

July 31, 2015

Ari N. Kaplan
akaplan@kmlaw.ca

SUMMARY OF THE CLASS SETTLEMENT

Linda Marchuk, Daniel Lang and Cathy MacNaughton
v. The University of Calgary and The Crown
In the Right of the Province of Alberta, et al.
(Alberta Court of Queen's Bench
Action No. 1001-09969)

To: All persons who worked as a "Trust Employee" at the University of Calgary on or prior to December 31, 2008 for any period or lengths of time including on a full-time, part-time, term, occasional, temporary or other basis ("**Class Members**").

**Re: Settlement for Trust Employees at the University of Calgary
for All Pre-2009 Pension and All Other Employment-Related Claims**

Dear Class Member:

I. INTRODUCTION

This letter is for all Class Members who received a Notice of Settlement of Class Proceeding by mail or newspaper notice or online. It provides further details about the settlement, explains the different categories of Trust Employee, describes settlement payments and distribution options available to you, how to opt-out of the settlement, important factors to consider and other information, such as what steps need to be taken and when. There will also be Class Member meetings in Calgary on August 25, 26 and September 29 and 30, to which you are invited.

This letter is organized under the following headings and pages:

I.	INTRODUCTION	1
II.	BACKGROUND	2
III.	LITIGATION.....	3
IV.	SETTLEMENT	3
A.	Group 1 Trust Employees and Group 2 Trust Employees	4
1.	Individual Settlement Amount.....	4
2.	Pre-2007 Settlement Amount.....	5
B.	Group 3 Trust Employees	5
C.	Take-Up Period Deadline.....	5
1.	Group 1 Trust Employees	5
2.	Group 2 Trust Employees	6
3.	Group 3 Trust Employees	7
4.	Dispute Form	7
D.	Opting-Out of the Settlement	8
E.	Settlement Pools, Pro-Rata Reduction and Reversion	8
F.	Release and Discharge	9
V.	CONSIDERATIONS.....	9
VI.	MORE INFORMATION.....	10
VII.	NEXT STEPS	11

II. BACKGROUND

Historically, namely prior to January 1, 2009, certain persons (“**Trust Employees**”) worked at the University of Calgary (the “**University**”) and provided services to other persons (“**Trust Holders**”) who also worked at the University. Trust Employees were engaged by Trust Holders and paid from money granted to the Trust Holders from sources outside the University and not from ordinary University budgets (“**Trust Moneys**”). The University provided administration services for the Trust Moneys on behalf of the Trust Holders.

A dispute existed about whether Trust Employees were employed by the Trust Holder or the University. The Alberta Union of Provincial Employees (the “**AUPE**”) and some Trust Employees took the position that Trust Employees were employees of the University, whereas the University took the position that Trust Employees were the employees of the particular Trust Holder who engaged the Trust Employee.

In 2008, the Alberta Labour Relations Board (the “**ALRB**”) decided that the University was the employer of certain test case Trust Employees for purposes of the *Public Service Employee Relations Act*, RSA 2000, c. P-43 and they were entitled to bargain collectively with the AUPE. As a result, the AUPE and the University entered into a Letter of Understanding (the “**LOU**”) with effect as of January 1, 2009. The LOU resulted in the University issuing offers of employment to Trust Employees who were employed at the University as of January 1, 2009. Some of those Trust Employees accepted offers of employment with the University and became eligible and were enrolled by the University in the Public Service Pension Plan (the “**Pension Plan**”) effective January 1, 2009 and also became eligible for other employment benefits. The AUPE became the certified bargaining agent for those Trust Employees as of January 1, 2009.

Following implementation of the LOU, the AUPE and some Trust Employees felt there were unresolved issues concerning the status of Trust Employees for the period prior to January 1, 2009, including in relation to pension and other employment-related benefits during that period. For example, people alleged that the University should have remitted pension contributions from the Trust Moneys to the Pension Plan and deducted employee pension contributions from their pay, on behalf of the Trust Employees.

