

PENSION SURPLUS GROUP
TORONTO DISTRICT SCHOOL BOARD BUSINESS
AND SUPPORT EMPLOYEES PAID-UP PENSION PLAN

May 15, 2009

Dear Fellow Pension Plan Member,

Like you, we are members of the Toronto District School Board Business and Support Employees Paid-Up Pension Plan, FSCO Registration #0369785 (the "Plan"). In 2005, we consulted with lawyers at Koskie Minsky LLP about the Plan members' rights with respect to the surplus in our Plan as of December 31, 2004. We organized a Pension Surplus Group to pursue the distribution of surplus to members and invited you to join. Many of you did join and attended an information meeting that we held in North York on February 25, 2005.

Since then, we have represented the interests of the Pension Surplus Group, and all Plan members, in surplus negotiations with the Toronto District School Board (the "School Board"). **We are pleased to inform you that we have successfully negotiated a proposed deal with the School Board that will allow pension surplus to be distributed to Plan members (or their beneficiaries or estates, if applicable).** However, this proposed surplus deal (the "Proposal") is conditional on a number of things, including obtaining support from the majority of Plan members.

This information package includes:

- A report from us (your Plan member representatives) and our lawyers that explains the proposed surplus deal in detail;
- A form from the Plan administrator that contains an estimate of the amount of surplus you will receive under the Proposal based on an estimated surplus of \$4 million as of January 31, 2009;
- An Authorization and Retainer Form which allows you to vote "YES" or "NO" to the Proposal, along with a prepaid return envelope.

Please read the enclosed information carefully and return the blue Authorization and Retainer form to our lawyers at Koskie Minsky LLP in the prepaid envelope provided, by July 3, 2009. We strongly recommend this surplus deal to all of you and hope that you will vote "YES".

Please understand that the Proposal, if implemented, will in no way diminish your pension benefits which are completely safe and secured by pension assets held in trust. This Proposal is about providing Plan members with additional money.

If you have any questions regarding the proposal, please contact us or our lawyers at Koskie Minsky LLP, at the numbers provided in this package.

Yours truly,

Audrey Field, Doug Kelman and Alexander Thomson

Plan Member Representatives of the Pension Surplus Group

Pension Surplus Group

Toronto District School Board Business and Support Employees Paid-Up Pension Plan (the "Plan")

PENSION SURPLUS GROUP REPORT

This is a report from the Member Representatives of the Pension Surplus Group regarding discussions with representatives of the Toronto District School Board (the "School Board") about sharing surplus assets in the Plan.

We are pleased to announce that we have negotiated a proposed deal with the School Board that is conditional on a number of things, including obtaining sufficient support from eligible Plan members, spouses and beneficiaries (we will refer to this deal as the "Proposal").

We support the Proposal and recommend that you consent to it. Please read this report carefully, as you will be asked to vote on the Proposal by returning the enclosed Authorization and Retainer Form to Koskie Minsky LLP by July 3, 2009 in the enclosed self-addressed stamped envelope. The Authorization and Retainer Form will authorize our lawyers to act on your behalf regarding the implementation of the Proposal. This will include executing the surplus sharing agreement on your behalf.

The Proposal is conditional and may not proceed unless it is supported by a significant majority of eligible members (at least two thirds or 66.6%). Another condition of implementation is that the required court and government pension regulatory approvals be obtained.

Once we have received sufficient support from the eligible members, we will proceed with the necessary legal steps to implement the Proposal. While we cannot predict how long this process will take, we will make every effort to obtain the necessary approvals in as short a period of time as possible. Due to the complex nature of the process however, the surplus distribution, if approved, will not be made until 2010.

A. BACKGROUND

1. History of the Plan

The Paid-Up Pension Plan for Non-Teaching Employees of the Board of Education for the City of North York, which is now called the Toronto District School Board Business and Support Employees Paid-up Pension Plan (the "Plan"), was established in 1960. The Plan accepted new members for approximately five years.

In 1965 the *Ontario Municipality Employees Retirement System Act* ("OMERS") was enacted by the Legislature. The Plan stopped accepting new members at this time and all new members were required to join OMERS instead. Active members of the Plan

were given the option of moving over to OMERS and by August 30, 1971, all active employees had elected to do so.

The Plan has continued to be administered to the present day by the School Board and the Royal Trust Company, but it only provides pension benefits with respect to service prior to August 30, 1971. Since 1976, members have not been required to contribute to the Plan, nor have they been permitted to make voluntary contributions to the Plan's fund.

The Plan has not accepted new members since 1965 and there are no longer any active members accruing further benefits. The Plan currently covers just over 400 pensioners and survivors. According to the most recently filed actuarial valuation report, the Plan's trust fund held approximately \$5.4 million of surplus assets as at December 31, 2006. However, in light of economic conditions since December 31, 2006, this surplus has decreased and is estimated to be approximately \$4 million as of January 31, 2009. This means that after taking into account the money that will be required to pay all pension benefits that have accrued under the Plan, there remains an excess of funds.

