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Superintendent of  
Financial  
Services



Surintendant des  
services  
financiers

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**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “PBA”);

**AND IN THE MATTER OF** a Notice of Intended Decision of the Superintendent of Financial Services to Refuse to Make an Order and to Refuse to Decline to Make an Order under section 87 of the PBA relating to the Metropolitan Toronto Pension Plan, Registration Number 0351577.

**TO:**

City of Toronto  
Metro Hall, 26<sup>th</sup> Floor, Stn. 1260  
55 John Street  
Toronto ON M5V 3C6

**Attention:**

Derek Brown  
City Solicitor

**AND TO:**

Board of Trustees for the Metropolitan Toronto Pension Plan  
Metro Hall, 13<sup>th</sup> Floor  
55 John Street  
Toronto ON M5V 3C6

**Attention:**

Michael Beswick  
Chair, Board of Trustee for the Metropolitan Toronto Pension Plan

## NOTICE OF INTENDED DECISION

**I INTEND TO REFUSE TO MAKE AN ORDER** in respect of the Metropolitan Toronto Pension Plan, Registration Number 0351577 (the “Plan”), under sections 87(1), 87(2) and 89(2) of the PBA requiring the payment of specific expenses from the Plan fund.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à : Adjointe, audiences, Greffe, Commission des service financiers de l’Ontario, 5160 rue Yonge, Toronto ON M2N 6L9.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the PBA. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing**

**(Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you.**<sup>1</sup> A copy of that form is included with this Notice of Intended Decision. Additional copies can be obtained by visiting the Tribunal's website at [www.fstontario.ca](http://www.fstontario.ca).

**If a Request for Hearing (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you**, sections 89(8) and 89(9) of the PBA provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the "Superintendent") to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the *PBA* and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

**IF NO WRITTEN REQUEST FOR A HEARING IS MADE within thirty 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will carry out the refusal to make an order pursuant to section 89(7).**

A completed Request for Hearing form must be received by the Tribunal within 30 days of this Notice is served on you. The Request for Hearing form may be mailed, faxed or delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14<sup>th</sup> Floor  
Toronto ON M2N 6L9

Attention: The Registrar  
Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. . Those Rules are available at the website of the Tribunal: [www.fstontario.ca](http://www.fstontario.ca). Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

## **REASONS FOR PROPOSAL**

### **Background Facts**

1. The Plan is a single-employer pension plan covering employees employed by the City of Toronto (the "City"). The Plan is created by a single municipal by-law (the "by-law"). Amendments to the Plan occur through amendments to the by-law. The Plan is administered by the Board of Trustees for the Metropolitan Toronto Pension Plan (the "Trustees").
2. This Intended Refusal to Make an Order arises from a dispute between the City and the Trustees as to the obligation to pay audit expenses for the preparation of financial statements for the pension fund as well as expenses associated with the printing and mailing of election material for an open position with the Trustees in 2009. The City and the Trustees disagree with respect to whether these amounts are to be paid by the Plan fund.
3. On May 6, 2013, the City requested that the Superintendent issue orders pursuant to section 87 of the PBA to require the Trustees to take the following actions:

- a. Reimburse the City for amounts paid with respect to the audit of 2009 pension fund financial statements from the fund; and to
  - b. Reimburse the City for amounts paid with respect to an election run by the City in 2009 to fill a Trustee vacancy.
4. The City has also requested that the Superintendent refuse to issue an order requiring the City to reimburse an amount paid from the pension fund to cover auditing fees associated with the 2008 pension fund financial statements. The Superintendent notes that the Trustees have not requested such an order, and as such, has determined that there is no basis for such an order or a refusal to make an order.
5. Section 8 of the Plan text describes the expense that may be paid from the Plan fund, and the expenses to be paid by the City, as stated:

#### ADMINISTRATIVE SERVICES AND COSTS

8. (1) Subject to subsections (2) and (3), the Metropolitan Treasurer shall, through the facilities of the Metropolitan Treasury Department, provide all administrative staff and services required for the efficient operation of the Plan.

(2) The Metropolitan Clerk shall, through the facilities of the Metropolitan Clerk's Department, record the proceedings of the Board of Trustees and execute such secretarial instructions as may be received from the Board of Trustees.

(3) The Metropolitan Treasurer and the Metropolitan Auditor shall be the Treasurer and the Auditor respectively of the fund and they shall report annually to the Board of Trustees and the Metropolitan Corporation.

(4) Subject to the approval of the Board of Trustees, the following costs of administering the Plan shall be paid from the fund:

(a) fees payable to the actuary, medical practitioners, custodians and advisers retained by the Board of Trustees;

(b) direct costs arising out of the administration of the fund; and

(c) expenses actually incurred by a Trustee in the capacity as such, provided that

(i) the expenses shall be in accordance with the by-law of the Council respecting the expenses of its members; and

(ii) the expenses of the mayor of the City and any Trustee who is a member of the Council shall not be paid from the fund.