III. LITIGATION

On July 7, 2010, three Trust Employees, namely Linda Marchuk, Daniel Lang and Cathy MacNaughton (the “**Plaintiffs**”), started a proposed class proceeding in the Alberta Court of Queen’s Bench. The Plaintiffs named the University, plus a number of government parties including the Pension Plan (the “**Government and Pension Plan**”), as defendants. In 2011, the AUPE also pursued a Court action in relation to these issues and began a “judicial review” proceeding on behalf of Trust Employees.

In 2013, the University, the Government and Pension Plan and the AUPE agreed to engage a mediator to see if a settlement could be reached in the litigation. All parties had legal counsel and professional actuarial support. I attended these discussions. After considerable negotiations, the parties have now reached a formal settlement on all issues relating to Trust Employees’ pre-2009 services at the University and have signed a Settlement Agreement.

On June 4, 2015, the parties appeared before the Court of Queen’s Bench. On that date, the Court approved the Settlement Agreement and, as part of its implementation, ordered the issuance of this notice package for your consideration.

The Court also appointed the three Plaintiffs to be “Representative Plaintiffs” of the Class Members. Koskie Minsky LLP is the law firm acting for the Representative Plaintiffs and as “Class Counsel”.

IV. SETTLEMENT

The terms of the settlement are set out in the Settlement Agreement. The Settlement Agreement is a legal document. You can review it and other documents on Class Counsel’s website: www.kmlaw.ca/UofCalgary. For convenience, a general description of the Settlement

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Agreement is summarized below. *Please note that if there is any conflict between the terms of the Settlement Agreement and this summary, the Settlement Agreement governs.*

The central feature of the Settlement Agreement provides that the University will set aside three pools of settlement funds totalling \$6.5 million in the aggregate from which Trust Employees may claim a settlement share during a three-month period, as explained in more detail below. *Note that all amounts offered pursuant to the settlement are subject to any applicable statutory withholdings or deductions and are also subject to reduction and pro-rata apportionment if the total of all amounts required to be paid by the University from the relevant settlement pool exceeds the total amount of that settlement pool.*

If you are a representative of an estate or beneficiary of a deceased Trust Employee, you are entitled to claim the relevant settlement share for the estate and you should write to the University at trustsettlement@ucalgary.ca for information about how to claim a share of the settlement or you can complete the requisite Form on behalf of the deceased Trust Employee and return it to the University of Calgary, along with any supporting documents that are required, to the following website: <http://trustsettlementuc.ca>.

A. Group 1 Trust Employees and Group 2 Trust Employees

1. Individual Settlement Amount

Group 1 Trust Employees and Group 2 Trust Employees are Trust Employees with a record of service at the University between January 1, 2007 and December 31, 2008 (the “**Settlement Period**”) who would have been eligible to be enrolled in the Pension Plan during this period. They are entitled to receive a cash payment from the University (an “**Individual Settlement Amount**”) for up to two years of employer contributions that would have been made by the University to the Pension Plan, plus interest at the Pension Plan rate,¹ in satisfaction of all Claims (as that term is defined in the Settlement Agreement).

Group 1 Trust Employees, currently employed by the University and participating in the Pension Plan, have an option to receive their Individual Settlement Amount as a pension contribution, in exchange for up to two years of pension service credit in the Pension Plan for their service during the Settlement Period. The Minister of Finance has confirmed that Alberta Pension Services (“**APS**”) is able to administer this option for Group 1 Trust Employees.

Group 2 Trust Employees are not employed at the University or are employed at the University and not currently eligible to participate in the Pension Plan (e.g. because they are in another pension plan). Their Individual Settlement Amount will be paid in cash.

¹ The Individual Settlement Amounts include interest to the Take-Up Period Deadline. The interest rates used for this purpose are 5-year term deposit rates (CANSIM series V122515). These are the rates described in Section 105(2) of the Pension Plan. The annual interest rates being used range from 3.00% (for 2007) to 1.20% (for 2015). Interest is compounded annually assuming that the hypothetical contribution amounts would have been remitted at mid-year. For periods less than a calendar year, simple interest rather than geometric interest is used.

