



**SUBJECT** ENDOWMENT FUND ENCROACHMENT AND TRANSFER REQUEST

**MEETING DATE** JUNE 14, 2017

Forwarded to the Board of Governors on the Recommendation of the President

**APPROVED FOR  
SUBMISSION**

Santa J. Ono, President and Vice-Chancellor

**DECISION REQUESTED** IT IS HEREBY REQUESTED that *the UBC Board of Governors approve encroachment on a portion of the Frank and Casey Smith Football Endowment Fund which will be used to create the Negrin Family Football Endowment Fund, as recommended by the President and University Counsel.*

**Report Date** May 17, 2017

**Presented By** Hubert Lai, Q.C., University Counsel

**EXECUTIVE SUMMARY**

The Department of Athletics and Recreation (the “**Department**”), with the support of Chris Davies, who was the primary donor to the Frank and Casey Smith Football Endowment Fund (the “**Smith Fund**”), and David Negrin, whose gift of \$50,000 was added to the Smith Fund, requests that David Negrin’s gift be transferred from the Smith Fund into a new endowment fund, to honour the Department’s commitment to use David Negrin’s gift to establish an endowment in his family’s name. The Negrin Family Football Endowment Fund will support awards for student athletes on the Thunderbird football team.

**INSTITUTIONAL STRATEGIC PRIORITIES SUPPORTED**

- Learning
  - Research
  - Innovation
  - Engagement (Internal / External)
  - International
- or  Operational

**DESCRIPTION &  
RATIONALE**

**BACKGROUND:**

The Thunderbird Football Association Football Endowment Fund, established in 2007, was recently renamed the Smith Fund in April 2017 to coincide with Frank Smith’s induction into the BC Sports Hall of Fame. Chris Davies is the primary donor to the Smith Fund. As at March 31, 2017, the market value of the Smith Fund is \$437,286.

The Smith Fund supports the Thunderbird football program at the University, including scholarships for student athletes.

David Negrin made a gift of \$50,000 in 2012 in support of football. This contribution was added to the Smith Fund, and is reflected in the above total. However, the University has recently determined that this contribution should have been used to create a separate named endowment fund in honour of the Negrin family, with a purpose of supporting scholarships for student athletes in the football program.

**APPROVAL REQUESTED:**

The Department together with the support of David Negrin and Chris Davies, request that the Board of Governors approve their request to encroach on \$50,000 of the capital of the Smith Fund and to transfer it to create the Negrin Family Football Endowment Fund to honour the University's commitment to recognize the Negrin Family in a named endowment.

The Office of the University Counsel supports this request.

**LEGAL AUTHORITY:**

The Board's authority to encroach upon the capital of the Smith Fund is in section 4(f) of the Terms of Reference for the Smith Fund:

"The University... may, from time to time, encroach on the capital of the Fund if, in the opinion of the University, it is clearly necessary to do so in order to carry out the purpose of the Fund; provided however that the University may only encroach on the capital if that encroachment is recommended by the President to the Board of Governors and is approved by the Board of Governors."

The Board also has authority to encroach upon the capital of an endowment fund to correct an administrative error.

**ADDITIONAL MATERIALS:**

The Terms of Reference for the Smith Fund and the draft Endowment Trust Agreement for the Negrin Fund are attached to this report.

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**THE UNIVERSITY OF BRITISH COLUMBIA**

**FRANK AND CASEY SMITH FOOTBALL  
ENDOWMENT FUND TERMS OF REFERENCE**

Amended and Restated as of April 13, 2017

*(Varies the original Terms of Reference for the Thunderbird Football Association Endowment Fund approved May 22, 2007)*

**1. Name of Fund**

This Endowment Fund will be known as the Frank and Casey Smith Football Endowment Fund (the "Fund").

**2. Purpose of the Fund**

The Fund is established by The University of British Columbia (the "University") as an endowment with the intent that the capital will be held and kept invested in accordance with these Terms of Reference and the income will be used to support Thunderbird varsity football at the University.

**3. Use of Income**

Without restricting the authority of the University to use the income of the Fund in any manner it decides in support of the purpose set out in paragraph 2 of these Terms of Reference, the University may:

- (a) use income as per schedule A;
- (b) use income to pay the expenses associated with the administration of the Fund;
- (c) invest, in accordance with paragraph 4 of these Terms of Reference, any income that is not for the time being used either so that invested income retains the status of income or so that invested income is added to the capital of the Fund in order to preserve the real capital value of the Fund, or both, in whatever combination the University decides.

**4. Use of Capital**

The University will hold the capital of the Fund and:

- (a) may invest and reinvest the Fund in the investments as the University decides and in making those investments the University is not limited to the investments authorized by the *Trustee Act* of British Columbia or any other law relating to trust funds;
- (b) may invest the Fund in any investments both inside and outside Canada as it decides;
- (c) may invest the Fund as part of the University's pooled endowment investments and in any mutual or other pooled investment funds;

- (d) when making investment decisions, the University shall have as its objective the maintenance of the real capital value of the Fund over time and the generation of a sufficient flow of income to fund properly the purpose of the Endowment;
- (e) may accept further contributions, from any other source, whether by gift, Will or otherwise, or may otherwise add to the capital of the Fund, provided that the terms and conditions of any donation or addition to the capital of the Fund conform to these Terms of Reference;
- (f) may, from time to time, encroach on the capital of the Fund if, in the opinion of the University, it is clearly necessary to do so in order to carry out the purposes of the Fund; provided however that the University may only encroach on the capital if that encroachment is recommended by the President to the Board of Governors and is approved by the Board of Governors.

