



STAFF REPORT ACTION REQUIRED

Pension Committee - City of York Employee Pension Plan

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| Date: | June 23, 2008 |
| To: | Government Management Committee |
| From: | Treasurer |
| Wards: | All |
| Reference Number: | P:\2008\Internal Services\ppeb\gm08010ppeb (AFS#7866) |

SUMMARY

The City is the sponsor of five pension plans that pre-date OMERS, each of which is administered by a Pension Committee or 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 City of York Employee Pension Plan (York Plan), and to quorum, conflicts of interest, abstentions from voting and other administrative issues.

RECOMMENDATIONS

The Treasurer recommends that:

1. The following modifications be made to the Corporation of the City of York Employee Pension Plan effective January 1, 1998:
 - a) restructuring of the Plan's Pension and Benefit Committee so as to consist of:
 - i. the City Treasurer or designate;
 - ii. two City Councillors appointed by City Council;
 - iii. two representatives elected by the active/retired members of the Plan from among their number;

- b) adjustment of the three member quorum requirement for the Pension and Benefit Committee so that the only condition is the presence of the City Treasurer (or designate);
 - c) specification of four months as the targeted frequency of meetings of the Pension and Benefit Committee;
 - d) elimination of The Investment Committee and the specific investment restrictions imposed on it, and as discussed in Section 15 of By-law 3001999, be eliminated effective January 1, 1998, as the activities outlined in this section are being performed by the expansion of the responsibilities of the Pension and Benefit Committee members to include investment of the Plan's assets in accordance with applicable pension-plan legislation;
 - e) amendment of the power granted to the Pension and Benefit Committee to “make amendments to the Plan” by rewording the description of the power to read “make recommendations for amendments to the Plan”.
2. By-law No. 3349-96 of the former City of York governing respectively the City of York Employee Pension Plan as amended to date be further amended accordingly and authority be granted to introduce the necessary bills in Council.
 3. 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 Pension and Benefit Committee of The Corporation of the City of York Employee Pension Plan 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. In the case of the Corporation of the City of York Employee Pension Plan, the administrator is defined to be the “York Employees’ Pension and Benefit Committee”.

As the membership of these plans have been closed since mid-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 Committee/Board has been conducted by staff including consultations with various stakeholders and discussion of the results have been held with the Pension Committee. Modifications of the composition are necessary to ensure the presence of a quorum at scheduled meetings so that the members of the Committee can fulfil their responsibilities.

The York Plan's provision for control of its assets by a three person "Investment Committee", one of whom is not on its Pension Committee, should be removed as contrary to both the applicable pension-plan legislation and the Plan's administrative practice since amalgamation. As well, the Plan's provision for possible involvement of the Pension Committee in Plan amendments should be clarified to limit same to the sphere of recommendation-making.

COMMENTS

Pension and Benefit Committee

The current composition of the nine member Pension and Benefit Committee of The Corporation of the City of York Employee Pension Plan ("PB Committee") is as follows:

- i. the Clerk (ex officio) or designate;
- ii. the Treasurer (ex officio) or designate;
- iii. the Solicitor (ex officio) or designate;
- iv. two members of Council appointed annually by Council;
- v. three representatives elected annually by the active/retired Members, subject to nomination of at least one by each trade union representing active Members;
- vi. one representative of the retired Members elected annually from among their number.

The quorum requirement is three, but two of those present must be "City" representatives as described in categories (i) to (v) above. The Plan states that "The Committee shall so far as possible hold regular meetings on the last Thursday in each month"

In practice, however, two retired representatives (the last active Member retired in 2006), along with the Treasurer's designate and the two City councillors have been consistently attending all meetings. The PB Committee was advised at its meeting of September 24, 1999, on behalf of both the City Clerk and the City Solicitor, that neither wished to continue to be represented.

Investment Committee

The Plan's governing by-law has, since its most recent re-enactment by the former City of York in 1996, placed responsibility for the Plan's fund and its investments in the hands of an "Investment Committee" consisting of "the Mayor, Solicitor and Treasurer", and notwithstanding that the subsection relating to general investing states that investments

are to be “in accordance with Applicable Pension Laws and Revenue Rules”, the Investment Committee is restricted to making investments “in which the *Canadian and British Insurance Companies Act* (1932) as amended and as such Act may be from time to time amended, states that companies registered under it may invest their funds”.

However, since it came into force at the beginning of 1988, the *Pension Benefits Act* has required in subsection 22(1) that “The *administrator* of a pension plan shall exercise the care, diligence and skill in the administration and *investment* of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person” (emphasis added).

Since amalgamation, no meeting of the “Investment Committee” has been convened and the restriction concerning investments permitted by the insurance legislation has never been implemented — the PB Committee has been seeing to all investment matters in accordance only with the Plan's Statement of Investment Policies and Procedures formulated by the Committee in compliance with the Regulations under Ontario's *Pension Benefits Act*, which (unlike the Regulations under the predecessor law) have never made any reference to the insurance legislation since they were promulgated in 1987.

Plan Amendment and the PB Committee

Paragraph 17.01 of the Plan states unequivocally in one of its sentences that “Any amendment of the Plan shall be made *by the adoption of a bylaw by Council*” (emphasis added). Yet paragraph 19.04 of the governing by-law states that “The Committee is empowered to *make amendments to the Plan* in accordance with paragraph 17.01” (emphasis added).

Discussion:

As at December 31, 2007, there were no active members, 174 retired members and 108 survivor pensioners in the York Plan. This is the smallest pension plan at the City in terms of assets and meetings are generally held two to three times per year.

In view of the well-established practice, it is being recommended that as of the creation of the new City on January 1, 1998, the Plan be retroactively amended to reduce the PB Committee's size to five by dropping the *ex officio* positions of the City Clerk and the City Solicitor and, to maintain employer/employee balance, replacing the four Member-representing positions with two positions filled annually by the active/retired members of the Plan from among their number (there were over eight years following amalgamation during which the Plan had at least one active member). It is proposed that the Treasurer or designate be the only “City” representative required to be among those present to make up the three member quorum, and not either of the two Councillors, and that the targetted frequency of meetings be every four months rather than each month.

The proposed changes to the composition of the York PB Committee are shown below (as is the current practice, the Chair would continue to be selected by the Committee from among its membership).

| Current Composition | Proposed Composition |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> ▪ City Clerk (ex officio) or designate ▪ City Solicitor (ex officio) or designate ▪ City Treasurer (ex officio) or designate ▪ City Councillors (2) ▪ Active Members (3) ▪ Retired Members (1) | <ul style="list-style-type: none"> ▪ City Treasurer (ex officio) or designate ▪ City Councillors (2) ▪ Active/Retired* Members (2) <p style="margin-top: 10px;"><i>*Retired members only after 2006</i></p> |

Investment Committee

Given the questionable legality of the provision in the Plan, the Investment Committee and the fact that since amalgamation neither it nor the investment restriction relating to insurance legislation has ever been operative, it is being recommended that the Investment Committee be eliminated, the insurance-legislation investment restriction be dropped and the Plan be modified to make clear that the responsibility for investing lies with the PB Committee.

City Legal Services staff have been consulted in the preparation of this report.

CONTACT

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SIGNATURE

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