2. Pre-2007 Settlement Amount

In addition to the Individual Settlement Amount, the University will make certain fixed lump sum cash payments (the “**Pre-2007 Settlement Amount**”) to Group 1 and Group 2 Trust Employees in satisfaction of all potential Claims for their service as a Trust Employee at the University prior to January 1, 2007. Group 1 Trust Employees will receive Pre-2007 Settlement Amounts of up to \$1,000 and Group 2 Trust Employees will receive up to \$300.²

B. Group 3 Trust Employees

Group 3 Trust Employees are persons who are not a Group 1 or Group 2 Trust Employee and who have service at the University at any time prior to January 1, 2009.

Group 3 Trust Employees are entitled to claim a fixed payment of up to \$300 in satisfaction of all Claims.

C. Take-Up Period Deadline

There is a three-month period during which Class Members may consider the settlement and decide whether to remain a Class Member and participate in and be bound by the settlement or whether to “opt-out” of the settlement. The three month period starts from the date on the Notice of Settlement of Class Proceeding and ends at 5:00 p.m. Mountain time on **November 4, 2015** (the “**Take-Up Period Deadline**”). This is a cut-off date for processing claims and has been authorized by the Court.

1. Group 1 Trust Employees

Group 1 Trust Employees are automatically entitled to an Individual Settlement Amount and Pre-2007 Settlement Amount. Group 1 Trust Employees do not have to come forward to claim a share of the settlement. If you do nothing and do not send in your Settlement Form, you will automatically receive the above amounts in cash and you will also be bound by the settlement.

However, you are encouraged to submit your Settlement Form to the University in order to elect your payment distribution option for your Individual Settlement Amount. Group 1 Trust Employees have the following distribution options:

- (i) Option 1: receive the Individual Settlement Amount in cash, less applicable statutory withholdings or deductions, with no amount to be contributed to the Pension Plan by either the University or the Group 1 Trust Employee for the purchase of any pensionable service.

² If you are a Group 2 Trust Employee on whose behalf the AUPE has filed a grievance for termination benefits applicable to pre-January 1, 2009 service you are entitled to an additional \$700 termination grievance settlement amount on top of your \$300 Pre-2007 Settlement Amount. You receive this additional payment if you also accept the University’s prior grievance settlement offer.

- (ii) Option 2: direct that the Individual Settlement Amount be contributed to the Pension Plan by the University as the employer portion of the cost to purchase pensionable service for the Settlement Period, and the Group 1 Trust Employee will provide, from your own resources, the corresponding amount of the employee portion required to be contributed to the Pension Plan in respect of that service; or
- (iii) Option 3: direct that the Individual Settlement Amount be contributed to the Pension Plan by the University, as both the employer portion and the employee portion of the cost to purchase pensionable service for as much of the Settlement Period as the Individual Settlement Amount will allow, as confirmed by APS (and provided that the aggregate amount required for the employer portion plus the employee portion cannot exceed the Individual Settlement Amount).

If you do not return a Settlement Form by the Take-Up Period Deadline you will be deemed to have elected Option 1 – the cash payment option.

If you elect Option 2 (contribute the Individual Settlement Amount to the Pension Plan plus your own funds on account of employee contributions) you may pay the employee contribution share to the Pension Plan either in a lump sum or you may finance the amount through payroll deductions over a period up to 18 months. Under the settlement, the Pension Plan is able to confer pension service from these contributions based on the cost of normal annual contributions owing to the Plan, plus interest. ***You are encouraged to seek independent financial and tax advice about your Options. None of the University, the AUPE, the Representative Plaintiffs or the Government and Pension Plan parties are able to give you financial or tax advice about the settlement and you are solely responsible for any financial and tax consequences.***

You may return your Form to the University of Calgary, along with any supporting documents by visiting: <http://trustsettlementuc.ca>.

