity in accordance with the terms of the pension plan, as those terms are at the date of retirement and that is not less than the pension benefits in respect of service as an employee after January 1, 1984.

Continuing after retirement age

21(9) No pension plan shall prohibit or prevent an employee from continuing as a member of the pension plan and to make contributions to the pension plan for the purpose of enhancing the pension benefits under the pension plan solely because the employee has reached or is older than the normal retirement age for the pension plan.

Early retirement provision

21(10) Every pension plan shall provide that subject to reasonable age and service requirements, a member may elect to retire and begin receiving pension payments before reaching the normal retirement age under the pension plan and any age requirement relating to an early retirement provision of a pension plan is not discrimination because of age within the meaning of *The Human Rights Act*.

Employee's share of deferred life annuity

21(11) Notwithstanding clause (1)(b), every pension plan shall provide that where a member of a pension plan becomes entitled to a deferred life annuity under clause (2)(a), if the value of his or her contributions and accumulated interest thereon exceeds 1/2 of the commuted value of the deferred life annuity, the amount of the difference shall at the option of the member either

- (a) be refunded to the member; or
- (b) be used to increase the benefits under the deferred life annuity.

Effect of temporary suspension of employment

21(12) Every pension plan shall provide that employment after December 31, 1983 of an employee before and after a temporary suspension of employment of the employee shall be considered as continuous for the purposes of interpreting terms of the pension plan relating to

- (a) eligibility for membership in the pension plan;
- (b) vesting of deferred life annuities as required under clause (1)(a) or (2)(a);
- (c) locking in of contributions as required under clause (1)(b) or (2)(b); and
- (d) the determination of benefits arising on the termination or winding up of the pension plan.

Right to transfer benefits

21(13) Notwithstanding subsections (1), (2) and (6), no pension plan shall deny the right

- (a) of an employee, upon termination of employment or upon termination of membership in the pension plan, otherwise than where the termination results in the commencement of payment of a pension forthwith; or
- (b) of the surviving spouse or common-law partner of an employee, other than a spouse or common-law partner who has commenced receiving a pension under the pension plan;

to transfer, in a manner prescribed in the regulations, the commuted value of the accrued benefits under the pension plan.

Life income fund

21(13.1) Notwithstanding subsections (1), (2) and (6), every member or spouse or common-law partner of a member of a pension plan who becomes entitled to a pension benefit under the plan may replace that pension benefit with a life income fund or other arrangement prescribed in the regulations.

Integration with government plan

21(14) If a pension plan so provides, an employee may, on or before attaining normal retirement age as defined by the plan, elect to receive an annuity the amount of which is varied by reference to benefits payable under the *Old Age Security Act* (Canada) or under any other pension plan administered by the Government of Canada or by the government of a province of Canada.

Prohibition against reductions in pension

21(15) After a person has begun to receive payments of a pension from a pension plan, the amount of pension being paid to the person shall not, after July 1, 1976, be reduced by reason of any change in benefits paid to the person under the *Old Age Security Act* (Canada) or under the *Canada Pension Plan* (Canada) or under The Quebec Pension Plan or any or all of them.

Reduction for C.P.P. and O.A.S.

21(16) Where a pension plan provides that the pension which a person is eligible to receive from the pension plan shall be reduced by any amount by reason of the person receiving a benefit under the *Canada Pension Plan* (Canada), or the Quebec Pension Plan or any or all of them, the amount by which the pension payable to a person may be reduced shall not exceed an amount calculated in accordance with the following formula:

Formula

Maximum amount of reduction = .03 B x Y

In this formula

B is the amount of benefit determined as of the date of termination of employment, retirement or death of the member of the pension plan, payable to the person

(i) under the *Canada Pension Plan* (Canada) or the Quebec Pension Plan where the reduction relates only to benefits under the *Canada Pension Plan* (Canada) or the Quebec Pension Plan, or

(ii) under the *Canada Pension Plan* (Canada) and the Quebec

Pension Plan where the reduction relates to benefits under both of them; and

Y is the number of years, including fractions but not exceeding 33 1/3 years, that the person has been a member of the pension plan.

