

Proposed Governance Change in respect of the Retirement Compensation Arrangement for certain members of the Metropolitan Toronto Police Benefit Fund

Date: February 15, 2023

To: General Government Committee

From: Controller

Wards: All

SUMMARY

This report recommends amending By-law 18-97 governing the legacy Metropolitan Toronto Police Retirement Compensation Arrangement ("Police RCA") to have the City of Toronto assume the responsibilities of the Board of Trustees of the legacy Metropolitan Toronto Police Benefit Fund ("PBF"), who are also the Trustees of the Police RCA, in relation to the Police RCA, and to discharge the Trustees of the Police RCA from any further responsibilities.

The PBF was rolled into OMERS in 2019 and approval has now been granted by the Financial Services Regulatory Authority of Ontario ("FSRA") to close it. The remaining step is for the City to repeal the PBF By-law.

The Police RCA is unable to be rolled into OMERS. If the proposed changes are not made, the Board of Trustees will be required to remain active solely in order to fulfil their role as Trustees of the Police RCA, and the PBF By-law will not be able to be repealed.

These By-law amendments and resulting governance changes to the Police RCA will allow the Board of Trustees to be disbanded and the related PBF By-law to be repealed.

The Board of Trustees, in their capacity as Trustees of the Police RCA, unanimously approved these proposed governance changes on November 22, 2022.

RECOMMENDATIONS

The Controller recommends that:

1. City Council amend City of Toronto By-Law 18-97, respecting the Police RCA, as follows:
 - a) Provide that all references in the By-Law to “the Board” shall be read as references to the City of Toronto;
 - b) Law 181-81 respecting the PBF is repealed; and
 - c) Discharge the Board of Trustees from all rights, duties, liabilities and obligations in respect of the Police RCA, from and after the Effective Date.

FINANCIAL IMPACT

Should the recommendation be adopted and once the Board of Trustees is disbanded, there is anticipated to be notional savings of \$7,500 per annum for the City, which will be reflected in the future annual operating budget submissions for the Office of the Controller. No member of the Board of Trustees, other than its Chair, is currently receiving any remuneration to serve.

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

DECISION HISTORY

On March 6, 1997, the Municipality of Metropolitan Toronto passed By-law 18-97 to establish the Police RCA. The By-law required the Board of Trustees of the PBF to enter into an agreement with a licensed trust company to administer the RCA created under the By-law.

On February 8, 2011, By-law 180-211 was passed by City Council amending By-law 18-97 to replace all references to Metropolitan Toronto with references to the City of Toronto, and to provide for the City to make payments as a direct payroll obligation if the RCA funds were insufficient to provide the supplementary benefits pursuant to the RCA, to the pensioners.

At its meeting November 26 and 27, 2019, City Council adopted report item GL9.4, authorized the City Solicitor to submit a Bill to repeal By-law 116-2018 as amended, being the By-law governing the Metropolitan Toronto Police Benefit Fund, once the surplus remaining in the Police Plan following its merger with OMERS was distributed. <https://secure.toronto.ca/council/agenda-item.do?item=2019.GL9.4>

COMMENTS

The Metropolitan Toronto Police Benefit Fund ("PBF") provided pension benefits to retired members of the Metropolitan Police Force and the Toronto Police Force, and their spouses and beneficiaries. A retirement compensation arrangement established under City of Toronto By-Law 18-97 ("Police RCA By-Law") provides supplemental benefits to PBF members and their spouses and beneficiaries to the extent their PBF benefits are over the maximum defined benefit prescribed in the *Income Tax Act* ("Police RCA").

The legal administrator of the PBF is the Board of Trustees of the Metropolitan Toronto Police Benefit Fund ("Board of Trustees"). The Board of Trustees also has certain duties and obligations in respect of the administration of the Police RCA. Following the merger of the PBF into the OMERS Primary Pension Plan and the subsequent distribution of the surplus that remained in the PBF, the PBF has been wound up and the related by-law will be repealed. The Police RCA could not be merged into OMERS and will continue in its current form. In light of the wind up of the PBF, the City must make provision for the continued governance of the Police RCA.

The purpose of this report is to recommend a change in governance of the Police RCA. The report recommends amending the Police RCA By-Law, effective as of the Effective Date (defined herein), to (a) discharge the Board of Trustees from all rights, duties, liabilities and obligations in respect of the Police RCA, and (b) appoint the City of Toronto to succeed the Board of Trustees in the performance of its duties under the constating documents.