**5. University Policy**

Decisions on the administration, financial and otherwise, of the Fund will be made in accordance with the policies of the University as they may be amended from time to time.


**6. Variation of Terms**

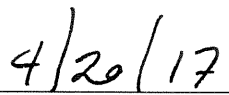
The University may vary these Terms of Reference but only if that variation is recommended by the President to the Board of Governors and is approved by the Board of Governors. For greater certainty, and without limiting the generality of the foregoing, such variation may include a variation of the purpose set out in paragraph 2 of these Terms of Reference.

TO EVIDENCE the terms of the Fund the University has executed these Terms of Reference on the date appearing below.

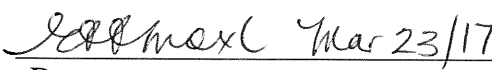
**The University of British Columbia**

by its Authorized Signatory:

  
\_\_\_\_\_  
Santa J. Ono  
President and Vice-Chancellor

  
\_\_\_\_\_  
Date

Approved as to form by the Office of  
the University Counsel

  
\_\_\_\_\_  
Date:

**THE UNIVERSITY OF BRITISH COLUMBIA**  
**FRANK AND CASEY SMITH FOOTBALL**  
**ENDOWMENT FUND TERMS OF REFERENCE**

**Schedule A**

1. Use income to make awards to Thunderbird Football student athletes
2. Use income to fund purchases of equipment for the use of Thunderbird Football student athletes
3. Use income to fund the hiring of assistant football coach(es) for the Thunderbird Football programme at the University
4. Use income to assist with funding of other activities in direct support of the Thunderbird Football programme at the University



**NEGRIN FAMILY FOOTBALL ENDOWMENT  
TRUST AGREEMENT**

**1. Name of Fund**

The gift of **\$50,000** (the “**Gift**”) from David Negrin (the “**Donor**”) will be used to establish the Negrin Family Football Endowment Fund (the “**Fund**”).

**2. The Endowment Pool**

The University of British Columbia (the “**University**”) manages a large number of endowment funds in its Endowment Pool (the “**Endowment Pool**”), of which the Fund will be one. All of the endowment funds that make up the Endowment Pool are governed by the University’s policies, including the Endowment Management Policy and its associated procedures, as amended from time to time (the “**Policies**”).

**3. Purpose of the Fund**

The purpose of the Fund is to support is to support award(s) for student athletes on the Thunderbird football team at the University (the “**Purpose**”).

The University will hold the Fund in trust and will use and manage the Fund in accordance with the Policies to support the Purpose. Without limiting the generality of the foregoing, the University will:

- (a) make an annual allocation based on the spending rate established under the Endowment Management Policy and credit the annual allocation to the Fund’s spending account; and
- (b) use the funds in the spending account to support the Purpose.

**4. Investment of the Fund**

The University may:

- (a) invest and reinvest the Fund in such investments as the University decides and in making those investments the University is not limited to the investments authorized by the *Trustee Act* of British Columbia or any other law relating to trust funds; and
- (b) invest and maintain the Fund as part of the Endowment Pool.

**5. Additional Contributions**

The University may accept or make further contributions to the Fund, from any source, whether by gift, Will or otherwise, provided that any further contributions will be governed by the trust terms established in this Endowment Trust Agreement.

6. **Encroachment on the Fund**

Although very uncommon, circumstances may arise where it is advisable for the University to encroach on the Fund. The University may encroach on the Fund in such circumstances but only if that encroachment is recommended by the President to the Board of Governors and is approved by the Board of Governors.

7. **University Policy**

Decisions, financial and otherwise, on any matters relating to the investment, management, use and administration of the Fund will be made in accordance with the Policies.

8. **Variation of Terms**

If, as a result of the Donor's wishes or other circumstances, the Board of Governors is of the opinion that it would be advisable to vary one or more terms of this Endowment Trust Agreement, keeping in mind the spirit of the original Purpose, the Board of Governors may vary the term[s].

9. **General**

- (a) **Headings.** The use of headings is for convenient reference only and will not affect how this Endowment Trust Agreement is interpreted.
- (b) **Counterparts.** This Endowment Trust Agreement may be signed by original or by facsimile and executed in any number of counterparts, and each counterpart will be considered to be an original. All executed counterparts taken together will constitute one agreement.

- (c) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the matters set out herein and the Donor acknowledges that there are no terms or conditions governing the University's use of the Fund other than as expressly set out in this Agreement.

TO EVIDENCE THEIR AGREEMENT the Donor and the University have executed this Endowment Trust Agreement on the dates appearing below.

SIGNED by the Donor in the presence of: )  
 )  
 )  
 \_\_\_\_\_ )  
 (Signature) )  
 )  
 \_\_\_\_\_ )  
 (Print Name) )  
 )  
 \_\_\_\_\_ )  
 (Address) )  
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 \_\_\_\_\_ )  
 (Occupation) )  
 )  
 \_\_\_\_\_ )  
 Date

\_\_\_\_\_  
 David Negrin

**The University of British Columbia**  
 by its Authorized Signatory:

\_\_\_\_\_  
 Santa J. Ono  
 President and Vice-Chancellor

Date: \_\_\_\_\_

Approved as to form by the Office of the  
 University Counsel:

\_\_\_\_\_  
 Date: \_\_\_\_\_