Reduction for OAS prohibited

21(17) Subject to subsection (14), no pension plan shall provide that the pension which a person is eligible to receive from the pension plan in respect of service after December 31, 1983, will be reduced by any amount by reason of the person receiving a benefit under the *Old Age Security Act* (Canada).

Discrimination based on sex prohibited

21(18) No pension plan shall provide for or permit

(a) different rates or amounts of contributions by the members based on difference in sex; or

(b) different pensions, annuities or benefits based on differences in sex; or

(c) different options as to pensions, annuities or benefits based on differences in sex; or

(d) the inclusion in or exclusion from membership in the pension plan of employees on the basis of the sex of the employees.

Compulsory eligibility and membership

21(19) Subject to subsection (20), where a pension plan is in effect for a class of employees of an employer, the pension plan shall provide

(a) that each full-time employee of that class shall be a member of the pension plan subject to any eligibility period which shall not be greater than two years;

(b) that each part-time or temporary employee who, if he were a full-time employee, would come within that class, is eligible for membership in the pension plan on the same basis as full-time employees of that class; and

(c) that each part-time or temporary employee who, if he were a full-time employee, would come within that class, and who has been so employed by the employer during two consecutive numerical years in each of which he has earned not less than one quarter of the maximum pensionable earnings for that numerical year under the *Canada Pension Plan* (Canada), shall be a member of the pension plan.

Exemption

21(20) The provisions of a pension plan for employees of an employer required under subsection (19) do not require

- (a) a person who is an employee of the employer and who is a student on a substantially full-time basis; or
- (b) a person who is an employee of the employer and who is a member of a religious group which has as one of its articles of faith the belief that members of the group are precluded from being members of the pension plan; or
- (c) a person who is a full-time employee of the employer and was so employed as a full-time employee before January 1, 1984 or the commencement date of the pension plan, whichever is the later, and who before that date was not a member of the pension plan; or
- (d) a person who is a part-time or temporary employee of the employer, was so employed as a part-time or temporary employee before January 1, 1984, or the commencement date of the pension plan, whichever is the later, and whose employment after that date is broken only by temporary suspensions of employment; or
- (e) a person who retires from the employment of the employer and is in receipt of a pension benefit, but subsequently returns to work for the same employer or another employer covered by the same pension plan;

to become a member of the pension plan.

Winding up plan

21(21) Notwithstanding any provision of a pension plan, upon termination or winding up of the pension plan all contributions made after the qualification date in respect of the deferred life annuity prescribed in subsection (1) to which any person is entitled shall be applied, subject to subsection (23) and to the extent not already applied, towards the provision of the pension benefits prescribed in subsection (1).

Determination of benefits on winding up of plan

21(22) For the purpose of determining the pension benefits to which a person may be entitled under subsection (1) at the date of termination or winding up of the pension plan,

- (a) each person who on the date of the termination or winding-up of the pension plan was an employee or who within six months prior to the termination or winding-up of the pension plan terminated his employment as an employee but was not retired on pension, shall be deemed to have

terminated his employment prior to attaining retirement age on the date of the termination or winding-up of the pension plan; and

(b) each former employee who retired on pension from the service of the employer shall be deemed to have terminated his employment prior to attaining retirement age but on the date of his retirement.

Reduction of additional benefits

21(23) Notwithstanding subsections (1) and (3) and notwithstanding any provision of a pension plan, upon the termination or winding up of a pension plan where,

(a) the benefits arising from the deferred life annuities prescribed in subsection (1) include additional pension benefits provided by an amendment to the terms of the plan made after the qualification date or by the creation of a plan after the qualification date, in respect of service prior to such amendment or creation; and

(b) the funding of such additional pension benefits, as required by the regulations, has not been completed;

the amount of such additional pension benefits may be reduced in accordance with the regulations.

Formula for contributions and benefits

21(24) A pension plan filed for registration in accordance with section 18 shall provide for contributions and benefits calculated in accordance with a formula prescribed by the regulations.

Benefit not to be less than contributions

21(25) Notwithstanding any provision of this section and any provision of a pension plan, where,

(a) any employee is entitled upon termination of his employment or upon termination of his membership in a pension plan to a deferred or immediate pension benefit; and

(b) on the date of termination of his employment or termination of his membership in a pension plan, his pension benefit credit is less than the value of his contributions made to the plan towards such pension benefit;

his pension benefit credit shall be increased to an amount not less than the value of his contributions.