In addition, the Pension Plan has confirmed that Group 1 Trust Employees may, for periods of service as a Trust Employee prior to the Settlement Period as confirmed by the University, apply directly to the Pension Plan to contribute their own additional funds for additional pension service (strictly at your own cost and outside of this settlement). Note that the pension cost for service from these contributions will be calculated differently than contributions made in conjunction with this settlement. If you are interested in applying for this, please see section 18(a)(viii) of the Settlement Agreement.

2. Group 2 Trust Employees

Group 2 Trust Employees are not automatically entitled to receive a settlement payment. If you are a Group 2 Trust Employee, in order to claim a payment you must return your Settlement Form to the University before the Take-Up Period Deadline by submitting it, along with any supporting documents that are required, to the following website: <http://trustsettlementuc.ca>.

As stated above, Group 2 Trust Employees will receive their Individual Settlement Amount and Pre-2007 Settlement Amount in cash.

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If you do not return your Settlement Form by the Take-Up Period Deadline you will be bound by the Court settlement and will not receive any payment.

3. Group 3 Trust Employees

Group 3 Trust Employees are not automatically entitled to receive a settlement payment. If you are a Group 3 Trust Employee, you must return your Claim Form to the University before the Take-Up Period Deadline in order to claim and receive a payment by submitting it, along with any supporting documents that are required, to the following website: <http://trustsettlementuc.ca>. If you did not receive a Claim Form in the mail, you should contact the University by email (trustsettlement@ucalgary.ca).

If you do not return your Claim Form by the Take-Up Period Deadline you will be bound by the Court settlement and will not receive any payment.

For Group 3 Trust Employees who do not receive a Claim Form in the mail, you will be required to prove your status as a Group 3 Trust Employee by submitting some evidence (e.g., contract documents, T-4 slips, income tax returns or other relevant evidence with employment information) that you worked as a Trust Employee prior to January 1, 2009. The University will have the sole discretion to determine whether your claim will be accepted and there is no appeal or review process to dispute the decision of the University by arbitration or otherwise.

4. Dispute Form

If you are a Group 1 Trust Employee or Group 2 Trust Employee and disagree with your Individual Settlement Amount or the employment or service information in the University records used to calculate it, there is a dispute resolution process available. You will need to complete a Dispute Form with supporting reasons and documentation and submit it to the University (e.g. contract documents, T-4 slips, income tax returns or other relevant evidence with employment information). You may submit your Dispute Form to the University, along with supporting documents that are required, to the following website: <http://trustsettlementuc.ca>.

If you do not complete a Dispute Form and deliver it as required before the Take-Up Period Deadline, you are deemed to accept your Individual Settlement Amount.

If you complete and deliver a Dispute Form by the Take-Up Period Deadline, the University will review your Dispute Form and either (a) accept your information and revise your Individual Settlement Amount accordingly, or (b) submit the dispute to an arbitrator who will choose between the information in your Dispute Form or as shown in the Settlement Form based on the University records. Disputes submitted to an arbitrator will be decided within 30 days from the date of submission.

The arbitrator's fees and charges will be paid, initially, equally by the University and from the settlement pool funds. However, be aware that the arbitrator will be empowered to apportion costs as deemed fit and may direct that charges be borne solely by the University or the Trust Employee. In apportioning costs, the arbitrator may have specific regard to the merits of the

dispute brought by the Trust Employee including considering the requirements of supporting information or other evidence. As such, you should not pursue arbitration for a revised Individual Settlement Amount arbitrarily or without comprehensive supporting information.

Note that there is no dispute process for any other settlement amounts offered to Group 1 and Group 2 Trust Employees or for Group 3 Trust Employees.