2. Accessing the Plan's Surplus

When we first approached our legal counsel at Koskie Minsky LLP, our objective was to determine whether the surplus in the Plan could be paid to the members of the Plan.

Our lawyers reviewed the historical plan documents to determine whether the surplus in the Plan belongs to the members and their beneficiaries, or to the School Board. Based on the legal advice they provided to us, we believe the members of the Plan and their beneficiaries would be entitled to full ownership of the Plan's surplus funds if the Plan were to be terminated or "wound-up". However, the School Board does not agree that the Plan members own the surplus. The School Board takes the position that it would likely be entitled to the Plan's surplus if it were to be wound up.

It is difficult for the Plan members to obtain a surplus payout for the following reasons:

1. While the Plan is ongoing, the School Board is permitted to keep the Plan's surplus in the trust fund;
2. The School Board is not obligated to pay any surplus to the Plan members while the Plan is ongoing; and
3. The School Board is not obligated to wind-up the Plan at this time.

One option for accessing surplus that we explored with our lawyers, was to go to court and to the pension regulator, the Financial Services Commission of Ontario (FSCO), to attempt to force the School Board to wind-up the Plan and distribute the Plan's surplus to the Plan members, or their beneficiaries or estates, where applicable.

We concluded that any litigation to force the School Board to wind up the Plan would likely be met with resistance. In addition, even if the members were successful in

forcing a Plan wind-up, there is no guarantee the members would be successful in establishing their entitlement to the surplus. Although we believe the members own the surplus, a court could find the School Board is entitled to receive the Plan's surplus on wind-up. Regardless of the result achieved, this route would involve lengthy, complex and expensive litigation.

Because of these risks, our legal counsel concluded, and we agreed, the surest and quickest route for Plan members to receive a payout of surplus from the Plan would be to negotiate a deal with the School Board. Pursuant to a surplus deal, the School Board would agree to wind up the Plan to allow the surplus to be distributed, and the School Board and Plan members would share the surplus.

Surplus sharing deals of this sort are quite common in the pension industry and our lawyers have represented pension plan members in many surplus deals. In fact, companies and employees are encouraged by Ontario's *Pension Benefits Act*, to negotiate surplus sharing deals instead of engaging in lengthy and expensive litigation over legal entitlement. Pursuant to the pension legislation, no surplus can be paid out of a pension plan unless the company and at least two thirds of the pension plan beneficiaries consent to the method of distribution. Even if a court confirms that a group of employees or a company is legally entitled to the surplus in a pension plan, two thirds of the plan members and beneficiaries must still consent to the distribution. As such, many employee groups and companies have opted to proceed straight to negotiating an agreement about the distribution to avoid costly litigation.

3. Negotiations with the School Board

Our lawyers approached the School Board at the end of February 2005. We took the position that since there are no longer any active members participating in the Plan, it would be in everyone's best interests for the School Board to wind-up the Plan, arrange for the purchase of annuities to continue the payment of pensions, and distribute the surplus funds to the members and the School Board.

Negotiations with the School Board have been ongoing since that time. We have also hired an independent actuary to provide us with advice and ensure the Proposal we have reached is fair and workable.

B. SUMMARY OF THE PROPOSAL

Under the Proposal, the Plan will be wound up and annuities will be purchased to cover all pensions. **The pensions you have earned under the Plan are completely safe and you will continue to be entitled to those pension benefits.** If the Proposal is implemented the only change in relation to your pension benefits is that you will receive those same payments from an insurance company instead of the current trust company for the Plan.

The surplus assets (ie. the money that is left in the Plan after the pensions are fully covered) will be used first to pay for the administrative costs of winding up the Plan.

The remaining surplus will be divided equally between the School Board and the eligible Plan members, or beneficiaries or estates where applicable. In other words, after paying for the cost of the wind-up, 50% of the surplus will be allocated to the School Board and 50% of the surplus will be allocated to the Plan members, or their beneficiaries where applicable, as a group.

Before any surplus distributions are made to individuals, the members' share of surplus will be used to pay for all legal, actuarial and court fees that were incurred on the Plan members' behalf while negotiating and implementing the Proposal. The remaining surplus assets allocated to the Plan members will be distributed to the eligible members, beneficiaries and estates. At no time will you be asked to pay any fees personally. All costs associated with the Proposal will be covered by the Plan's surplus.

C. DETAILS OF THE PROPOSAL

1. Surplus Sharing Group

The "Surplus Sharing Group" means the persons, other than the School Board, who are entitled to share surplus pursuant to the Proposal.

The Surplus Sharing Group includes all members and former members of the Plan and any other person entitled to receive benefits from the Plan on December 31, 2004.

