



# **TEACHERS' PENSION BOARD OF TRUSTEES**

## **CODE OF CONDUCT and CONFLICT OF INTEREST POLICY**

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# TABLE OF CONTENTS

<b>I.</b>	<b>Preamble .....</b>	<b>3</b>
<b>II.</b>	<b>Key Fiduciary Duties .....</b>	<b>4</b>
	<b>A – Duty to comply with the Plan’s terms.....</b>	<b>4</b>
	<b>B – Duty to be loyal to the Plan Beneficiaries .....</b>	<b>5</b>
	<b>C – Duty to be careful and prudent.....</b>	<b>6</b>
	<b>D – Duty to deal impartially, fairly and in good faith .....</b>	<b>6</b>
	<b>E – Duty to act personally or delegate reasonably and responsibly .....</b>	<b>7</b>
	<b>F – Duty to disclose .....</b>	<b>7</b>
<b>III.</b>	<b>Sources of Protection .....</b>	<b>7</b>
	<b>A – Diligence .....</b>	<b>8</b>
	<b>B – Indemnification .....</b>	<b>8</b>
	<b>C – Legal and Judicial Advice .....</b>	<b>9</b>
	<b>D – Liability Insurance .....</b>	<b>9</b>
<b>IV.</b>	<b>Conflict of Interest Policy.....</b>	<b>9</b>
	<b>A – Preamble.....</b>	<b>9</b>
	<b>B – Conflict of Interest Rules .....</b>	<b>10</b>
	<b>C – Addressing a Conflict of Interest .....</b>	<b>12</b>
	<b>D – Definitions.....</b>	<b>13</b>
<b>V.</b>	<b>Applicable Legislation .....</b>	<b>14</b>
<b>VI.</b>	<b>Board Operational Policies .....</b>	<b>15</b>
<b>VII.</b>	<b>Consequences.....</b>	<b>15</b>
<b>VIII.</b>	<b>Legal Documents Served on Trustees .....</b>	<b>16</b>
<b>IX.</b>	<b>Review and Amendment.....</b>	<b>16</b>

# Code of Conduct and Conflict of Interest Policy

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## I. Preamble

This Code of Conduct applies to the Teachers' Pension Board of Trustees (the "**Board**"), the individuals appointed to the Board (the "**Trustees**") and to committee members of the Teachers' Pension Plan (the "**Plan**"), including those committee members who are not Trustees. However, the responsibility for the administration of this Code of Conduct rests solely with the Board.

The Plan and the activities of the Board are governed by the Teachers' Pension Plan Joint Trust Agreement (the "**Joint Trust Agreement**") and the Teachers' Pension Plan Rules (the "**Plan Rules**"). The Joint Trust Agreement provides that the Plan's assets are owned by the Board subject to an obligation to hold and administer such assets for the benefit of others. Specifically, each Trustee has the power and responsibility to own and manage the Plan's assets on behalf of the Plan members, former Plan members and their beneficiaries (the "**Plan Beneficiaries**") and to pay benefits in accordance with the Plan Rules.

In exercising his or her powers or duties, each Trustee shall adhere to the following standard of care:

- (a) act honestly, in good faith and in the best interests of the Plan Beneficiaries,
- (b) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person, and
- (c) comply with this Code of Conduct and the resolutions of the Board.

Each Trustee is also a fiduciary in that he or she has a fiduciary relationship with the Plan Beneficiaries and is acting on their behalf while exercising discretionary powers and following a set of behavioural rules. Finally the Board, as a group, is also the "administrator" of the Plan, as defined in the *Pension Benefits Standards Act* (British Columbia) (the "**PBSA**"), in that the Board is ultimately responsible in law for managing the Plan and its investments.

As a fiduciary, a Trustee is acting on behalf of the Plan Beneficiaries and must act in their best interests. At the same time, Trustees have an overriding responsibility to carry out the terms of the Plan while acting within the scope of the Joint Trust Agreement and Plan Rules. Everything a Trustee does is for the benefit of the Plan Beneficiaries, not for themselves.

This Code of Conduct outlines the following primary fiduciary duties that apply to the Trustees.