The Police RCA

The Police RCA was established to provide supplementary benefits to PBF pensioners in excess of the maximum defined benefit prescribed by the Income Tax Act (Canada). Currently, there are 19 members of the PBF that receive supplementary benefits under the Police RCA. The Police RCA By-Law provides that the Police RCA benefits will be funded by: (a) directing to the Police RCA the contributions that should have been paid to the PBF but for the ITA's contribution limits, and (b) insofar as funds in the RCA Trust Fund are insufficient to provide the promised supplementary benefit, the City will pay the benefit as a direct payroll obligation as it becomes due ("Pay As You Go").

Property of the RCA is held in trust by Royal Trust Corporation of Canada ("RBC"), as the custodian/trustee of the RCA and related trust fund ("RCA Trust Fund"). RCA benefits are currently paid from the RCA Trust Fund held by RBC; when RCA Trust Fund assets are depleted, the benefits will be paid by the City pursuant to Pay As You Go.

The Board of Trustees is the "administrator" (as that term is defined in the *Pension Benefits Act* (Ontario)) of the PBF. Pursuant to the Police RCA By-Law, the Board of Trustees also has certain responsibilities in respect of the Police RCA, namely entering into an agreement with a licensed trust company that is custodian/trustee of the Police RCA. The Board of Trustees entered into a trust agreement with Royal Trust Corporation dated June 25, 1997 (the "RCA Trust Agreement"). As a party to the RCA Trust Agreement, the Board of Trustees also has certain rights and responsibilities under the Restructuring of the PBF RCA Pension Committee

RCA Trust Agreement, including the authority to appoint and remove RBC as custodian/trustee of the RCA Trust Fund and to provide instructions to RBC (including investment instructions or, alternatively, to appoint an investment manager to do so). Further, the Board of Trustees has obligations to cause contributions to be made to the RCA Trust Fund, provide RBC with information relating to the entitlement of Police RCA beneficiaries, and indemnify RBC for any losses that may arise as a result of RBC's administration of the Police RCA or by reason of its compliance with an instruction of the Board of Trustees.

The Board of Trustees and its composition are established pursuant to City of Toronto By-Law 181-81, as consolidated by By-Law 116-2018 and amended to the date hereof ("PBF By-Law") which will be repealed. The Board of Trustees is currently comprised of one (1) citizen appointed by Council as Chair; three (3) pension member representatives elected by the Plan members; a City Manager designate, and a Deputy City Manager and Chief Financial Officer designate.

The pensioner representatives, who are advanced in age, are questioning their continued requirement to serve on this Board since there have been very few duties to be performed in light of (i) the transfer of all active members and assets to OMERS, (ii) the closure of the Plan as approved by FSRA, and (iii) the substantial completion of the surplus distribution. Amending the Police RCA By-law to remove the Board of Trustees and appoint the City as successor to the Board will allow for the release of the pensioner representatives from their duties.

The PBF

The PBF was terminated effective November 30, 2019. On January 8, 2020, the assets of the PBF were transferred to the OMERS Primary Pension Plan. After approval by the Financial Services Regulatory Authority of Ontario ("FSRA") and pursuant to a surplus sharing agreement, in 2020, the City distributed surplus to the City and approximately \$15.6M of surplus payments were made to 1,711 eligible PBF members, beneficiaries and estates (as applicable), representing the surplus remaining in the PBF as of the termination date. The City received notice on October 31, 2022 that FSRA had "closed" its file in respect of the PBF, thereby approving the final wind up of the PBF and its related trust fund and allowing for the repeal of the PBF By-law.

The Future of the Police RCA

Due to regulatory issues, the RCA benefit could not be transferred to OMERS. Therefore, notwithstanding the wind up of the PBF, there remain benefits to be administered in respect of Police RCA beneficiaries. The total RCA benefit is approximately \$60,000 per annum. While RBC carries out the day-to-day administration of these benefits and the operation of the RCA Trust Fund, the responsibilities of the Board of Trustees as a party to the RCA Trust Agreement described above must be fulfilled by the Board of Trustees or a successor.

At its meeting of November 30, 2022, the Board of Trustees unanimously voted to approve a motion recommending that the Police RCA By-Law be amended to give effect

to the discharge of the Board of Trustees, and authorizing the assumption of its rights, duties and obligations under the Police RCA and RCA Trust Agreement by the City of Toronto.

The City of Toronto obtained legal advice which concluded that the legal risks associated with the proposed governance change are low. The advice also indicated that the change should be accompanied by an assignment of the Board of Trustees' rights and obligations under the RCA Trust Agreement to the City, as its successor. This assignment (or amendment) under the RCA Trust Agreement should also take effect on or before the Effective Date (i.e., before the Board of Trustees is discharged). Note that the assignment described herein need not be reflected in the amendment enacting the proposed governance change.

Following the change, responsibility for the administration of the Police RCA will be undertaken by staff representing the City Manager, Chief Financial Officer & Treasurer, and Controller, in consultation.

CONTACT

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SIGNATURE

Andrew Flynn
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