D. Opting-Out of the Settlement

In accordance with Alberta law, every Class Member (meaning each Group 1 Trust Employee, Group 2 Trust Employee and Group 3 Trust Employee) has the right to “opt-out” of this settlement. If you opt-out, you will not receive any share of the settlement funds and you will not be bound by the Court order affecting the settlement. Any legal rights you may have vis-à-vis the University and the Government and Pension Plan regarding any legal claims you may have stemming from your status as a Trust Employee will remain (as will all rights and defenses available at law to the University and the Government and Pension Plan).

To opt-out, you will need to obtain an Opt-Out Form, which is available at Class Counsel’s website: kmlaw.ca/UofCalgary. You are required to fill out the form and submit it to Class Counsel by regular post to Koskie Minsky LLP c/o Ari Kaplan at 20 Queen St. W., Suite 900, Toronto, Ontario, M5H 3R3, which must be received by no later than 5:00 p.m. on the Take-Up Period Deadline, which is **November 4, 2015**. If you do not opt-out you will be bound by the Court order and settlement.

Please note: If more than 15% of Group 1 Trust Employees opt out, the University may apply to the Court to set aside the settlement. If this happens, there will be no settlement and no Trust Employee will receive a settlement share. There is also no guarantee that the AUPE will continue to fund the cost of plaintiffs in any further litigation.

In deciding whether to opt-out of the settlement, you are strongly encouraged to obtain independent legal advice. None of the University, the AUPE, the Representative Plaintiffs, Class Counsel or the Government and Pension Plan parties are able to give you advice about opting-out.

E. Settlement Pools, Pro-Rata Reduction and Reversion

The \$6.5 million set aside by the University for this settlement has been allocated into three distinct pools for each of Group 1, 2 and 3 Trust Employees, as follows:

- Group 1 Pool: \$2.2 million
- Group 2 Pool: \$4 million
- Group 3 Pool: \$300,000

As noted above, all amounts to which a Trust Employee may be entitled under the settlement may be reduced pro-rata in the event that the value of all claims made against their settlement pool exceeds the amount allocated to that pool. This applies to all Individual Settlement

Amounts, Pre-2007 Settlement Amounts and Group 3 Claims. It will not be known until after the Take-Up Period Deadline whether any proration will occur and Class Members will be advised of any changes to their settlement payments after this date.

Any settlement funds not claimed by Class Members by the Take-Up Period Deadline, or not otherwise paid out in accordance with the settlement, will revert back to the University.

F. Release and Discharge

The Court has ordered that, upon making the payments contemplated in the settlement, the University and the Government and Pension Plan parties will be released from all liability in connection with any and all Claims asserted by Trust Employees and they will be forever discharged in relation to any and all Claims. All Class Members who do not opt-out of the proceeding will be bound by the Court order approving the settlement and will be deemed to have released the University and the Government and Pension Plan parties from any and all Claims.

V. CONSIDERATIONS

This settlement, approved by the Court, settles legal claims through a compromise. Class Counsel has recommended this settlement. The AUPE and each of the Representative Plaintiffs support this settlement. The Representative Plaintiffs include Trust Employees in Group 1 and Group 2.

This settlement ends five years of Court litigation and resolves a dispute at the University workplace going back many years. The settlement was reached between counsel for all parties, including the University and Government and Pension Plan parties and with arms' length Class Counsel with expertise in pension law and litigation. All parties had professional actuarial support. The settlement provides meaningful consideration to resolve all claims. The two-year Settlement Period was reached taking into consideration the University's and Government and Pension Plan's legal defenses to the Claims, including the two-year statute of limitations on bringing forward claims to the Court, and the limitations of the University records from that period.

With respect to allocation of settlement funds amongst the Trust Employee groups, this was done on the basis that Group 1 and Group 2 Trust Employees have stronger legal claims than Group 3 Trust Employees because they have been determined to have eligible service for the Pension Plan during the Settlement Period. Legal claims for Group 3 Trust Employees are weaker and a fixed \$300 is offered.