Death of member

21(26) Notwithstanding any provision of this Act or of the pension plan, where a

member or former member of a pension plan who is entitled to a deferred life annuity under a pension plan provided in compliance with clause (2)(a) dies, the pension plan shall provide benefits

(a) by way of a life annuity to the surviving spouse or common-law partner of the member or former member, but only where that spouse or common-law partner has not received or is not entitled to receive a benefit under subsection 31(2); or

(b) where there is no surviving spouse or common-law partner, by way of payment to the beneficiary or estate of the member or former member;

the value of which is not less than the commuted value of the deferred life annuity to which the member or former member was entitled under clause (2)(a).

Eligibility for benefits after resuming cohabitation

21(27) If, after dividing pension benefit credits under subsection 31(2) or entering into an agreement under subsection 31(6), the spouses or parties resume cohabitation, the division or agreement does not affect any right the spouse or common-law partner of the member or former member otherwise has to receive benefits under clause (26)(a).

Restriction on payments out of plan

26(2) Subject to subsections (2.1), (2.2) and (2.3), no funds, including surplus, in a pension plan shall be paid out of the plan to an employer unless the commission consents thereto in writing.

Conditions for payment of surplus to employer

26(2.1) The commission shall not under subsection (2) consent to the payment of surplus to an employer out of a pension plan, unless

(a) subject to subsection (2.2), the commission is satisfied that the employer is entitled to receive the surplus under the terms governing the pension plan;

(b) all facts relevant to the payment, including the amount of the assets and liabilities of the pension plan and such other relevant information as the superintendent may require, have been disclosed to all members of the pension plan; and

(c) the employer submits a written application for the payment that contains or has attached the information required by the regulations.

Application to court

26(2.2) Where the commission is not satisfied that an employer applying for the payment of surplus out of a pension plan is entitled to it under the terms

governing the pension plan, the commission shall not consent to the payment unless a judge of the Court of Queen's Bench upon the application of the employer determines that the employer is entitled under those terms to receive the surplus.

No reduction of credits

26(5) No amendment of a pension plan shall adversely affect the pension benefit credits of any member in respect of remuneration and service or membership in the plan prior to the effective date of the amendment.

Trust for contributions

28(1) Any sum received by an employer from an employee pursuant to an arrangement for the payment of such sum by the employer into a pension plan as the employee's contribution thereto shall be deemed to be held by the employer in trust for payment of the sum after his receipt thereof into the pension plan as the employee's contribution thereto, whether or not the amount thereof has been kept separate and apart by the employer and the employer shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust.

Employer's contributions in trust

28(3) Any sum required to be paid into a pension plan by an employer as the employer's contribution to the pension plan shall, when due under the pension plan, be deemed to be held by the employer in trust for payment of the same into the pension plan in accordance with the pension plan and this Act and the regulations as the employer's contribution, whether or not the amount thereof has been kept separate and apart by the employer and the employer shall not appropriate or convert any part of the amount required to be paid to the pension plan to his own use or to any use not authorized by the terms of the pension plan.

Meaning of "administrator"

28.1(1) In this section, "administrator" means any person involved in the administration of, or charged with a duty in respect of, a pension plan, and includes

- (a) the employer who establishes the plan;
- (b) a trustee of the plan;
- (c) a member of a board of trustees of the plan; and
- (d) a person appointed under clause 8(3)(c) to perform the duties of the administrator or trustee of the plan.

Care, diligence and skill

28.1(2) The administrator of a pension plan shall exercise the care, diligence and skill in the administration of the plan and in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

Special knowledge and skill

28.1(3) The administrator of a pension plan shall use in the administration of the plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator's profession, business or calling, ought to possess.

Application of subsection (3)

28.1(4) Subsection (3) applies with necessary modifications to a member of a board, agency or commission made responsible by an Act of the legislature for the administration of a pension plan.

Conflict of interest

28.1(5) An administrator of a pension plan shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the plan and the pension fund.

Employment of agent

28.1(6) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ or appoint one or more agents to carry out any act required to be done in the administration of the plan and in the administration and investment of the pension fund.

