



UBC's Endowments - Responsible Investment Analysis

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Introduction and summary



- Endowment Responsible Investment Policy (ERIP) pre-dated Sustainable Future Pool (SFP)
- A legal analysis set the stage for responsible investments for UBC's endowment pools
- ERIP needs to be revised to incorporate ESG, SRP, and the legal analysis

Strategic plan alignment



Goals:

- 1. Lead globally...sustainability
- 10. Lead as a model public institution

Core areas and strategies:

- S18: Alumni Engagement
- S20: Coordinated Engagement

Key terms



- Fiduciary duties: prudence and best interest
- UBC's money vs charitable purpose trust
- Main Endowment Pool (MEP) vs Sustainable Future Pool (SFP)
- Social Responsible Investing (SRI) and Divestment

Discussion and decision points



ERIP needs to be revised to:

- Recognize existence of ESG and SFP
- Ensure fiduciary duty is highlighted as critical first step in analysis of whether any divestment or SRI may be further examined



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UBC's endowments – Main and SFP – Responsible Investment Analysis

**This is condensed from a presentation to
the Canadian Association of University Solicitors in Oct 2016**

This presentation is intended for general informational purposes only and should not be construed or relied upon as legal advice. The legal issues addressed in this presentation are subject to changes in the applicable law. You should always seek legal advice concerning any specific issues affecting you or your business.

Overview

- Definitions
- UBC's Main Endowment Pool v. Sustainable Future Pool (SFP)
- UBC's own money v. charitable purpose trusts
- Fiduciary duties: prudence and best interests
- Legal framework for investing UBC's own money v. charitable purpose trusts
- Best interests analysis for SFP

Environmental Social Governance

“**ESG**” refers to three central factors that are used as part of a financial decision-making process to measure the sustainability and ethical impact of an investment in a company or business: environmental, social and governance.

- The characteristic of this investment style is that it uses a best-in-class approach that includes all industry types, including oil, gas, coal, etc., and favours the selection of companies that have the highest ESG scores to determine the best financial investments
- ESG is the addition of more information into the decision making process to make more informed investment decisions

Social Responsible Investing

“**SRI**” refers to making investment decisions based on social, moral or other values.

- The characteristic of this investment style is the exclusion of a company or industry based on what they do, as opposed to how they compare with other companies when considering investment selection criteria

Divestment

“**Divestment**” means disposing of investment assets which meet particular criteria, which can be financial or non-financial criteria.

- Where divestment is based on non-financial factors, it is a form of socially responsible investing

UBC's endowments

- Two main sources of funds:
 - University's own monies derived from land development, unrestricted donations and other unrestricted sources
 - Charitable purpose trusts derived from donations for restricted specific purposes
- Over 3,500 funds pooled for investment purposes
- Two pools:
 - Main Endowment Pool – ESG
 - Sustainable Future Pool – SRI

Charitable Purpose Trust

Characteristics:

- Purposes must be charitable
- They can last forever: rule against perpetuity does not apply
 - This allows charitable purpose trusts to be endowed: UBC invests the capital and uses the income to support the purpose in perpetuity
- Many other rules – too many to include here

Charitable Purpose Trusts

Examples of trusts for purposes:

- To support a scholarship for students studying clean energy
- To support research in biodiversity
- To support a chair in corporate governance
- To support a student award for leadership in sustainability

Sustainable Future Pool

- Started with \$10 million of University's own *funds* – to add \$15 million over 3 years for total of \$25 million
 - derived from proceeds from land development
 - not trust monies
- Includes financial and non-financial criteria
- *Donors are invited to create funds in the Pool if they approve specific terms related to the investment criteria*

Sustainable Future Pool

- Financial objective
 - to maximize rate of return at appropriate level of risk to provide cash flow and capital appreciation ... and to preserve capital and purchasing power in perpetuity
 - 6.15% Long-term target investment return and 3.5% spending rate (compared to 6.65% and 4% for Main Endowment)
- Non-financial objective
 - to materially lower CO² emissions, including reducing or excluding companies that own fossil fuel reserves

Summary: Fiduciary Duties

- Prudence is the diligent managing of the investments
- Best Interests:
 - ESG, as the addition of more information into the financial decision-making process, is aligned with the best interests of the charitable purpose trust and is permissible (and based on current trends is arguably heading in the direction of being part of prudent management)

Summary: Fiduciary Duties

- Best Interests:
 - Socially responsible investing and divestment based on non-financial criteria are only permissible where:
 - expressly permitted by the terms of the trust, or
 - aligned with the best interests of the beneficiary

Elements of prudent investing:

- Consider the circumstances of the fund, including size, duration and need for access to capital
- take appropriate advice
- hold an even hand between successive beneficiaries (current and future recipients benefiting from charitable purpose)
- diversify trust assets where appropriate
- periodically monitor the trust portfolio in light of market conditions

--*Ermineskin v. The Queen* 2006 FCA 415 in the dissent at ¶234-239

Best Interests: Charitable Purpose Trusts

Trustees have a duty to act in the best interests of the beneficiaries of a trust

Again, because charitable purpose trusts have purposes rather than individuals, UBC refers to this obligation as acting in the best interests of the charitable purposes

Best Interests: University Own Money

University Act (British Columbia) s. 19.1

“The members of the board of a university must act in the best interests of the university”

Cowan v. Scargill

Leading case on trustee's investment responsibilities (UK Chancery Division 1984)

- “in considering what investments to make trustees must put on one side their own personal interests and views”
- “Powers must be exercised fairly and honestly for the purposes for which they are given and not so as to accomplish any ulterior purpose, whether for the benefit of the trustees or otherwise”

Cowan v. Scargill

- “Trustees must do the best they can for the benefit of their beneficiaries, and not merely avoid harming them”
- “Subject to such matters, under a trust for the provision of financial benefits, the paramount duty of the trustees is to provide the greatest financial benefits for the present and future beneficiaries”

Cowan v. Scargill: Application to Charitable Purpose Trusts and University's Money

- Charitable Purpose Trusts:
 - Investment policy: must manage the trust's assets to provide the greatest possible financial benefit to support the charitable purposes
- University's Own Money:
 - Investment policy: must be in the best interests of the University

Summary: Legal Framework

Charitable Purpose Trusts	UBC's Own Money
Trust Law (common law and statute): fiduciary duty of due diligence and act in best interests of object of trust	University Act: prudent person standard for investments and act in best interests of university
Best interests of purposes are financial interests to best carry out the purposes	Best interests of university includes financial and non-financial interests
ESG is permissible, it is the addition of more information into a financial decision to obtain a better financial result	ESG also okay
SRI generally not permissible unless authorized in the trust document, as it is a policy of exclusion based on factors not related to the purpose's interests	SRI only okay if the non-financial criteria used are in best interests of university

Best Interests of UBC: Non-Financial Interests

- Complying with UBC's strategic plan – commitment to and leader in economic sustainability
- Being a living lab – a giant sandbox with freedom to explore
 - lessons may be used to benefit Main Endowment and educate others
- Serving stakeholders – students, faculty and donors – in manner that advances educational mission

Balancing

It's a balancing act, and UBC will:

- Consider both financial and non-financial criteria in the Sustainable Future Pool
- Monitor and report on how both of the Pools are performing
- Regularly review whether the Sustainable Future Pool continues to be in the best interests of UBC