

## **Banking, Investments and Borrowing**

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## **Purpose and Application**

The [Ontario Colleges of Applied Arts and Technology Act, 2002](#) establishes colleges as Crown agencies and authorizes the Minister of Training, Colleges and Universities to issue policy directives binding upon colleges.

As colleges are Crown agencies, the Government of Ontario is ultimately responsible and accountable for the management of the colleges' funds and therefore places certain limitations on the management of these funds.

This binding policy directive establishes banking, investment and borrowing requirements for all colleges. College subsidiaries and other college controlled entities are also subject to this directive unless excluded from some or all of the provisions of the directive by written permission of the Minister of Training, Colleges and Universities. Some of the funds the college manages may also be subject to the *Trustee Act*.

Colleges, as Crown agencies, should also be aware of Section 28 of the *Financial Administration Act*, which provides that a ministry (defined to include Crown agencies) shall not enter into any financial arrangement, financial commitment, guarantee, indemnity or other similar transaction that would increase directly or indirectly the indebtedness or contingent liabilities of Ontario without prior written approval of the Minister of Finance.

On June 21, 2007, Treasury Board approved a framework for financing public bodies that are consolidated on the Province of Ontario's financial statements, including colleges, mandating the Ontario Financing Authority ("OFA") to provide long-term financing to public bodies. Upon recommendation of the Minister of Training, Colleges and Universities, and with the approval of the Minister of Finance, the OFA will now lend directly to colleges that require long-term financing. Such financing is subject to the requirement that the borrowing college agree in writing with the OFA that the Minister of Finance is, pursuant to section 23 of the *Capital Investment Plan Act, 1993*, entitled to deduct from money appropriated by the Legislature for payment to the college amounts equal to any amounts that the college fails to pay to the OFA on account of the indebtedness (the "intercept").

In June 2008, the OFA and the Ministry of Training, Colleges and Universities entered into a Memorandum of Understanding setting out their respective roles and responsibilities with respect to college financing arrangements, approvals pursuant to Section 28 of the *Financial Administration Act*, and OFA financing, and the mechanism for invoking the intercept.

The [Banking Investments and Borrowing](#) Operating Procedure sets out procedures to be used by colleges requesting approvals under Section 28 of the *Financial Administration Act* ([Appendix A](#)), and for approval of requests for long-term financing from the OFA.

For further information regarding this binding policy directive click on the Contact link to consult with the appropriate [Ministry contact](#) listed in the Contacts section on the Colleges of Applied Arts and Technology website (<http://caat.edu.gov.on.ca>).

### **Principles**

Boards of governors of colleges of applied arts and technology are responsible and accountable to the Minister of Training, Colleges and Universities and to the public for ensuring that colleges provide high-quality service and excellence in management, and for exercising prudent use of funds.

As public institutions, colleges are held to high standards and are subject to public scrutiny in the safeguarding of funds entrusted to them.

Funds are to be utilized consistent with the purpose for which they were provided.

### **Glossary**

**Bank loan:** a loan made by a bank listed in Schedule I or II to *Bank Act (Canada)*, a branch in Canada of an authorized foreign bank as defined in the *Bank Act (Canada)*, a loan or trust corporation registered under the *Loan and Trust Corporations Act*, or a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* applies and includes a banker's acceptance and excludes a capital lease.

**College annual borrowing plan:** an annual borrowing plan for colleges provided by the Ministry to the OFA which contains information available to the Ministry on each college's borrowing plan for the following fiscal year.

**College funds:** all money belonging to a college, received or collected by a college official or by any person authorized to receive and collect such money, for the purpose of operating the college, including:

- Money contributed in the form of transfer payments from the governments of Ontario and Canada.
- Contributions provided by organizations that have entered into agreements with the college.

- Proceeds from borrowings by the college by means of loan, promissory note or other evidence of indebtedness.
- Revenues generated by investment by the college.
- Proceeds made from the sale of college assets or investments.
- Money generated by college ancillary operations.
- Student tuition fees paid to the college.
- Money generated from all other college operations.

**Externally restricted and endowment funds:** money contributed by a person or entity other than a government of Ontario or Canada to the college under or pursuant to a trust or other agreement which contains restrictions on the use and investment of the money. This would include money and donations for scholarships and bursaries.