Responsibility for agent

28.1(7) An administrator of a pension plan who employs or appoints an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed or appointed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.

Employee or agent

28.1(8) An employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections (2), (3) and (5).

Benefit by administrator

28.1(9) The administrator of a pension plan is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits, a refund of contributions, and fees and expenses related to the administration of the pension plan and permitted by the common law or provided for in the pension plan.

Member of pension committee

28.1(10) Subsection (9) applies with necessary modifications to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

Payment to agent

28.1(11) An agent of the administrator of a pension plan is not entitled to payment from the pension fund other than the usual and reasonable fees and expenses for the services provided by the agent in respect of the pension plan.

Information by employers

29 Every employer shall, in accordance with the regulations provide such information pertaining to pension plans and pension benefits to such person in such circumstances as is prescribed in the regulations.

The relevant sections of the Pension Benefit Regulations are:

Plan to be reviewed after certain amendments

3(8) Where an amendment to a plan affects the cost of benefits provided by the plan or the solvency or funding of the plan or creates an unfunded liability, the employer shall have the plan reviewed or have the latest review revised as of the date the amendment is made and, if a review is made, the review date is the last day of the fiscal year preceding the year in which the amendment is made.

Use of actuarial gain where no unfunded liability or solvency deficiency

4(19) Where an actuarial valuation report or cost certificate filed under section 3 reveals that a that a plan does not have an unfunded liability or solvency deficiency, the actuarial gain

(a) may be used to increase benefits;

(b) may be applied to reduce the employer contributions, if the plan does not specifically provide that an employer may not reduce the employer contributions referred to in clause (3)(a) by the use of surplus; or

(c) may be left in the plan.

Employer's written application for payment of surplus out of plan

7(1) An application under clause 26(2.1)(c) of the Act must include a report, prepared in accordance with sections 3 to 5 of this regulation, indicating

(a) the amount of surplus in the plan;

(b) the amount of surplus requested to be paid to the employer; and

(c) if the plan is not being terminated or wound up, the amount of surplus to be retained in the plan;

and the report shall be for a period ending not more than 90 days before the date of the submission to the commission.

Content of application

7(2) An application referred to in subsection (1)

(a) must specify the amount of surplus being requested;

(b) must include a copy of the terms of the plan that authorize the payment of surplus or a copy of a ruling of the Court of Queen's Bench declaring the employer's entitlement to a payment of surplus;

(c) must certify that the members, former members, an authorized agent

of any of them, or a bargaining agent representing members or former members, and any other persons entitled to benefits under the plan have been provided

- (i) the information specified in clause 26(2.1)(b) of the Act,
- (ii) information as to the amount of surplus in the plan and the amount of surplus being requested by the employer in the application,
- (iii) a statement indicating that any of them may make a written submission to the commission relating to the request for a payment of surplus within 30 days after receipt of the statement, and
- (iv) a statement indicating that any of them may inspect and make extract from the application and all accompanying documents at the offices of the employer, and have been provided with information as to how to obtain copies of the documents from the employer; and

(d) must include any other information requested by the commission.

Refund of contributions to avoid revocation of registration

7(3) Despite subsections 21(1), (2) and (3) (requirements re deferred life annuities) and 26(2) (restriction on payments out of plan) of the Act, an employer may, upon making a written request to the commission accompanied by such information supporting the request as the commission considers sufficient and on receiving the commission's prior written consent, refund a contribution made under a pension plan by a member or the employer to the person who made the contribution to the extent that the refund is necessary to avoid the revocation of the plan's registration under the Income Tax Act (Canada).

Employer to file copy of amendment to plan

9(2) Where a plan or a portion of a document under which a plan is constituted is amended, the employer shall file with the commission

- (a) a certified copy of the amendment within 60 days after the amendment is made; and
- (b) any additional information required by the commission to determine whether the plan continues to qualify for registration.

