

The University of Winnipeg Trusteed Pension Plan Trust

Duties of the Board of Trustees

What is The University of Winnipeg Trusteed Pension Plan Trust (the “Trusteed Plan”)?

The Trusteed Plan is an express trust created to hold and deal with the assets of Pension Fund. All of the assets of the Pension Fund are owned by a Board of Trustees who make the decisions regarding the Plan. The Board of Trustees, as administrator of the Plan (within the meaning of *The Pension Benefits Act* (Manitoba), administers the Plan, and the sponsoring employer – namely, The University of Winnipeg (the “University”) - has no direct involvement in the Plan’s administration, except to the extent that the Trust Agreement governing the Board of Trustees gives it rights. Legal title to the assets of the Pension Fund is held by the Board of Trustees for the benefit of the Plan’s beneficiaries (participating employees, pensioners and others with rights under the Plan). The primary documentation of the Trusteed Plan is the Trust Agreement and the Plan text.

The Trustees collectively have full responsibility for ensuring that the Plan is properly administered in accordance with *The Pension Benefits Act* (Manitoba), the *Income Tax Act* (Canada), *The Trustee Act* (Manitoba) and the common law; and further, that the assets of the Pension Fund are properly invested and disbursed in compliance with all such applicable laws. Although the University is responsible for making contributions in accordance with the terms of the Plan, since the transfer of responsibility for Plan administration from the University to the Board of Trustees, the University has had no further continuing responsibility for the administration of the Plan.

Trust Agreement - Contents

The text of the Plan sets out the manner in which eligibility for Plan participation and contributions and benefits are calculated. The Trust Agreement is equally important in that it sets out the duties, powers, responsibilities and liabilities of the Trustees appointed or elected to administer the Plan and the Pension Fund. These include: (i) the manner in which the Trustees are to be appointed or elected, removed and replaced; (ii) the precise duties of the Trustees; (iii) the parameters of the authority of the Trustees (and the decisions in respect of which the approval of the University or any other stakeholder is required); (iv) the powers of the Trustees, including the power to delegate (such as to an investment manager or custodian); and (v) such other administrative matters as are necessary to provide for the effective operation of the Board of Trustees.

The Duties of a Trustee

A Trustee must be cognizant of both the duties of a Trustee as established in the Trust Agreement and the duties of a trustee at law.

First and foremost, a Trustee cannot advance the interests of any person or party other than the beneficiaries of the Trusteed Plan and, in particular, cannot represent or advance the interests of a stakeholder that has appointed him or her. The primary duty of the Trustees is to administer the Plan in accordance with the objects of the Trust, the

Plan text and the Trust Agreement in a prudent manner, having regard for the best interests of Plan Members, Pensioners and other beneficiaries participating, or eligible to participate, in the Plan. A Trustee cannot act with a view to advancing the best interests of any particular stakeholder or other party.

At common law, the Trustees of a Trusteed Plan have four basic duties:

- (1) Duty of care;**
- (2) Duty to act personally;**
- (3) Duty to avoid conflict of interest; and**
- (4) Duty to maintain an “even hand”.**

(1) Duty of Care

At law, the duty of care, which is owed to the Plan's beneficiaries, means that the Trustees must carry out their functions in a competent manner. This duty would extend, for example, to the care exercised by the Trustees in investing and administering trust assets. The common law standard of care for a Trustee is that which an ordinary business person would exercise in conducting his or her own affairs. However, this is only the minimum standard. Legislation in Manitoba has established a higher standard; namely, that subject to the Trust Agreement provisions, a Trustee shall exercise the judgment and care that a person of prudence, discretion and intelligence would exercise in administering the property of others.

The concept is that an ordinary prudent person would take less risk with the property of another person than he or she would take with his or her own property. When investing trust property, a Trustee must take care that he or she invests only as permitted by law and by the terms of the Trust Agreement.

In order to ensure that he or she can discharge the duty of care, a prudent Trustee, on accepting office, should first become familiar with all documentation relating to the trust property. A Trustee should understand the restrictions set out in the Trust Agreement and be familiar with any investment policy established for the Trust and the provisions of any investment management contracts.