**Fundraising:** the obtaining of donations through the acceptance or active solicitation from sources other than the federal or provincial governments in Canada.

**Donations:** cash, gifts in kind and bequests received directly by the college or from fundraising.

**Loan agreement:** a loan agreement entered into between the OFA or another third-party lender, as lender, and a College, as borrower, setting out the terms and conditions of the loan.

**Long-term financing:** borrowing of money on terms that provide that the principal and interest may be fully repaid more than one year but not later than forty years after the date the money is borrowed.

**Minister:** Minister of Training, Colleges and Universities

**Ministry:** Ministry of Training, Colleges and Universities

**Normalized revenue:** the amount of revenue set out in the college's annual business plan for the fiscal year in which the money is borrowed excluding all non-recurrent revenue generated from the sale of property and assets, fundraising campaigns, endowment donations, one-time capital contributions, bank loans and any other item or activity that would not be deemed to be recurring.

**OFA loan:** a loan provided to a college by the OFA.

**Outstanding long-term debt:** the principal amount of and accrued interest on long-term debt owed or guaranteed by the college, the total amount payable under capital leases entered into by the college with a term of more than one year and any other long-term contingent liabilities of the college, but does not include all or a portion of the long-term principal amount of long-term debt of the college or guaranteed by the college for which an equivalent amount has been deposited irrevocably into a sinking or retirement fund for the purposes of repayment of that debt.

**Request:** a request by a college for either (1) a section 28 approval as it relates to a financing arrangement that is not an OFA loan or (2) an OFA loan and the related section 28 approval.

**Section 28 approval:** an approval by the Minister of Finance or his or her delegate pursuant to section 28 of the *Financial Administration Act*.

**Total annual long-term debt service and other payments:** the total amount of principal and interest payable on long-term debt, related financing costs and charges and any other payments in relation to an outstanding debt including payments on operating and capital leases.

**Trustee:** the board of governors of the college for the purposes of this policy.

**Variable interest rate:** a rate of interest payable on the principal amount borrowed, which rate is calculated by reference to the change in value of an index or basis of reference or by another method or standard for determining the changes to interest rates.

### **Binding Policy Directive**

- A. Every college is to safeguard the funds it receives by exercising due diligence to satisfy itself of the financial soundness of the institutions it utilizes for banking and investment purposes.**
- B. In the selection of a financial institution for financial services, other than OFA loans, colleges are to establish a competitive process to acquire banking services, to ensure both high-quality service and fairness in the marketplace.**
- C. The Ministry is to be informed of the account to which transfer payments are to be deposited and provided with sufficient notice when accounts are**

changed to allow for the Ministry to make the appropriate change to the direct deposit system.

- D. The college board of governors is to approve an investment policy to guide its investment activities. The board of governors is to review and approve at least annually an investment performance report that will include a statement signed by the senior financial officer stating that the college is in compliance with relevant legislative requirements in force at the time of the review and with this binding policy directive.
- E. A college may only invest college funds not immediately required to operate the college in the following securities, expressed or made payable in Canadian dollars, subject to the ratings identified in section F:
- I. Bonds, debentures and promissory notes or other evidence of indebtedness, issued or guaranteed by:
    - a. Canada or a province or territory of Canada, or
    - b. an agency of Canada or a province or territory of Canada.
  - II. Bonds, debentures, promissory notes or other evidence of indebtedness, issued or guaranteed by:
    - a. a municipality in Canada;
    - b. a university in Ontario that receives ongoing operating and capital funding from Ontario;
    - c. the board of governors of a college established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*;
    - d. a board of a public hospital within the meaning of the *Public Hospitals Act*;
    - e. a school board in Canada;
    - f. Ontario Infrastructure Projects Corporation; or
    - g. the Municipal Finance Authority of British Columbia.

