

Fiduciary Responsibilities of Members of the Governing Council

Statutory Framework

Members of the Governing Council execute their responsibilities within a statutory framework established by:

- the University of Toronto Act, 1971, as amended by 1978, chapter 88,
- the Corporations Act (R.S.O. 1990, c.38) and
- the common law.

The *Act* [paragraph 2(3)] summarizes governors' duties as follows:

“Members of the Governing Council shall act with diligence, honestly and with good faith in the interests of the University and University College.”

Governance and Administration

The **essential role of governance** is to provide guidance on the University's long-term strategic directions and to provide **oversight of the University's management** – its role is not to duplicate that of the University's administration.

The **administration** is responsible for the **day-to-day business of the University** and for **implementing policies and strategic directions** adopted by the Council.

General Responsibilities of the Governing Council

Key general responsibilities of the Governing Council include:

- participating in setting – and approving – the University's vision, mission, values and strategic directions.
- providing stewardship and ensuring that University actions support and advance the University's mission and values.
- recruiting, appointing, supporting and evaluating the University's President.
- overall accountability for the performance of the University and monitoring the University's performance against specific measures.
- ensuring the fiscal integrity of the institution.
- approving policies to guide and support the work of the University and monitoring implementation of those policies.

Duties of a Governor

Each governor has two fundamental duties to the University:

- (1) a fiduciary duty, and
- (2) a duty of care.

Fiduciary Duty

Governors:

- owe their fiduciary obligation to the University and
- are required to act honestly and in good faith with a view to the best interests of the University.

“Interests of the University” should not be confused with the specific interests or agendas of constituencies / stakeholders inside or outside of the University.

Components of fiduciary duty include:

- **disclosure and avoidance of conflict of interest** – in general, there will be a conflict of interest when a governor does business directly with the University, is an officer or director of an entity that does business with the University, or has a material interest in an entity that does business with the University. If a governor has any uncertainty about a potential conflict he/she should discuss the matter with the Chair or with the Secretary of the Governing Council.

The Governing Council’s By-law Number 2 (section 27) addresses situations of conflict of interest and specifies steps to be taken. In general, there are three considerations:

- the governor must notify the Chair of the Governing Council of his or her conflict;
- the governor may not take part in discussion or deliberation of the matter before governance; and
- the governor may not vote on the matter.
- **avoiding appropriation of University opportunities** – governors may not take for themselves opportunities which are before the University or deal personally with opportunities in which the University may also be interested.
- **maintaining confidentiality** – governors may not disclose the University’s confidential information to third parties and may not profit from such information personally.
- **disclosure** – a governor has a duty to disclose information that affects a vital aspect of the University’s business.

Duty of Care

A governor is required to exercise the level of skill and diligence that can reasonably be expected from an individual of his or her knowledge and experience. The standard of care varies by individual according to knowledge or experience – that is, greater specialized knowledge or skills means a higher expected standard of care.