The Pre-2007 Settlement Amount is higher for Group 1 Trust Employees than for Group 2 Trust Employees because the former group is still employed at the University and this may affect their Claims.³

As Class Counsel, it is my legal opinion that this settlement is fair and reasonable and takes into account relevant legal considerations respecting a class action settlement. It is a good settlement that balances interests, takes into account litigation risk and costs and avoids the potential for adverse results in Court after an expensive trial. There is no certainty of any particular result. And if successful at trial, there could be years of appeal to follow.

The AUPE has supported the Representative Plaintiffs' legal costs during the past five years. The Claims deal with pre-2009 employment, before the AUPE was the collective bargaining agent. This means that the AUPE is not legally obligated to support the Representative Plaintiffs' litigation costs and has been doing so to date voluntarily. The AUPE cannot guarantee that it will continue to do so in the absence of this settlement.

VI. MORE INFORMATION

Before the Take-Up Period Deadline, the parties will be taking active steps to advertise this settlement. The University will be publishing newspaper notices in the Calgary Herald and the Edmonton Journal for all Class Members.

If you believe that you are a Class Member or an estate or beneficiary of a Class Member and have not received a Settlement Form or Claim Form, or if you wish to make an inquiry in this regard, or if you know someone who may be a Class Member who has not received any information, you or they should contact the University of Calgary by writing to trustsettlement@ucalgary.ca. The University will provide information that will help anyone who writes to them determine if they are a Class Member or an estate or beneficiary of a Class Member and, if they are, about how to claim a share of the settlement.

The AUPE will post a copy of this letter and copies of the newspaper notice on its website (aupe.org) and on bulletin boards in the University workplace.

Class Counsel and the AUPE will also be holding information sessions for Trust Employees and you are invited to attend one of these sessions:

- August 25th from 6:00 p.m. – 8:00 p.m. in ICT 102;
- August 26th from 10:00 a.m. – 12:00 p.m. in ICT 102;
- September 29th from 6:00 p.m. – 8:00 p.m. in the SB 103; and
- September 30, 2015 at 10:00 a.m. – 12:00 p.m. at the Red & White Club.

³ The additional \$700 being offered to Group 2 Trust Employees who have filed a grievance for termination benefits is so that their Pre-2007 Settlement Amount is equivalent to that of a Group 1 Trust Employee's.

Class Counsel will also post copies of this letter, the notices, the Settlement Agreement and relevant Court documents at our website: kmlaw.ca/UofCalgary.

VII. NEXT STEPS

Please keep in mind the following steps to claim your share of the settlement:

- (i) Read this documentation very carefully. Take care to understand the settlement.
- (ii) If you are a Group 1 or Group 2 Trust Employee, review your Settlement Form and Individual Settlement Amount and your service information which was obtained from the University records. Fill out and sign your Settlement Form and make your election among the distribution options (if applicable), and return it to the University, along with any supporting documents that are required, by using the following website: <http://trustsettlementuc.ca>. Note that Group 1 Trust Employees who do nothing will automatically receive the amounts set out in their Settlement Form in cash.
- (iii) If you disagree with your Individual Settlement Amount, fill out a Dispute Form, and submit it to the University along with any supporting documents that are required, by using the following website: <http://trustsettlementuc.ca>.
- (iv) If you are a Group 3 Trust Employee and have a Claim Form, fill it out and return it to the University along with any supporting documents that are required, by using the following website: <http://trustsettlementuc.ca>. If you do not have a Claim Form, write to trustsettlement@ucalgary.ca to request one, and then fill out the Claim Form and return it to the University in the manner described above, along with evidence that you are a Group 3 Trust Employee.
- (v) Alternatively, if you decide to opt-out of the settlement, obtain and fill out the Opt-Out Form and return it to Class Counsel.

You must take these steps before the Take-Up Period Deadline of 5:00 p.m. on November 9, 2015. Failure to do so will affect your legal rights and may result in loss of your share of the settlement, as set out above.

Yours truly,

KOSKIE MINSKY LLP



Ari N. Kaplan
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