- III. Bonds, debentures, promissory notes, deposit receipts, deposit notes, certificates of deposit or investment, acceptances, commercial paper or similar instruments, issued, guaranteed or endorsed by:
- a. a bank listed in Schedule I or II or a branch in Canada of an authorized foreign bank under the *Bank Act (Canada)*;
  - b. a loan corporation or trust corporation registered under the *Loan and Trust Corporation Act*; or
  - c. a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
- IV Bonds, debentures, promissory notes or other evidence of indebtedness, issued by a corporation that is incorporated under the laws of Canada or a province of Canada; or
- V. Promissory notes or commercial paper, other than asset-backed securities, issued by a corporation that is incorporated under the laws of Canada or a province of Canada.
- F. A college is not to invest in a security under subsection E.IV or E.V above unless the security has a minimum rating, at the time the investment is made by the college by at least one rating agency of:
- I. "R-1 (high)" or "AAA" by Dominion Bond Rating Service Limited;
  - II. "Prime-1" or "Aaa" by Moody's Investors Services Inc.;
  - III. "A-1+" or "AAA" by Standard and Poor's; or
  - IV. "F1+" or "AAA" by Fitch Ratings.
- G. If an investment falls below the standard required in section F, the college is to sell the investment within 90 days after the day the investment falls below the standard.
- H. If an investment made by a college prior to the effective date of this directive does not comply with this directive, the college is to sell the investment within one year of the effective date of this directive.
- I. Every college may invest externally restricted and endowment funds not immediately required, in investments consistent with the requirements for

all organizations handling funds or property in trust under the *Trustee Act*, as amended from time to time (see [Appendix B](#)). Colleges are responsible for obtaining their own legal advice regarding such investments.

- J. A college may borrow only in Canadian currency.
- K. Every college entering into a loan or other financial obligation that requires Section 28 approval under the *Financial Administration Act*, including colleges entering into a loan agreement, must comply with the procedures set out in the [Banking Investments and Borrowing](#) Operating Procedure (the "Operating Procedure"). Colleges must provide advance notice to the Ministry of their intention to make a Request and provide the Ministry with all pertinent information as set out in the Operating Procedure.
- L. A college is not to enter into interest rate or currency exchange agreements, forward rate agreements, foreign exchange transactions, futures, options or any other type of financial agreements to manage its financial assets, liabilities or risks.
- M. A college making a loan request is to request an OFA loan unless it is able to demonstrate to the satisfaction of the OFA that a loan from another financial institution would provide a lower cost of borrowing.
- N. A college is solely responsible for the financial obligations created by taking out a loan, mortgage or other debt or entering into any investments and financial agreements. A written agreement for a Bank Loan is to expressly provide that the remedies, recourse or rights of the lender or counterparty are limited to the present or future assets of the college and shall further provide that, with the exception of the assets of the college, the lender or counterparty are to have no remedies, recourse or rights to the assets of any other person or entity, including, but not limited to, the Crown in right of Ontario, a Ministry of the Crown, a Minister, agent, agency, servant, employee or representative of the Crown or a director, officer, servant, agent, employee or representative of a Crown agency or a corporation in which the Crown holds a majority share or appoints a majority of the directors or members, all of whom (other than the college) shall have no liability to the lender with respect to the borrower or counterparty.
- O. A college will annually provide the Ministry with an annual borrowing plan which will contain the best information available to the college regarding

its following fiscal year's annual borrowing plan. The process for submitting this plan is set out in the Operating Procedure.

### Summary of Responsibilities

#### Colleges of Applied Arts and Technology

The college is responsible for complying with this Binding Policy Directive including:

- Establishing appropriate banking arrangements.
- Establishing an investment policy and reviewing and approving annually an investment performance report.
- Complying with Section 28 of the *Financial Administration Act* if making any financial arrangement, financial commitment, guarantee, indemnity or similar transaction, including obtaining a Section 28 approval prior to entering into any such transaction.
- Keeping the Ministry informed of banking arrangements for direct deposit systems.
- Submitting information required for the college annual borrowing plan to the Ministry by such date as requested by the Ministry.
- Providing the Ministry with advance notice as soon as possible of its intention to make a Section 28 request and providing the Ministry with all pertinent information as set out in the [Banking Investments and Borrowing](#) Operating Procedure.

## Ministry of Training, Colleges and Universities

The Ministry is responsible for:

- All communication to colleges regarding any additions or revisions to this Binding Policy Directive or the Operating Procedure.
- Coordinating communication between the OFA and the college in regards to a Request.
- Making a recommendation that the Minister recommend approval of Section 28 requests to the Minister of Finance based on the Ministry's review of the information as set out in the Operating Procedure.