(2) Duty to act personally

At common law, the personal performance of fiduciary duties is expected of a Trustee. Therefore, except to the extent that the Trust Agreement or applicable legislation specifically permits delegation, a Trustee may delegate only if it is normal business practice to employ an agent in the circumstances or if the very nature of the task involved requires delegation (for example, retaining legal counsel or investment counsel and management). Therefore, each Trustee of a Trusteed Plan should ensure that he or she remains ultimately responsible for the decisions made with respect to the Pension Fund except to the extent that the governing Trust Agreement specifically allows for delegation.

In the event of permissible delegation, the Trustees must ensure that delegates are properly selected and that they are monitored to ensure that the Pension Fund's objects are fulfilled. A Trustee must ensure that: (a) the person to whom responsibilities are

being delegated has the necessary skills and training to carry them out; (b) the person is appropriately supervised; and (c) there is regular reporting to the Trustee or to the Board of Trustees as a whole.

A Trustee must also exercise prudent judgment in acting upon the advice of an agent or delegate, and cannot simply rely upon the advice of the delegate to abdicate his or her responsibility under the Trusteed Plan.

(3) Duty to avoid conflict of interest

A Trustee has an absolute duty to avoid any conflict of interest. This includes not only actual conflict of interest, but any perceived conflict of interest.

A Trustee owes this duty to the Plan's beneficiaries first and foremost. Regardless of whether or not a Trustee is the nominee of a Plan stakeholder, such as a nominee of the employer, a union, pensioners or otherwise, he or she must always act with a view to the best interests of the Plan beneficiaries participating in the Plan as a whole, and not with a view to the best interests of any particular stakeholder or otherwise. It is a fundamental principle of our legal system that one who undertakes a task on behalf of another must act exclusively for the benefit of the other, putting her or his own interests completely aside.

(4) Duty to maintain an “even hand”

Trustees are also obligated to treat all Plan beneficiaries fairly and impartially (regardless of the manner in which the Trustees have been elected or appointed). In all their dealings with the Trust, the Trustees must ensure that, if there are two or more beneficiaries, each beneficiary receives exactly what the terms of the trust confer upon him or her and otherwise receives no advantage and suffers no burden which other beneficiaries do not share. In this way the Trustees act impartially and even-handedly. Of course, differently situated beneficiaries of the Plan can be treated differently to the extent contemplated by the Plan and the Trust Agreement, but the interests of some beneficiaries cannot be preferred over the interests of other beneficiaries without a rational basis for the differential treatment in the Plan and the Trust Agreement itself.

Applicable Province of Manitoba Legislation

A Trustee should also familiarize himself or herself with the legislation governing Trustees of a pension plan, including *The Pension Benefits Act* (Manitoba) and *The Trustee Act* (Manitoba). The Trustees, as administrator of the Plan, will be responsible for ensuring that the administration and investment of the pension fund assets complies with the specific requirements of the legislation. Legal, actuarial, investment and accounting advice is, of course, always available to assist where determined to be necessary by the Board of Trustees. In addition, a copy of the relevant Manitoba legislation is available upon request from the Secretary of the Board of Trustees.

The following documents are attached to this memo for your review and retention:

(1) Trust Agreement

As set out above, the Trust Agreement is the key document which sets out the powers, duties, responsibilities and liabilities of the Trustees.

(2) Amended and Restated University of Winnipeg Trusteed Pension Plan.

Each Trustee should review and also become familiar with the text and provisions of the Plan.

(3) Custodian Agreement

This is an agreement pursuant to which RBC Dexia Investor Services Trust, as custodian, holds the assets of the Pension Fund on behalf of the Board of Trustees. All Trustees should be familiar with the terms of the Custodian Agreement.

(4) Plan Services Agreement

Under this agreement, the University has agreed to perform certain administrative, secretarial and management support functions for the Board of Trustees to assist it in the administration of the Trusteed Plan. Again, all of the Trustees should be familiar with the terms of this agreement.