



STAFF REPORT ACTION REQUIRED

Boards of Trustees - Metropolitan Toronto Pension Plan & Metropolitan Toronto Police Benefit Fund

Date:	June 17, 2008
To:	Government Management Committee
From:	Treasurer
Wards:	All
Reference Number:	

SUMMARY

The City is the sponsor of five pension plans that pre-date OMERS, each of which is administered by a Board of Trustees. The membership of all these plans has been closed since 1968 and consists mostly of retirees in receipt of pensions.

This report recommends changes related to the composition of the Board of Trustees of the Metropolitan Toronto Pension Plan and the Board of Trustees of the Metropolitan Toronto Police Benefit Fund, and to quorum, conflicts of interest, abstentions from voting and other administrative issues.

RECOMMENDATION

1. Each of the Metropolitan Toronto Pension Plan (MTPP) and the Metropolitan Toronto Police Benefit Fund (MTPBF) pension plan be modified so that
 - i. at any time that the active members of the plan are required to elect a Trustee to represent them on the Board
 - a) if there are fewer than three such members, no seconder be required for a nomination;
 - b) if there is only a single such member, the member may nominate himself or herself;
 - c) if no timely nomination is submitted, such Board position be filled by election among the pensioners of the plan;

- d) nomination material be circulated to pensioners on a conditional basis in anticipation of the possibility that the active members may fail to make a timely nomination;
 - ii. once there ceases to be any active members in the plan, all vacancies in the position of Trustee formerly elected by such members be filled by election among the pensioners of the plan;
 - iii. the quorum for the Board of Trustees be specified as an actual number — four of its members for the MTPP and five for the MTPBF — rather than as a “majority”, subject to reduction (to no less than three in each case) if any conflicting interest is disclosed;
 - iv. a member of the Board of Trustees in attendance at any meeting thereof having an interest with respect to any matter to be considered thereat conflicting with his or her duties and powers as a Trustee be required to make advance disclosure thereof, refrain from participating in the deliberation/voting with respect to that matter, refrain from attempting to influence such voting and withdraw from the meeting venue during consideration of the matter;
 - v. an absent Trustee with a conflicting interest be required to make disclosure and comply with the other requirements described in foregoing item (iv) at the first subsequent meeting;
 - vi. at any duly constituted meeting at which a Trustee makes disclosure of a conflicting interest the remaining Trustees having no conflict of interest will, if at least two in number, be deemed to constitute a quorum;
 - vii. a Trustee who abstains from voting will be treated as having cast a negative vote.
2. The composition of the MTPBF be modified so as to eliminate, as of December 1, 2010, the two positions occupied by:
- i. the chair of the Toronto Police Services Board, or a member of that Board as their designate;
 - ii. a pensioner member of the plan.
3. The MTPBF pension plan be modified so as to eliminate the Benefit Fund Committee and transfer its responsibilities to the MTPBF Board of Trustees.
4. By-law Numbers 15-92 and 181-81 of the former Municipality of Metropolitan Toronto governing respectively the MTPP and the MTPBF, as amended to date,

be further amended accordingly and authority be granted to introduce the necessary bills in Council.

5. The appropriate City officials be authorized to take the necessary action to give effect to the foregoing recommendations.

FINANCIAL IMPACT

There are no financial implications arising from this report. However, adoption of the recommendations in this report will improve the efficiency of elections to and meetings of the Boards of Trustees of the MTPP and the MTPBF and reduce the associated demands on staff time and City resources.

ISSUE/BACKGROUND

The City of Toronto is the sponsor of five pre-OMERS pension plans. Each of these plans is governed by its own by-law which has been amended from time to time by City Council.

Each of the five funds is administered by a Board of Trustees or Pension Committee — a balanced body with equal representation from the members and the City.

As the memberships of these plans have been closed since 1968, there remain very few active (employed) members and the main focus of each administrator is ensuring proper investment of the plan's assets and payment of the pension benefits called for by the applicable by-law.

A review of the composition of each Board has been conducted by staff including consultations with various stakeholders and discussion of the results have been held with each respective Board of Trustees. Modifications of the composition are necessary to ensure the presence of a quorum at scheduled meetings so that the members of the Boards/Committees can fulfil their responsibilities.