(5) The employers shall pay all costs in connection with the Plan not provided for in subsection (4), including the remuneration of the chairman of the Board of Trustees and the costs associated with subsections (1) to (3).

6. Section 22.1(1) of the PBA provides for the payment of reasonable fees and expenses relating to the administration of the pension plan and the administration and investment of the pension fund. Section 22.1(5) further provides that such payment of expenses with respect to the administration of a pension plan shall not be paid to an employer if prohibited or otherwise provided for under the terms of the Plan text. As stated:

22.1 (1) The administrator of a pension plan is entitled to be paid from the pension fund the administrator's reasonable fees and expenses relating to the administration of the pension plan and the administration and investment of the pension fund.

...

(5) However, the administrator is not permitted to pay from the pension fund to an agent, employer or other person described in subsection (4) the fees and expenses relating to the administration of the pension plan or the administration and investment of the pension fund,

(a) if payment to the agent, employer or other person is prohibited, or payment of the fees and expenses is otherwise provided for, under the documents that create and support the pension plan or the pension fund; or

(b) if payment to the agent, employer or other person is prohibited, or payment of those fees and expenses is otherwise provided for, under the Act or regulations.

7. Section 87 of the PBA provides the Superintendent with the broad authority to rectify a breach of the PBA or Plan terms through the issuance of an order. There are no time limits applicable to an order under section 87 of the PBA.

### **2008 and 2009 Auditor Expenses**

8. For the Plan years to 2007, the City acted as the auditor of the Plan. Due to changes to the City's municipal by-laws that require external auditors perform audit functions for the City, the City paid a third party auditor to audit the Plan for the 2007 to the 2009 Plan years. The Trustees reimbursed the City in 2008 for the audit expenses. The Trustees refused to reimburse the City for audit expenses in 2009.

9. The City asserts that the audit expenses for the years 2008 and 2009 should be paid from the Plan fund. The basis for the City's argument is that audit expenses should be viewed as direct costs arising out of the administration of the fund as set out in subsection 8(4)(b) of the Plan text.

10. The Board of Trustee's position is that the Plan provisions do not support the payment of expenses from the Plan fund.

11. The Superintendent has reviewed the Plan terms and is of the view that audit expenses are not specifically included within section 8(4). Further, section 8(3) of the Plan text requires the City to provide audit services, and section 8(5) of the Plan text requires the City to pay for such services. Moreover, by operation of the first sentence in section 8(4), the Trustees have the discretion to determine whether the payment of such expenses is appropriately within the scope of section 8(4).

12. It is the Superintendent's view that the Trustees acted within the scope of their authority to make the determination that the costs associated with the preparation of audited financial statements do not fall within the scope of expenses to be paid from the fund as described in section 8(4) of the Plan text. This decision-making authority is also described in section 4(6) of the Plan that provides the Board with the broad power to decide matters with respect to the Plan including "all matters in regard to the meaning or application of this by-law."

13. The Superintendent has determined that the Trustees have not violated the PBA nor the Plan provisions by withholding payment for the 2009 audit expenses. As such, it is the Superintendent's view that the Trustees' decision to not reimburse the City for the 2009 audit expenses does not constitute a breach of the Plan or the PBA.

### **Board Member Election Expenses**

14. The Superintendent's view is that the Trustees' failure to remit the 2009 election expenses to the City does not constitute a breach of the Plan or the PBA.

15. As described above, the Trustees have the discretion to approve the payment of expenses from the Plan fund as provided for in sections 8(4) and 4(6) of the Plan text. As such, the Trustees have discretion to approve (or not approve) the 2009 election expenses. Given that the Plan text and existing case law are silent as to whether election expenses amount to direct costs arising out of the administration of a fund, the Superintendent is of the view that the Trustees appropriately exercised their discretion in deciding that the election expenses did not amount to direct costs arising out of the administration of the fund.

16. As such, payment of the 2009 election expenses does not constitute a breach of the Plan or the PBA.

### **Conclusion**

17. The Superintendent has reviewed the request by the City regarding reimbursement for the 2009 audit expenses and 2009 election expenses, and has determined that the refusal by the Trustees to remit payment for the 2009 audit expenses and 2009 election expenses does not amount to a contravention of the Plan or the PBA. As such, the Superintendent intends to refuse to make an order under sections 87(1), 87(2), and 89(2) of the PBA.

18. Such further and other reasons as the Superintendent may advise.

**DATED** at Toronto, Ontario, this 22nd day of December, 2017.

*Original Signed By*

Lester J. Wong  
Deputy Superintendent, Pensions  
By Delegated Authority from the  
Superintendent of Financial Services

1NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.

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