



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Toronto Complaints to the *Payment-In-Lieu of Taxes Dispute Advisory Panel* for the CBC Property at 250 Front Street West

Date:	October 23, 2007
To:	Government Management Committee
From:	Treasurer
Wards:	Ward 20 – Trinity Spadina
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions.
Reference Number:	P:\2007\Internal Services\rev\gm07033rev (AFS # 5467)

SUMMARY

This report advises on the status of complaints filed by the City of Toronto with the federal Payment-in-Lieu of Taxes Dispute Advisory Panel, for taxation years 1998 to 2003 inclusive, for the property known as “the CBC” (Canadian Broadcasting Corporation) situated at 250 Front Street West. In addition, the report recommends a strategy for dealing with the Payment-in-Lieu of Taxes (PILs) for the years 2004 to 2007.

RECOMMENDATIONS

The Treasurer recommends that:

1. Council adopt the recommendations contained in Confidential Attachment 1;
2. Council authorize the public release of the confidential information and recommendations in Attachment 1, at the discretion of the City Solicitor, if a settlement is finalized to the satisfaction of the City Solicitor; and,
3. the appropriate City staff be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

Details regarding financial impacts resulting from the recommendations made in this report are disclosed in Confidential Attachment 1.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting held on September 22, 23, 24 and 25, 2003, Council considered a report (August 19, 2003) from the Chief Financial Officer and Treasurer entitled “Canadian Broadcasting Corporation (250 Front Street West, Crown Corporation) - Reduction in Payment-in-Lieu of Taxes” [re: Clause 8 of Policy and Finance Committee Report No. 9]. In its consideration of this report, Council adopted staff’s recommendation that “authority be granted to reduce the payment-in-lieu-of-tax receivable for the property located at 250 Front Street West, by writing-off such receivables in the total amount of \$16,231,490 for the taxation years 1998 to 2003 inclusive, as a result of a reduction in the current value assessment for each of those years”. Additionally, Council directed that:

- 1) “the City of Toronto request, in writing, a review by the Payment-in-Lieu Disputes Advisory Board of the revised assessment of the CBC property”; and
- 2) “the Chief Financial Officer and Treasurer be authorized to retain professional services required to pursue this matter, up to an amount representing five percent of the potential revenue lost by the City”.

To view this report on-line, please follow hyperlink:

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030922/pof9rpt/cl008.pdf>

ISSUE BACKGROUND

Under the provisions of the *Assessment Act*, R.S.O. 1990, c. A.31, as amended, all property in Ontario is liable for assessment with certain exemptions from taxation. Section 3 of the *Assessment Act* outlines the various types of property that are exempt from taxation including property owned by the federal and provincial governments. Various statutes, however, provide for PILs to be made by the federal and provincial governments and some municipal agencies.

Section 125 of *The Constitution Act* states that “No Lands or Property belonging to Canada or any Province shall be liable to taxation”. However, to recognize the valuable service the governments receive from local municipalities, the *Payments in Lieu of Taxes Act, 2000* provides that the Minister of Public Works and Government Services Canada (the “Minister”) may, in his discretion, make a payment to a municipality in lieu of a real property tax for a taxation year.

The *Payments in Lieu of Taxes Act* outlines the method of calculating the PILs amount as being based on an “effective rate” times a “property value”. The Minister may exercise discretion in calculating this amount since both the “effective rate” and the “property values” are based on the “opinion of the Minister”. The *Act* defines the:

(a) “effective rate” as:

“the rate of real property tax or of frontage or area tax that, in the opinion of the Minister, would be applicable to any federal property, if that property were taxable property”, and,

(b) “property value” as:

“the value that, in the opinion of the Minister would be attributable by an assessment authority to federal property, without regard to any mineral rights or any ornamental, decorative or non-functional features thereof, as the basis for computing the amount of any real property tax that would be applicable to that property if it were taxable property”.

As PILs on federal properties are determined in accordance with the *Payments in Lieu of Taxes Act*, the Assessment Review Board (ARB) has, in the past, declined to hear assessment appeals for such properties. Accordingly, the City of Toronto has, in the past, depended on the Municipal Property Assessment Corporation (MPAC) to review and provide reliable assessment values for all property owned by the Federal Government subject to PILs, but without recourse to an appeal to the ARB.