Employer to provide information

23(1) For the purposes of this section and of sections 29 and 30 of the Act:

- (a) every employer shall provide to a pension plan member information

relating to the pension plan as required by this section;

(b) every employer shall, upon the receipt of a written request, make available to a member, the spouse or common-law partner of a member, or an authorized agent of any of them, information relating to the pension plan to which the member has access or is entitled to under this section;

(c) "active member" means an employee of the employer who is accruing benefits under the pension plan; and

(d) "member" means an active member, a pensioner or a deferred pensioner.

23(2) Every employer shall, within 30 days after receipt of a written request, make available to a member, the member's spouse or common-law partner or an authorized agent of any of them, subject to the payment of a reasonable fee to cover administrative expenses, which fee may be waived by the employer, copies of the following documents:

(a) the text of the pension plan, including all amendments, as filed with the commission;

(b) all documents under which the plan and its funds are constituted and administered and amendments thereto which have been filed with the commission;

(c) the most recent annual information return filed with the commission;

(d) the most recent cost certificate filed with the commission;

(e) for uninsured plans, where pension benefits are determined on a defined benefit basis, the most recent actuarial report filed with the commission, or a summary thereof, including

(i) the valuation method,

(ii) the assumptions, and

(iii) the valuation balance sheet;

(f) for insured plan, the most recent annual report of the insurance company including information on

(i) employee and employer contributions,

(ii) pension, death, and termination payments, and

(iii) administrative expenses;

(g) for uninsured plans, most recent annual financial statement including information on

(i) the opening balance,

(ii) the income of the fund in the year, showing separately, investment income, employee contributions and employer contributions,

(iii) the expenditures from the fund in the year, showing separately, pension, death and termination payments and administrative expenses, and

(iv) the closing balance;

(h) for uninsured plans with segregated or pooled funds, a list of assets showing market value and, if the financial statement referred to in clause (g) has been prepared on a book value basis, the book value;

(i) for uninsured plans with guaranteed funds, a statement showing the guaranteed interest rates and the part of the fund to which those interest rates apply;

(j) for defined benefit plans, in the event of the member's retirement, death or termination of employment, a detailed explanation of how the benefits as reported by the employer have been calculated;

(k) any written statement of investment policies and procedures required under regulations made under the Pensions Benefits Standards Act, 1985 (Canada).

23(4) Notwithstanding subsections (1) and (2), an employer shall not be required to make available to a member or a member's agent, the documents referred to in those subsections more than once in any 12 month period.

APPENDIX B

Extracts of The University of Winnipeg Pension Plan – Amended and Restated effective January 1, 1992

Article 4 University Contributions

4.1 Regular Contributions

The University shall, subject to Paragraphs 2.5 and 3.2, make on behalf of each Member in its employ concurrent with the contributions made by the Member pursuant to Paragraph 3.1, regular contributions to the Fund.

The regular contributions by the University shall be an amount equal to the Member's Required Contributions (as described in Paragraph 3.1) for such period.

4.2 Additional Contributions

In the event that an actuarial valuation of the Plan determines that the Plan has a Initial Unfunded Liability or an Experience Deficiency as defined under, and using the methods specified in, the Regulations to the Pension Benefits Act of Manitoba, and the matching contributions specified in Paragraph 4.1 are insufficient to satisfy the funding requirements of such Regulations, the University shall make additional contributions to satisfy those requirements.

Paragraph 4.4 Return of University Contributions

Contributions made by the University which, if they remained in the Plan, would cause the revocation of registration under the Income Tax Act, shall, with the approval of the Pension Commission of Manitoba, be refunded to the University.

Extract of The University of Winnipeg Pension Plan – Amendment effective January 1, 1992 made June 24, 1996

Paragraph 4.5

Notwithstanding the above, contributions made by the University shall be made pursuant to a recommendation by the Actuary that the contributions are necessary so that the Plan will have sufficient assets to pay the defined benefits.

Extract of The University of Winnipeg Pension Plan – Amendment 97/1

Paragraph 6.2 (d)

(d) Notwithstanding Paragraph 6.2(c), the early commencement pension of a Member who

- (i) is actively at work or on leave of absence with pay on May 31, 1998, and
- (ii) on or prior to May 31, 1998 commits to retire on a date in the period June 1, 1998 to September 1, 1999 such that
 - (a) the retirement date is no earlier than one year following the commitment date unless the University consents to a shorter notice period,
 - (b) on the retirement date the Member is eligible to retire under Paragraph 6.2(a) and the sum of the Member's age and Service is 80 or more, and
 - (c) on the retirement date, the Member is not eligible to retire under Paragraph 6.2(b),

shall be calculated in accordance with Paragraph 7.1."