COMMENTS

Metropolitan Toronto Pension Plan (MTPP)

The current composition of the Board of Trustees of the MTPP is as follows:

- (a) one person appointed by the Council who is not a member of the Council and who shall be the Chairman of the Board;
- (b) the mayor of the City, who may designate a member of the Council to act as his or her representative at any meeting of the Board and exercise his or her voting rights;

- (c) two members of the Council appointed by the Council;
- (d) one employee member of the Plan who shall be elected by the employee members of the Plan;
- (e) two members of the Plan elected by the pensioners.

Discussion:

As at December 31, 2007, there were 12 active members, 2,062 retired members and 1,050 survivor pensioners in the MTPP. The active member, the Trustee re-elected by the active members in 2006, retired in 2007, and a vacancy resulted. A by-election was initiated, but no nominations for a successor were received.

The MTPP will very soon have no active members and it is recommended that the composition of its Board of Trustees be modified to allow for the active member Trustee position to be filled by a Trustee elected by the pensioners whenever the active members fail to put forth a nominee when required, and to provide for the circulation of nomination material to pensioners on a conditional basis in anticipation of the possibility that the active members may fail to make a timely nomination.

It is also recommended that if the number of employee members dwindles to less than three, no seconder be required for a nomination, that if there is only a single such member, the member may nominate himself or herself and once there are no longer any employee members in the plan, all vacancies in position of Trustee formerly elected by such members be filled by election among the pensioners of the plan.

The proposed changes to the composition of the MTPP Board are shown below:

MTPP Board of Trustees	
Current Composition	Proposed Composition
a) Chair	a) Chair
b) Mayor (or designate)	b) Mayor (or designate)
c) City Councillors (2)	c) City Councillors (2)
d) Active Member (1)	d) Active Member/Retired Member (1)
e) Retired Members (2)	e) Retired Members (2)

Metropolitan Toronto Police Benefit Fund (MTPBF) Pension Plan

The current composition of the Board of Trustees of the MTPBF is as follows:

- (a) one person appointed by the Council who is neither a member of the plan nor a member of the Council and who shall be the Chair of the Board of Trustees;

- (b) the mayor of the City, who may designate a member of the Council to act as his or her representative at any meeting of the Board and exercise his or her voting rights;
- (c) the chair of the Toronto Police Services Board, who may designate a member of that Board to act as his or her representative at any meeting of the Board of Trustees and exercise his or her voting rights;
- (d) two members of the Council appointed by the Council;
- (e) one officer member of the plan elected by the officer members;
- (f) three persons, each of whom is an officer member of the plan or a pensioner, elected by the pensioners;
- (g) the City Treasurer or Deputy or, if neither is able to attend, the designate of the City Treasurer, who in each case shall be a member of the Board without voting rights.

Discussion:

As is the case with the MTPP, there are very few active members (police officers) in the MTPBF plan. As at December 31, 2007, there were 12 active members, 1,496 retired members and 671 survivor pensioners. The retirement in 2007 of the Trustee re-elected by the officer members in 2006, created a vacancy on the Board. A by-election to fill the open position was initiated earlier this year and after an inadvertent procedural delay a single officer was nominated and acclaimed.

As for the MTPP, it is recommended that the composition of the MTPBF Board of Trustees be modified to allow for the officer-elected Trustee position to be filled by a Trustee elected by the pensioners if the officer members fail to put forth a nominee when required, and to provide for the circulation of nomination material to pensioners on a conditional basis in anticipation of the possibility that the officer members may fail to make a timely nomination.

It is also recommended that if the number of officer members dwindles to less than three, no seconder be required for a nomination, that if there is only a single such member, the officer may nominate himself or herself and once there are no longer any officer members in the plan, all vacancies in position of Trustee formerly elected by such members be filled by election among the pensioners of the plan.

It is also being recommended that the position of the Chair of the Toronto Police Services Board on the Pension Board be eliminated and, to maintain balance, a pensioner representative also be eliminated. It was appropriate when the pension plan was still open to new members to have the Chair of the Toronto Police Services Board on the Pension Board, however the plan has been closed to new members since 1968 and the Board's focus is ensuring the pension assets are appropriately invested.

The proposed changes to the composition of the MTPBF Board are shown below:

MTPBF Board of Trustees	
Current Composition	Proposed Composition
(a) Chair	(a) Chair
(b) Mayor (or designate)	(b) Mayor (or designate)
(c) Chair, Police Svcs Board (or designate)	(c) City Councillors (2)
(d) City Councillors (2)	(d) Officer Member/Retired Member (1)
(e) Officer Member	(e) Retired Members (2)
(f) Retired Members (3)	(f) City Treasurer (or designate)
(g) City Treasurer (or designate)	

Benefit Fund Committee (BFC)

The MTPBF pension plan calls for a Benefit Fund Committee (which acts as a subcommittee of the MTPBF Board of Trustees) to be responsible for the “detailed administration of the plan” and states that its chief function is to authorize the payment of pension benefits in those cases which are clearly within the terms of the by-law. The Committee is to meet if possible at least once a month.