Pursuant to subsection 11.1 of the *Payments in Lieu of Taxes Act*, if a taxing authority is dissatisfied with the PILs received, it can request the Payment in Lieu of Taxes Dispute Advisory Panel (the “Advisory Panel”) to review the property value and/or effective tax rate used to calculate the PILs.

There are recent decisions of the Federal Court of Canada in judicial review applications involving the calculation and payment of PILs for the Montreal Port Authority and a CBC property in Montreal. These decisions suggest that with respect to determinations of questions of law that it (the Federal Court) and not the Advisory Panel, has original and exclusive jurisdiction to interpret the *Payments in Lieu of Taxes Act*. The Montreal Port Authority and the CBC have indicated that these decisions will be appealed to the Federal Court of Appeal.

Besides Montreal, other municipalities are considering the possibility of seeking relief before the Federal Court of Canada, and are waiting for the outcome of the appeals by CBC and the Montreal Port Authority.

COMMENTS

For taxation years 1998 to 2003 inclusive, the original PILs payable for the CBC property were calculated and billed as \$68,453,590 for the years from 1998 to 2003. These PILs were calculated based on the Current Value Assessment, as returned on the assessment rolls for these years. In letters dated May 30, 2003 and June 24, 2003, MPAC advised the City of Toronto that the Current Value Assessment (CVA) attributable to the CBC property at 250 Front Street West for taxation years 1998 to 2003 inclusive were overstated as outlined in Table 1 below.

Given that MPAC acknowledged an error in the CVA of the CBC property and given that the City calculated and billed the CBC for payment-in-lieu of taxes based on the original assessment as returned on the assessment rolls for taxation years 1998 to 2003 inclusive, staff requested authority to adjust the payment-in-lieu of tax account for the CBC to reflect the amended CVA for each respective year. The resulting financial impact to the City was a PILs reduction of \$16,231,490. As the City retains the education portion of taxes for most properties that are subject to PILs, the reduction in the assessment was fully borne by the City.

Table 1, below, summarizes the CVA and PILs for taxation years 1998 to 2003.

Table 1
Analysis of CVA & PIL Amounts for Taxation Years 1998 to 2003
Canadian Broadcasting Corporation, 250 Front Street West

	Current Value Assessment (CVA)			Payment-in-Lieu of Taxes (PILs)				
	Original	Amended by MPAC	CVA Reduction	Original Billing	Less: PIL Adjustment Based on Amended CVA	Revised Billing based on Amended CVA	Amount Paid by CBC	Amt o/s
	(\$)	(\$)		(\$)	(\$)	(\$)	(\$)	(\$)
1998	115,911,735	89,499,575	26,412,160	8,400,711	\$309,745	8,090,966	8,090,966	0
1999	115,911,735	89,499,575	26,412,160	8,597,602	\$735,737	7,861,865	7,861,865	0
2000	115,911,735	89,499,575	26,412,160	8,553,069	\$718,449	7,834,620	7,834,620	0
2001	283,311,625	174,605,425	108,706,200	15,051,737	\$5,775,326	9,276,411	9,276,411	0
2002	283,311,625	174,605,425	108,706,200	15,051,385	\$5,775,191	9,276,194	9,276,194	0
2003	277,655,000	214,374,000	63,281,000	12,799,086	\$2,917,042	9,882,044	9,882,044	0
Total	1,192,013,455	832,083,575	359,929,880	\$68,453,590	\$16,231,490	\$52,222,100	\$52,222,100	0

Although Council approved the write-off of the receivables in the total amount of \$16,231,490 for the taxation years 1998 to 2003 inclusive, Council further directed that the Chief Financial Officer and Treasurer appeal the revised assessments to the Payment in Lieu of Taxes Dispute Advisory Panel. In October 2003, the Chief Financial Officer and Treasurer wrote to the Advisory Panel and requested a hearing. Furthermore, in December 2003, staff issued a Request for Proposal and retained the services of MacKenzie, Ray, Heron & Edwardh (MRHE) to independently determine what the fair

market value should be for the CBC property. To-date a hearing before the Panel has not been scheduled.

Confidential Attachment 1 summarizes the consultant's findings and provides recommendations as to the next steps the City should pursue with respect to the period 1998 to 2003 and the later years being 2004 to 2007.

CONTACT

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SIGNATURE

Cam Weldon
Treasurer

ATTACHMENTS

Confidential Attachment 1: Toronto Complaints to the Payment-In-Lieu of Taxes
Dispute Advisory Panel for the CBC Property at 250 Front Street West