**Appendix A: Excerpt from [Financial Administration Act](#):**

**28.** (1) Despite any other Act, a ministry shall not enter into any financial arrangement, financial commitment, guarantee, indemnity or similar transaction that would increase, directly or indirectly, the indebtedness or contingent liabilities of Ontario, or seek the approval of the Lieutenant Governor in Council to enter into any such arrangement, commitment, guarantee, indemnity or transaction, unless,

- (a) the ministry has obtained the written approval of the Minister of Finance; or
- (b) the arrangement, commitment, guarantee, indemnity or transaction belongs to a class that has been approved by the Minister of Finance in writing for the purpose of this section. 1991, c. 55, s. 13; 1994, c. 17, s. 62 (2).

**Liability not binding or enforceable without approval, unless exempted**

(2) A financial arrangement, financial commitment, guarantee, indemnity or similar transaction that a ministry purports to enter into contrary to subsection (1) on or after the date this subsection comes into force is not binding on or enforceable against any ministry, unless the Minister of Finance exempts it in writing from the application of this subsection. 2002, c. 8, Sched. B, s. 11; 2002, c. 22, s. 71.

**Approvals and exemptions may be subject to terms and conditions**

(3) The Minister of Finance may make written approvals under subsection (1) and written exemptions under subsection (2), subject to such terms and conditions as the Minister of Finance considers advisable. 2002, c. 8, Sched. B, s. 11.

**Appendix B: Excerpt from [Trustee Act](#), R.S.O. 1990, c. T.23, Dated June 29, 2001****Investments****Standard of care**

27. (1) In investing trust property, a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments. 1998, c. 18, Sched. B, s. 16 (1).

**Authorized investments**

(2) A trustee may invest trust property in any form of property in which a prudent investor might invest. 1998, c. 18, Sched. B, s. 16 (1).

Mutual, pooled and segregated funds

(3) Any rule of law that prohibits a trustee from delegating powers or duties does not prevent the trustee from investing in mutual funds, pooled funds or segregated funds under variable insurance contracts, and sections 27.1 and 27.2 do not apply to the purchase of such funds. 2001, c. 9, Sched. B, s. 13 (2).

**Common trust funds**

(4) If trust property is held by co-trustees and one of the co-trustees is a trust corporation as defined in the [Loan and Trust Corporations Act](#), any rule of law that prohibits a trustee from delegating powers or duties does not prevent the co-trustees from investing in a common trust fund, as defined in that Act, that is maintained by the trust corporation and sections 27.1 and 27.2 do not apply. 1998, c. 18, Sched. B, s. 16 (1); 2001, c. 9, Sched. B, s. 13 (3).

**Criteria**

(5) A trustee must consider the following criteria in planning the investment of trust property, in addition to any others that are relevant to the circumstances:

1. General economic conditions.
2. The possible effect of inflation or deflation.
3. The expected tax consequences of investment decisions or strategies.

4. The role that each investment or course of action plays within the overall trust portfolio.
5. The expected total return from income and the appreciation of capital.
6. Needs for liquidity, regularity of income and preservation or appreciation of capital.
7. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries. 1998, c. 18, Sched. B, s. 16 (1).

### **Diversification**

(6) A trustee must diversify the investment of trust property to an extent that is appropriate to,

(a) the requirements of the trust; and

(b) general economic and investment market conditions. 1998, c. 18, Sched. B, s. 16 (1).

### **Investment advice**

(7) A trustee may obtain advice in relation to the investment of trust property. 1998, c. 18, Sched. B, s. 16 (1).

### **Reliance on advice**

(8) It is not a breach of trust for a trustee to rely on advice obtained under subsection (7) if a prudent investor would rely on the advice under comparable circumstances. 1998, c. 18, Sched. B, s. 16 (1).

### **Terms of trust**

(9) This section and section 27.1 do not authorize or require a trustee to act in a manner that is inconsistent with the terms of the trust. 2001, c. 9, Sched. B, s. 13 (4).

### **Same**

(10) For the purposes of subsection (9), the constating documents of a corporation that is deemed to be a trustee under subsection 1 (2) of the *Charities Accounting Act* form part of the terms of the trust. 2001, c. 9, Sched. B, s. 13 (4).