December 31, 2004 is an important date for determining who is included in the Surplus Sharing Group. This date was chosen because it is the date we first decided to retain legal counsel and initiate surplus sharing discussions. We have insisted that all people who would have been eligible to receive surplus then, should continue to be eligible even though the negotiations were only concluded recently.

2. Plan Wind Up

As noted above, under the Proposal, the Plan will be wound up and annuities will be purchased to cover all pensions. Unless the Plan is wound up, it is not possible to distribute the entire surplus in the Plan. Certain administrative fees and expenses will be incurred to wind up the Plan and these costs will be paid from the Plan's assets "off the top" or, in other words, before the Plan's surplus is shared between the School Board and Surplus Sharing Group.

3. Division of Surplus

The surplus assets that will be divided and distributed to the School Board and Surplus Sharing Group are the assets that remain in the Plan after the payment of all basic pension benefits and the expenses associated with the wind up of the Plan. The surplus will be divided as follows:

- 50% to the Surplus Sharing Group; and

- 50% to the School Board

The Surplus Sharing Group and the School Board will each pay their own surplus sharing expenses out of their share of the surplus. These are the legal and actuarial fees and disbursements that are associated with the negotiation and court approval of this Proposal, and obtaining the approval of the pension regulator for the proposed distribution.

The Surplus Sharing Group's expenses will be taken out of the members' 50% share of the surplus, and then the remaining surplus will be distributed to the individual members (or their beneficiaries, or estates where applicable).

4. No direct costs to be borne by Plan members

To be clear, there will be no obligation on you to directly pay any of the legal or other expenses that we incur during this process. As your member representatives, we have entered into a contingency retainer agreement with our lawyers, Koksie Minsky LLP, and the Proposal provides that all Sharing Group expenses of negotiating and implementing the Proposal will be paid from the Surplus Sharing Group's share of the surplus prior to distribution.

5. Individual allocations for members of the Surplus Sharing Group

Each member of the Surplus Sharing Group will receive a pro rata share of the Surplus Sharing Group's portion of the surplus, based on the actuarial value of each member's pension entitlement under the Plan as at December 31, 2004. These calculations will be made by the Plan actuary and reviewed by our actuary.

We have decided to build into these calculations a minimum distribution for Plan members. As such, under this Proposal, all members (or their beneficiaries or estates where applicable), are guaranteed to receive at least \$2,000.

6. Payment

Surplus Sharing Group members will receive their share as a cash payment, less applicable withholding taxes.

D. THE COMMITTEE UNANIMOUSLY RECOMMENDS THE PROPOSAL

We recommend the Proposal to the Surplus Sharing Group. As indicated above, absent the Proposal there is no reason to believe the School Board will wind up the Plan in the near future. While the Plan is ongoing the surplus cannot be accessed unilaterally either by the members or by the School Board. Furthermore, the question of who owns the surplus is a complicated issue. The only way to avoid lengthy and expensive litigation over this issue and to guarantee that all eligible members will receive a share of the Plan's surplus is to reach an agreement with the School Board.

The Member Representatives have had the benefit of legal counsel and independent actuarial advice throughout the discussions with the School Board. Our lawyers and our actuary recommend this Proposal. We believe that, under the circumstances, the Proposal is reasonable, fair and is the best possible deal for all eligible members and former members of the Plan. We do not believe that further negotiations would have led to a better deal.

We unanimously recommend that you consent to the Proposal by checking the "YES" box on the blue Authorization and Retainer Form that is included with this package, signing the form and returning it to Koskie Minsky LLP in the enclosed envelope. Your signature must be witnessed by an adult. This can be a friend or family member.

Every vote counts. We must obtain the consent of at least two thirds or 66.66% of the eligible members in order to proceed.

If this Proposal proceeds, due to all the required steps involved (including attending court and regulatory proceedings), no Surplus will be distributed before 2010.

E. FURTHER INFORMATION

If you have any questions, you can contact any Member Representative, or our lawyers at Koskie Minsky LLP at their toll-free number which is **1-866-778-7986**. You may also email Koskie Minsky LLP tdsbpension@kmlaw.ca or you may visit their website to obtain updates and information from time to time. Go to www.kmlaw.ca, click on the "pension surplus" link, and then the Toronto District School Board link.

We will also be hosting a member meeting with our lawyers on **June 16, 2009 at 10:30 a.m.** at the following location:

North York Memorial Community Hall
5110 Yonge Street,
Burgundy Room
(under the North York Library, just steps
away from North York Civic Centre and
North York Centre subway station on the Yonge line)

We thank you all for your anticipated support. If you have any further questions, please do not hesitate to contact any of us below, and we look forward to seeing you on June 16, 2009:

Audrey Field (416) 444-8080

Douglas Kelman (905) 853-6470

Alex Thomson (416) 225-4404