As discussed in greater detail below, these duties are to:

- (d) comply with the terms of the Joint Trust Agreement, the Plan Rules and any other Plan documents;
- (e) be loyal to the Plan Beneficiaries;
- (f) act carefully and prudently;
- (g) deal impartially, fairly and in good faith;
- (h) act personally or delegate reasonably and responsibly; and
- (i) disclose information where required.

This Code of Conduct also outlines principles of conflict of interest and confidentiality. The standard of care and fiduciary duties listed above do not represent an exhaustive list of the conduct required from the Trustees. For example, the Trustees must also adhere to the following principles:

- (j) a Trustee must not divulge confidential information that he or she receives as a Trustee to anyone other than persons who are authorized to receive the information;
- (k) the duty to maintain information in confidence continues after the Trustee ceases to be a Trustee; and
- (l) a Trustee must not engage in activity or speak publicly on matters where this could be perceived as an official act or representation of the Plan unless the act or representation is authorized by the Board.

## **II. Key Fiduciary Duties**

The Trustees recognize that, as trustees, their duties emanate from common law obligations, the Joint Trust Agreement and the Plan Rules as well as from other statutes that regulate the operation of pension plans generally. Such duties generally include the following:

### **A – Duty to comply with the Plan’s terms**

The Trustees’ duties and responsibilities as trustees and fiduciaries are spelled out in the Joint Trust Agreement, the Plan Rules and other documents. Each Trustee should review and become familiar with the content of the following:

- (a) Joint Trust Agreement;

- (b) Plan Rules;
- (c) Investment Management Service Agreement;
- (d) Pension Administration Service Agreement;
- (e) Annual Report including Audited Financial Statements;
- (f) Statement of Investment Policies and Procedures;
- (g) Funding Policy;
- (h) Asset Liability Study;
- (i) Actuarial Report;
- (j) Fiduciary Liability Insurance Policy;
- (k) Post Retirement Group Benefit Plan Rules, Contracts and Agreements;
- (l) List of Trustees and Professional Advisors; and
- (m) this Code of Conduct.

### **B – Duty to be loyal to the Plan Beneficiaries**

The duty of loyalty is the cornerstone of the fiduciary relationship. Each Trustee must act honestly, in good faith and in the best interests of the members and former members and any other persons to whom a fiduciary duty is owed. The duty of loyalty is a personal duty which cannot be delegated.

Trustees must not knowingly permit their own interests to conflict with their duties and powers in respect to the Plan Beneficiaries and the Plan. They cannot serve interests of others where those interests and the interests of the Plan are in conflict. There can be no self- interest, self-dealing, or conflict of interest. (Despite the previous statement, entitlement to a pension or other benefit under the Plan by a Trustee does not in itself constitute a conflict of interest.) Trustees should only take into account considerations relevant to the interests of the Plan Beneficiaries when making decisions. In doing so, a Trustee should not consider the interests of the party that appointed him or her or the interests of other third parties except to the extent doing so is in the best interests, and do not conflict with the best interests, of the Plan Beneficiaries.

Section 14.1(c) of the Joint Trust Agreement provides for a significant exception to the duty of loyalty when the Trustees are considering the use of surplus assets. In this single circumstance, Trustees are freed of their duty of loyalty to the Plan

Beneficiaries and can take into account the interest of the party that appointed the Trustee.

Trustees cannot take advantage of their position on the Board. If they find themselves in a conflict of interest position, they must avoid the conflict in advance or declare it and remove themselves from consideration of the issue. The policy related to conflicts of interest is described in greater detail below in Section IV.

### **C – Duty to be careful and prudent**

To satisfy the standard of care imposed on Trustees, they must exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person. They cannot take the same risks as they might take with their own affairs. Rather, they must avoid undue risk and exercise their power of investment so as to yield the best return for the present and future Plan Beneficiaries.

With respect to the Plan investments Trustees must adhere to legislation and make decisions in the best financial interests of the Plan Beneficiaries. The Plan assets must be invested in a manner that a reasonable and prudent person would apply in respect of a portfolio of investments made on behalf of another person to whom there is owed a fiduciary duty to make investments without undue risk of loss and with a reasonable expectation of a return on the investments commensurate with the risk.