Extracts of The University of Winnipeg Pension Plan – Amended and Restated effective January 1, 1992

Article 7.3 **Supplementary Pension**

Paragraphs (a) to (g)

- (a) If, in 1988 or any subsequent calendar year, the net investment return of the Fund, as determined by the Actuary, exceeds 6.0% per annum, each pensioner who was receiving a pension at the end of that year shall be entitled to receive an increase in such pension at the end of that year shall be entitled to receive an increase in such pension effective from July 1 in the following calendar year.
- (b) For a pensioner who was receiving a pension at the start of the calendar year, the increase shall consist of a percentage increase in the pension, which percentage shall be equal to the lesser of
 - (i) the excess of the net investment return over 6.0% (the "excess interest" increase), and
 - (ii) the increase in the Consumer Price Index (Canada) over the 12 month period ending in December of the calendar year (the "CPI" increase).
- (c) For a pensioner who commenced receiving the pension during the calendar year, the increase shall be the same portion of the increase determined in accordance with (b) above, as the number of months during which the pensioner received the pension in the calendar year bears to 12.

- (d) For a pensioner who retired prior to January 1, 1992 no supplementary pension shall be paid prior to the July 1 following attainment of age 60. However the increase payable to a pensioner from the July 1 following attainment of age 60 shall be determined by including all previous increases to which, but for the application of the limitation described in the first sentence of this paragraph, the pensioner would have been entitled, except that the total pension payable from July 1 following age 60 shall not exceed the maximum pension provided in Paragraph 7.4.
- (e) If, in a calendar year, the "excess interest" increase is less than the "CPI" increase, and in a subsequent calendar year the "excess interest" increase is limited by the "CPI" increase, the University may provide that the increase in the subsequent year to those affected by the limitation in the preceding year, be modified to include part or all of the shortfall in the preceding year's "excess interest" increase.
- (f) Notwithstanding the foregoing, for a pensioner whose pension commenced prior to January 1, 1988, the increase effective July 1, 1989 shall be 6.0%.

Extracts of The University of Winnipeg Pension Plan – Amendment 97/1

Subsection 7.3 (g)

- (g) Notwithstanding the foregoing, for a pensioner whose pension commenced prior to January 1, 1998, the increase at any July 1 in the period 1998 to 2007 shall be enhanced, if necessary, so that the accumulated increase in this period is not less than 75% of the increase in the consumer Price Index (Canada) over the period from December, 1996, or the month prior to retirement for a pension which commenced in 1997, to the December of the year immediately prior to that July 1, but any such enhancement shall not cause the average annual pension increase in this period to exceed 4.5% per annum.

Paragraph 7.5

A Member who retires in accordance with Paragraph 6.2(d) shall be entitled to a temporary pension equal to \$600 per month payable from retirement date for a maximum period of 60 months but ceasing no later than the earlier of the Member's death and the attainment of age 65.

*Extracts of The University of Winnipeg Pension Plan – Amended and Restated
January 1, 1992*

Paragraph 14.2 Termination

The University expects to continue the Plan indefinitely but, as future conditions cannot be foreseen, the University reserves the right to terminate the Plan at any time.

In the event of such termination, no part of the assets of the Fund shall revert to or be recoverable by the University or be used or diverted for purposes other than for the exclusive benefit of Members, retired Members or their beneficiaries and joint annuitants under the Plan, unless the distribution of the assets of the Fund would result in the benefits to members being in excess of the maximum pension under Paragraph 7.4. In such event, any remaining assets shall revert to the University.

Paragraph 18.1 Pension Committee

The Pension Committee shall

- (i) communicate appropriate information about the Plan to all Members,
- (ii) establish, and recommend to the Board, investment policies for the Plan,
- (iii) report regularly to the Board upon the finances and administration of the Plan,
- (iv) recommend to the Board any amendments to the Plan or other changes that it believes to be desirable,
- (v) advise the Board upon the selection, retention, and termination of the following appointments: investment manager, auditor, actuary, administrator, trustee and such other consultants or agents as may be required, and upon the duties to be performed by each person appointed by the Board to fill any such position,
- (vi) oversee the administration of the Plan and monitor the performance of investments,
- (vii) ensure the preparation of annual audited financial statements for the Plan, and ensure that actuarial valuations of the Plan are made at least triennially.