The composition of the Committee whose quorum is a majority, as provided for in the by-law is shown below:

Benefit Fund Committee	
(a)	City Treasurer or Deputy/designate
(b)	City Solicitor or Deputy/designate
(c)	City Councillors (2)
(d)	Officer Members (2)
(e)	Pensioner Representatives (4)

The Committee’s manner of operation differs from what the by-law requires. For some time now, meetings have been held only as required — a clerk from City pension staff will take the list of applicants for new payments to a gathering of the pensioner representatives who approve the payments. Approximately 40 pension and spousal pensions are approved over two or three meetings on an annual basis, and it is inefficient to maintain a separate committee for that purpose.

It is only for the MTPBF plan that such a separate committee exists. It is recommended that, as approved by the MTPBF Board of Trustees at its most recent meeting, the Benefit Fund Committee be dissolved and its duties transferred to the MTPBF Board of Trustees, as was done for the MTPP some decades ago.

COMMON ISSUES

Quorum and Voting:

The quorum for a meeting of either Board of Trustees is stated by both plans to be “a majority of the voting members” with the proviso that one representative of the employee (or officer) members or the pensioners and one representative of Council must be among those present. The City Treasurer or designate must also be present.

On occasion, the question has arisen as to whether the words “majority of its members” have a different meaning when a Board vacancy exists. City Legal Services has always advised that the “members” referred to in that phrase means “member positions” regardless of vacancies. In order to eliminate doubt, it is recommended that the quorum be specified as precisely four Board members, with the same proviso as to representation, but subject to reduction as discussed below under “Conflicts of Interest”.

As well, there have been close votes from which one or more Trustees have abstained and in order to eliminate any dispute as to whether or not the motion has passed in such circumstances, it is recommended that the plans be amended to specify that an abstention is to be treated as a negative vote, as § 27-98B of the City's Municipal Code does for meetings of Council and its committees.

Conflicts of Interest

It has been the practice for an attending member of either Board of Trustees to declare any conflict of interest at a meeting and to refrain from participating with respect to the relevant matter.

Although the disclosure of a conflict of interest by a Trustee and consequent withdrawal from a meeting has never been known to cause a loss of quorum at the MTPP Board with respect to any matter, there has been such a loss of quorum in the past at the MTPBF Board and as well, disagreement over the need for a disclosing Trustee to leave the meeting.

Neither the loss of quorum nor the disagreement would have occurred if the conflict-of-interest regime which the *Municipal Conflict of Interest Act* imposes for meetings of municipal councils, local boards and their committees had been applicable in the circumstances.

That Act does not cover an administrator of a municipal pension plan since the affairs or purposes of such a plan are not those of a municipality, but at its last meeting each Board of Trustees endorsed the desirability of expanding the pension plan to include the basic provisions of the Act.

It is therefore being recommended that the MTPP and MTPBF be amended to require an attending Trustee with a conflict of interest to make advance disclosure, refrain from

participation in deliberations/voting and from attempts to exert influence (in advance or otherwise), and withdraw from the meeting — under the Act withdrawal is required only for closed meetings, but for a pension plan administrator, all meetings are non-public and the distinction is irrelevant. An absent Trustee with a conflict of interest would be required to make disclosure and comply with the other requirements at the first subsequent meeting. At any duly constituted meeting, the remaining Trustees having no conflict of interest would be deemed to constitute a quorum.

It is also being recommended that, although the Act has no corresponding provisions, the pension plans state that an attending Trustee having a conflict of interest be given a reasonable opportunity to comply with the applicable requirements and to be called back in time to participate in all other business.

Frequency of Meetings

Neither of the governing by-laws stipulates how often the Boards must meet, but for many years now the Boards have held 11 meetings per year. This frequency has become unworkable for support staff and has occasionally become an issue in achieving quorum.

Both Boards at their respective meetings held on May 23, 2008, directed staff to reduce the number of regularly scheduled meetings to six per year. Currently, the Civic and Fire Pension Committees each meet regularly five times per year and the York Pension Committee four times.

The City Legal Services Division has been consulted in the preparation of this report.

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SIGNATURE

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