While every Trustee must apply his or her training, experience and knowledge in the discharge of his or her duties and responsibilities as a Trustee, all Trustees are held to the same standard of care, regardless of their training, experience or knowledge. Trustees do not have to be infallible. They can make mistakes so long as the process that was used to reach the decision was prudent.

### **D – Duty to deal impartially, fairly and in good faith**

Trustees must use procedural fairness in making decisions. Trustees represent all Plan Beneficiaries and must use an even hand. They cannot play favourites with individuals or groups. They must apply the same rules and interpretations under the same circumstances within the rules governing the Plan. However, this does not mean that all groups within the Plan have to be treated the same or will receive equal benefits from the Plan.

As a result, a Trustee cannot be both an advocate and a judge when making a decision. If this possibility could occur, the Trustee should step aside from consideration of the issue.

## **E – Duty to act personally or delegate reasonably and responsibly**

Trustees cannot be expected to handle all responsibilities on their own or to be all knowledgeable. They can get assistance if it is prudent to do so. In many cases, it would be imprudent not to delegate in order to get something done and done well. However, the Board must delegate carefully by choosing well, instructing clearly, and supervising carefully.

Trustees should understand that they must actively participate in the deliberations of the Board. A Trustee cannot argue that it was the other Trustees that made the decision. Voting against a matter at a meeting generally will not relieve a Trustee of liability for the matter in question if the Trustee could have taken further steps to prevent the action, for example, applying to the court for injunctive relief.

## **F – Duty to disclose**

The Board has the responsibility to inform Plan Beneficiaries of their rights, entitlements and obligations under the Plan, and amendments to the Plan that relate to the Plan Beneficiaries. These rights, entitlements, obligations and amendment notifications are described in detail in the PBSA and its regulations. The PBSA and its regulations include the requirement to provide information annually or when a specific event occurs such as termination, death or retirement, and on request.

A Trustee also has a duty to disclose to the Board any conflict of interest. The onus is on the Trustee to make the disclosure to avoid situations that would otherwise place the Trustee in a conflict of interest or perceived conflict of interest and thus place the Board in a position that makes it impossible to fulfill its legal duties.

## **III. Sources of Protection**

The Trustees are personally liable for any breach of trust they commit. While the potential liability that the Trustees face can be significant, several legal protections are available to them. Such protections generally include the following:

### **A – Diligence**

The most obvious protection for Trustees is to prevent the liability from arising in the first place. While it is not possible to prepare a definitive and all-encompassing list of duties and responsibilities of Trustees, the board as a whole should do the following:

- (a) Where appropriate, obtain professional advice on legislation and guidelines that are relevant to the activities of the Board.

- (b) Where appropriate, obtain professional advice in writing on important decisions.
- (c) Periodically or on major issues where advisors have provided advice, consider independent outside advisors for a fresh perspective.
- (d) Ensure that risk and control frameworks are reviewed.
- (e) Ensure that the committees, the administrative agent and the investment manager report regularly to the Board.
- (f) Ensure that the Board acquires and maintains fiduciary liability insurance coverage.

The most important steps a Trustee can take in this regard are to prepare for, attend and fully participate in every Trustee meeting. If in preparing for a meeting a Trustee determines the meeting materials are not sufficient, the Trustee must seek to have appropriate materials circulated before the meeting. In addition, every Trustee should do the following:

- (g) Review opinions given by professional consultants.
- (h) Review the minutes of all meetings for accuracy and completeness.
- (i) Know what trust property or accounts are held.

## **B – Indemnification**

The Joint Trust Agreement contains an indemnity clause that provides protection for each Trustee against costs, charges and expenses resulting from an action or proceeding to which the Trustee is involved due to his or her role, if the Trustee's actions were taken in good faith and the Trustee has reasonable grounds for believing that his or her actions were lawful.

## **C – Legal and Judicial Advice**

If the Board is unsure of its legal responsibility, and thus liability, it can seek legal or judicial advice or direction. Acting on incorrect legal advice does not, however, cure a breach of trust.

Section 86 of the *Trustee Act* (British Columbia) permits a trustee to obtain the court's opinion, advice or direction on a question respecting the management or

administration of the Plan. Section 87 of the *Trustee Act* (British Columbia) confers protection on a trustee who acts in accordance with the court's opinion, advice or direction given under section 86.