Paragraph 14.1 Amendment

The University may at any time supplement, modify or amend this Plan, provided that no such supplementation, modification or amendment of the Plan shall permit any part of the assets of the Fund to revert to or be recoverable by the University or be used or diverted to purposes other than for the exclusive benefit of Members, retired Members or their beneficiaries and joint annuitants under the Plan and provided further that no such amendment shall adversely affect the

entitlement of any Member accrued prior to the effective date of such amendment other than an amendment which has been approved by the Pension Commission of Manitoba and which is for the sole purpose of avoiding revocation of registration under the Income Tax Act. The University shall amend this Plan in any other respect which may be required in order to meet the requirements of the Pension Benefits Act of Manitoba and the Income Tax Act (Canada) in order to maintain the Plan as a registered pension plan under the provisions of such Acts or of any statute applicable to this Plan.

Extract of The University of Winnipeg Pension Plan – Amendment 2001/1

The following was added to Paragraph 14.1

No amendment shall be made to the Plan that would result in the liabilities of the Defined Benefit Account exceeding the assets of the Defined Benefit Account reduced by an amount equal to the sum of the Contribution Credit Balance and the Contribution Reserve.

APPENDIX C

The relevant section of the *Income Tax Act* (Canada) is:

Employer contributions -- defined benefit provisions

147.2(2) For the purposes of subsection 147.2(1), a contribution made by an employer to a registered pension plan in respect of the defined benefit provisions of the plan is an eligible contribution if it is a prescribed contribution or if it complies with prescribed conditions and is made pursuant to a recommendation by an actuary in whose opinion the contribution is required to be made so that the plan will have sufficient assets to pay benefits under the defined benefit provisions of the plan, as registered, in respect of the employees and former employees of the employer, where

(a) the recommendation is based on an actuarial valuation that complies with the following conditions, except the conditions in subparagraphs 147.2(2)(a)(iii) and 147.2(2)(a)(iv) to the extent that they are inconsistent with any other conditions that apply for the purpose of determining whether the contribution is an eligible contribution:

(i) the effective date of the valuation is not more than 4 years before the day on which the contribution is made,

(ii) actuarial liabilities and current service costs are determined in accordance with an actuarial funding method that produces a reasonable matching of contributions with accruing benefits,

(iii) all assumptions made for the purposes of the valuation are reasonable at the time the valuation is prepared and at the time the contribution is made,

(iv) the valuation is prepared in accordance with generally accepted actuarial principles,

(v) the valuation complies with prescribed conditions, which conditions may include conditions regarding the benefits that may be taken into account for the purposes of the valuation, and

(vi) where more than one employer participates in the plan, assets and actuarial liabilities are apportioned in a reasonable manner among participating employers in respect of their employees and former employees, and

(b) the recommendation is approved by the Minister in writing,

and, for the purposes of this subsection and except as otherwise provided by regulation,

(c) the benefits taken into account for the purposes of a recommendation may include anticipated cost-of-living and similar adjustments where the terms of a pension plan do not require that those adjustments be made but it is reasonable to expect that they will be made, and

(d) a recommendation with respect to the contributions required to be made by an employer in respect of the defined benefit provisions of a pension plan may be prepared without regard to such portion of the assets of the plan apportioned to the employer in respect of the employer's employees and former employees as does not exceed the least of

(i) the amount of actuarial surplus in respect of the employer,

(ii) 20% of the amount of actuarial liabilities apportioned to the employer in respect of the employer's employees and former employees, and

(iii) the greater of

(A) 2 times the estimated amount of current service contributions that would, if there were no actuarial surplus, be required to be made by the employer and the employer's employees for the 12 months immediately following the effective date of the actuarial valuation on which the recommendation is based, and

(B) the amount that would be determined under subparagraph 147.2(2)(d)(ii) if the reference therein to "20%" were read as a reference to "10%".