Trustees may also be able to claim relief under section 96 of the *Trustee Act* (British Columbia), which permits the court to relieve a trustee wholly or partly from personal liability for breach of trust if it appears that the trustee acted honestly and reasonably.

#### **D – Liability Insurance**

The Joint Trust Agreement permits the Board to purchase errors and omissions insurance and/or fiduciary liability insurance.

The Board has purchased general liability insurance to cover costs and expenses incurred in a court challenge against a Trustee or the Board. The insurance has a deductible and policy limit. There is, however, no protection against any acts that are illegal.

### **IV. Conflict of Interest Policy**

#### **A – Preamble**

Except as provided in Section 14.1(c) of the Joint Trust Agreement, Trustees must not knowingly permit their personal interests, their personal interests derived from their roles with other organizations, or their duties to other persons or organizations, to conflict or appear to conflict with their duties and powers in respect to the management of the Plan and the fund. Entitlement to a pension or other benefit under the Plan does not in itself constitute a conflict of interest. Having personal interests or duties to other persons or organizations which might conflict with a Trustee's duties in respect of the Plan is not in and of itself a breach of a Trustee's duties in respect of the Plan. However, a Trustee must deal with actual or potential conflicts between such personal interests and duties and their duties as a Trustee in accordance with this Conflict of Interest Policy, including the Rules and Procedure set out in Items B and C below.

**A conflict of interest** exists when a Trustee has an official power or duty which could be exercised or performed in a manner which, to the Trustee's knowledge, would further the Trustee's private interest.

**A perceived conflict of interest** exists when there is a reasonable perception, which a reasonably well informed person could have, that a Trustee's ability to exercise the power or perform an official duty or function was or will be affected by the Trustee's private interest.

## **B – Conflict of Interest Rules**

Based on the principles in Item A, the Board has adopted the following conflict of interest rules. While these conflict of interest rules are comprehensive they are not exhaustive. Matters not addressed in these rules must be dealt with in a manner consistent with the principles in Item A.

- (a) A Trustee must disclose any direct or indirect interest he or she has in a proposed or completed contract or transaction between the Board and a service provider to the Board as soon as the Trustee becomes aware of the proposed or completed contract or transaction.
- (b) A Trustee must not exercise any decision making power which could bring about financial benefit to the Trustee (other than in the Trustee's capacity as a member of the Plan) due to the Trustee's financial holdings, business interests, family relationships, personal relationships, property interests or other reasons.
- (c) A Trustee must not directly or through an intermediary enter into contracts or transactions where to do so may be detrimental to the Plan's best interests or where the activity is in conflict with the proper discharge of the Trustee's duties to the Plan Beneficiaries.
- (d) A Trustee must not directly or through an intermediary engage in any transactions, contracts or arrangements for personal profit which accrue from or are based on the Trustee's official position or authority or upon confidential or non-public information which the Trustee gains by reason of such position or authority.
- (e) A Trustee must not directly or through an intermediary use information that is gained through the Trustee's position or authority, which is not available to the general public, in order to further the Trustee's private interest. A Trustee must also not provide such information to a related person.
- (f) A Trustee must not assist organizations or persons in their dealings with the Board or a service provider to the Board so as to cause preferential treatment to that organization or person.
- (g) A Trustee must not use trust property to pursue the Trustee's private interests or the interests of related persons for material personal gain

where such use would result in additional material cost or any material loss to the trust or otherwise detracts from the Trustee's performance of duties to the Plan. Trust property includes real and tangible items such as land, buildings, furniture, fixtures, equipment, and vehicles and also includes intangible items such as data, computer systems, reports, information, proprietary rights, patents, trademarks, copyrights, logos, name, and reputation.

- (h) A Trustee must not purchase trust property except with the Board's prior approval and on the same conditions that such property would be sold to an arm's length purchaser.
- (i) A Trustee must not solicit or accept benefits, entertainment or gifts in exchange for or as a condition of the exercise of the Trustee's duties or powers or as an inducement for performing an act associated with the Trustee's duties or responsibilities. A Trustee generally may accept gifts, hospitality or other benefits associated with the Trustee's official duties and responsibilities if such gifts, hospitality or other benefits:
  - (i) are within the bounds of propriety, a normal expression of courtesy, or within the normal standards of hospitality;
  - (ii) would not bring suspicion on the Trustee's objectivity and impartiality; and
  - (iii) would not compromise the integrity of the Plan.
- (j) An improper benefit should be returned to the person offering it as soon as practicable. If there is no opportunity to return an improper gift or benefit, or where the return may be perceived as offensive for cultural or other reasons, the gift must immediately be disclosed to the chair and turned over to the trust which will make a suitable disposition of the item.
- (k) A Trustee must refrain from conduct which compromises or may be perceived to compromise the Trustee's ability to carry out the Trustee's duties in an impartial manner and must be mindful that the Plan Beneficiaries may not distinguish between the Trustee's role in the Plan and the Trustee's role in outside activities.
- (l) A Trustee, after ceasing to be a Trustee, remains subject to these conflict of interest rules to the extent necessary to give effect to them.

- (m) A Trustee’s political activities must be clearly separated from activities related to the Trustee’s appointment. In engaging in political activities, in relation to the Trustee’s duties and responsibilities, a Trustee must remain impartial and retain the perception of impartiality.
- (n) A Trustee must report to the chair or vice chair any activity of another Trustee or Trustees which the Trustee believes:
  - (i) represents a real or apparent conflict of interest or breach of these standards of conduct;
  - (ii) represents a misuse of trust funds or assets; or
  - (iii) contravenes the Board’s policies.
- (o) A Trustee applying for employment with the British Columbia Pension Corporation, the British Columbia Investment Management Corporation, or the College, Public Service and Teachers’ boards as employers must declare their interest in the position to the Board and manage their Board participation in accordance with this policy. Upon accepting a position with the British Columbia Pension Corporation, the British Columbia Investment Management Corporation, Municipal Pension Plan, or the College, Public Service and Teachers’ boards as employers, a Trustee must resign from the Board.

### **C – Addressing a Conflict of Interest**

Once a Trustee has disclosed a conflict or potential conflict in accordance with the conflict of interest rules set out above, the Trustee must abstain from participating in any discussion and subsequent vote related to the matter at any meeting of the Board.

Alternatively, a Trustee may submit the matter to the Board for its consideration. The chair or vice chair will, for the record, identify the conflict and the material facts relating thereto. The Trustee must absent himself or herself from any portion of the Board’s discussion and vote in respect of determining whether a conflict exists.

If the Board, by a majority vote of the Trustees present at the meeting (but excluding the Trustee who has disclosed the conflict), decides that no conflict exists, the Trustee may participate in any discussion and subsequent vote related to the matter.

If the Board, by a majority vote of the Trustees present at the meeting (but excluding the Trustee who has disclosed the conflict), decides that a conflict:

- (a) *may* exist, the Trustee may provide information related to the matter and then must abstain from participating in any discussion and subsequent vote related to the matter; or
- (b) *does* exist, the Trustee must abstain from participating in any discussion and subsequent vote related to the matter.

In all instances, the decision to permit the Trustee to participate in any discussion and subsequent vote on the matter will be made after the Trustee has fully disclosed the nature of the conflict, and on the basis of whether, in all circumstances, the interests of the Plan Beneficiaries will be best served by the Trustee’s participation despite the conflict.

**D – Definitions**

For the purpose of the conflict of interest policy the following terms are defined:

- |                  |   |
|------------------|---|
| Private Interest | <p>A private interest is not limited to a pecuniary or economic advantage and can include any real or tangible interest that personally benefits the Trustee. A private interest does not include an interest arising from the exercise of an official power or the performance of an official duty or function that:</p> <ul style="list-style-type: none"> <li>(a) applies to all Plan Beneficiaries;</li> <li>(b) affects an individual as one of a broad class of Plan Beneficiaries; or</li> <li>(c) concerns the remuneration and benefits of the Trustee.</li> </ul> |
| Spouse           | <p>Spouse means a person to whom the individual is married or with whom the individual is living in a marriage-like relationship for a period of at least two years. Spouses do not include those who are separated and living apart, or those who have entered into written agreement under which they have agreed to live apart, or those who are the subject of an order of the court recognizing the separation.</p>  |
| Related Person   | <p>Spouse, associates, immediate family, friends or persons with whom the Trustee is connected by frequent or close association, or a private corporation or other entity controlled by any or a combination of these individuals.</p>  |