The relevant sections of the *Income Tax Regulations* are:

Conditions for Registration, s. 8501(1)

8501 (1) For the purposes of section 147.1 of the Act, and subject to sections 8509 and 8510, the prescribed conditions for the registration of a pension plan are:

- (a) the conditions set out in paragraphs 8502(a), (c), (e), (f) and (l),
- (b) if the plan contains a defined benefit provision, the conditions set out in paragraphs 8503(4)(a) and (c), and
- (c) if the plan contains a money purchase provision, the conditions set out in paragraphs 8506(2)(a) and (d),

and the following conditions:

(d) there is no reason to expect, on the basis of the documents that constitute the plan and establish the funding arrangements, that

(i) the plan may become a revocable plan pursuant to subsection (2) or

(ii) the conditions in subsection 147.1(10) of the Act may not be complied with, and

(e) there is no reason to expect that the plan may become a revocable plan pursuant to subsection 147.1(8) or (9) of the Act or subsection 8503(15)

Additional Conditions, s. 8503(4)

(4) For the purposes of section 8501, the following conditions are applicable in respect of each defined benefit provision of a pension plan:

Reduction in benefits and return of contributions, s. 8503(4)(c)

(c) where the plan is not established by an enactment of Canada or a province, it includes a stipulation that permits, for the purpose of avoiding revocation of the registration of the plan,

(i) the plan to be amended at any time to reduce the benefits provided under the provision with respect to a member, and

(ii) a contribution that is made under the provision by a member or an employer to be returned to the person who made the contribution,

which stipulation may provide that an amendment to the plan, or a return of

contributions, is subject to the approval of the authority administering the Pension Benefits Standards Act, 1985 or a similar law of a province;

Conditions Applicable to all Plans

8502 For the purposes of section 8501, the following conditions are applicable in respect of a pension plan

Permissible contributions, s. 8502(b)

(b) each contribution made to the plan after 1990 is an amount that

- (iii) is an eligible contribution that is paid in respect of a defined benefit provision of the plan by an employer with respect to the employer's employees or former employees

APPENDIX D

The following is a list of documents reviewed in regards to the allegations raised. While not a list of all documents reviewed, the following are of significant relevance.

Plan Documents

1. The University of Winnipeg Pension Plan – Amended and Restated effective January 1, 1992
2. The University of Winnipeg Pension Plan – Amendment effective January 1, 1992 made June 24, 1996
3. The University of Winnipeg Pension Plan – Amendment 97/1
4. The University of Winnipeg Pension Plan – Amendment 2001/1
5. The University of Winnipeg Pension Plan – Amended and Restated to December 1998 consolidated May 1, 2001

Letters/Documents

1. August 30, 1999 opinion of J. Carlson
2. Letter dated November 15, 2002 from B. Stearns
3. Letter dated November 8, 2002 from F. Barth and W. Stevens
4. Letter dated April 2, 2003 from F. Barth and W. Stevens
5. Letter of June 15, 2004 from the University of Winnipeg
6. Letter dated November 22, 2005 from F. Barth and W. Stevens and attachments
7. Letter dated December 9, 2005 from the University of Winnipeg and attachments
8. Letter dated February 9, 2006 from the University of Winnipeg and attachments
9. Letter dated March 13, 2006 from the University of Winnipeg and attachments
10. Letter dated March 14, 2006 from the University of Winnipeg and attachments
11. May 29, 2006 letter from B. Stearns

Statements/Reporting

1. Pension fund statements for 1997 to 2004
2. Financial statements for 1997 to 2004
3. Contribution remittance forms for March 2000 to April 2002

Retiree/Benefit Information

1. Letters or certificates of retirement detailing the amount of pension entitlement i.e. basic pension, supplementary pension increase each year, bridge benefits, for each member that elected to take early retirement under amendment 97/1 and 98/4
2. List of plan members who were eligible to retire under 97/1 and 98/4.
3. Basis for determining the "net investment return" from 1991 to 2005.

Governance

1. By-Law No. 1/2000, By-Law No. 5/97, By-Law No. 3/97 and a document entitled "Investment Policies for the Defined Benefit Portion of the University of Winnipeg Pension Plan".