## **V. Applicable Legislation**

Trustees' duties and responsibilities as trustees and fiduciaries are not limited to those duties and responsibilities described in the Joint Trust Agreement and the Plan Rules. Pension plans are also subject to the applicable provisions of legislation and regulations, including the following:

*Pension Benefits Standards Act* (British Columbia)  
*Pension Benefits Standards Act Regulations* (British Columbia)

*Income Tax Act* (Canada)  
*Income Tax Act Regulations* (Canada)

*Public Sector Pension Plans Act* (British Columbia)

*Employment Standards Act* (British Columbia)

*Family Maintenance Enforcement Act* (British Columbia)

*Family Law Act* (British Columbia)  
*Human Rights Code* (British Columbia)  
*Trustee Act* (British Columbia)  
*Freedom of Information and Protection of Privacy Act* (British Columbia)

*Limitation Act* (British Columbia)

*Wills, Estates and Succession Act* (British Columbia)

*Ombudsman Act* (British Columbia)  
*Other applicable regulations*

## **VI. Board Operational Policies**

Trustees' duties and responsibilities as trustees and fiduciaries also include the responsibility to be familiar with and comply with the Board's operational policies.

Policies are located in the Diligent Resource Centre.

Trustees will review and reaffirm their commitment to and compliance with the Teachers' Pension Board of Trustees operational policies and Code of Conduct upon initial appointment and on an annual basis thereafter.

The following declaration of compliance with board policies and Code of Conduct will be forwarded to each trustee prior to the December quarterly board meeting, and should be filed with the Board Secretary:

## **Annual Declaration of Compliance**

The undersigned is a member of the Teachers' Pension Board of Trustees.

I acknowledge that I have read and understand the Teachers' Pension Board of Trustees operational policies and attest that I have conducted myself in accordance with the Teachers' Pension Board of Trustees operational policies including the Code of Conduct and Conflict of Interest Policy, during the period \_\_\_\_\_, 20\_\_ to \_\_\_\_\_, 20\_\_.

I acknowledge that as a trustee I am responsible for the secure destruction of all board-related materials, in accordance with BOT IG-9 Records in the custody of Trustees Policy after a period of two years.

## **VII. Consequences**

There are number of consequences that could apply to an individual, a group or the Plan if the Board does not fulfill its responsibilities. These consequences could result from an illegal or inadvertent action.

The consequences could include fines and sanctions levied by the Superintendent of Pensions under the PBSA or by the Canada Revenue Agency under the *Income Tax Act* (Canada). The ultimate consequence is that the Plan would be de-registered by the Canada Revenue Agency thereby depriving Plan members of the tax deferred status of the Plan and thus the inability to deduct member contributions from taxable income. Lastly, courts could rule that fiduciary responsibilities have been violated.

If Trustees use any information gained as a result of their seat on the board for their own benefit, they may be required to pay to the Plan the entirety of that benefit.

As soon as the chair or vice-chair is made aware of a breach or suspected breach of this Code of Conduct, the chair or vice-chair must ensure that the matter is addressed by the Board in a timely fashion.

## **VIII. Legal Documents Served on Trustees**

Trustees may have legal documents served on them concerning Board business affairs. These documents are frequently detailed and usually include several deadlines for proposed action.

Upon receipt of the documents the Trustee should inform the chair or vice chair and courier the documents immediately to the Board's Secretary. The Secretary will, on the Trustee's behalf:

- (a) check with the Board’s legal advisors on the Trustee’s legal and fiduciary responsibilities in the matter;
- (b) ensure that an appropriate legal response or instruction is sent to the complainant; and
- (c) provide the Trustee and the Board with a briefing on the issue.

## **IX. Review and Amendment**

The board will review this Code of Conduct and Conflict of Interest Policy at least every three years and either confirm or amend the policy in such a manner as the board considers appropriate.