



## Regina Civic Employees Long Term Disability Plan Review

<b>Date</b>	November 30, 2022
<b>To</b>	Executive Committee
<b>From</b>	City Solicitor's Office
<b>Service Area</b>	Office of the City Solicitor
<b>Item No.</b>	EX22-128

### RECOMMENDATION

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The Executive Committee recommends that City Council:

1. Approve the amendments to Bylaw 9566, being *The Regina Civic Employees' Long Term Disability Plan 1992 Bylaw*, as outlined in Appendix A to this Report subject to the following conditions:
  - (a) that the Civic Pension and Benefits Committee consent to these amendments in writing prior to Council passing changes to Bylaw 9566;
  - (b) that the actuary for the LTD Plan provides a report on the changes prior to Council passing changes to Bylaw 9566; and
  - (c) that the other employers in the Plan (Saskatchewan Health Authority, Regina Board of Education (non-teaching staff), Regina Public Library, Buffalo Pound Water Treatment Corporation and Mobius Benefit Administrators Inc.) provide their consent in writing to the changes prior to Council passing changes to Bylaw 9566.
2. Instruct the City Solicitor to bring forward the Bylaw changes outlined in recommendation 1 once the City has received the report from the actuary and the consent of the Civic Pension and Benefits Committee and the other employers in the Plan.
3. Instruct the Administration to report back by Q4 of 2023 as to the progress the parties have made on negotiating governance changes to the LTD Plan.

4. Approve these recommendations at its December 7, 2022 meeting.

## ISSUE

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On behalf of the Administrative Board, Möbius Benefit Administrators Inc. (“Möbius”), the administrator of the *Regina Civic Employees Long Term Disability Plan* (“LTD Plan”), conducted a review of the LTD Plan’s governance structure. The reasons for this review were as follows:

- the LTD Plan as structured in Bylaw 9566 might not align with recently enacted changes to the *Income Tax Act* (“ITA”) which must be complied with in order to maintain the LTD Plan’s favorable tax status; and
- the governance structure of the LTD Plan is out of date, and there is a desire by the parties to make that structure substantially similar to that of the *Regina Civic Employees’ Superannuation & Benefit Plan* (“Pension Plan”).

Despite the discussions that occurred over the past year between Möbius, the employers in the Plan and the Civic Pension and Benefits Committee (the group that represents employees in the Plan), there are still areas of disagreement between the parties as to the governance of the LTD Plan, so governance changes cannot be recommended at this time.

The parties commit to continue to meet over 2023 with a view to bringing forward governance changes in the future. The City Administration will report back to Council by Q4 of 2023 as to the status of these negotiations.

Although governance changes could not be agreed upon at this time, the City is recommending that compliance changes to Bylaw 9566 be made to ensure that the LTD Plan continues to qualify for favorable tax treatment. If the Committee consents to these changes, the City will bring forward the changes to the Bylaw. The other employers are working towards providing their needed consent to the changes.

## IMPACTS

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### Financial Impact

The proposed compliance changes will ensure the LTD Plan continues to qualify for favorable treatment under the ITA. If the proposed compliance changes are not approved, there is the potential that the LTD Plan would have to pay income tax. The rough estimate of the amount of taxes is \$1 million a year going forward. As the LTD Plan has a healthy surplus this amount can be

covered by the Plan, but it is not ideal for the Plan to pay unnecessary income tax.

### **Legal Impact**

If Council approves the compliance changes, the Bylaw will be amended to ensure that the LTD Plan qualifies as an “employee life and health trust” under the ITA. Before amending Bylaw 9566, the Bylaw requires that a majority of the members of the Civic Pension and Benefits Committee consent to the changes in writing. The changes also require a report from the Plan’s actuary. Before bringing forward the Bylaw amendments, the City will ensure that it has both the consent and report required.

### **OTHER OPTIONS**

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Council could decide not to approve of Bylaw changes, but this is not recommended. If the Bylaw changes are not made, the LTD Plan may be subject to paying income tax.

### **COMMUNICATIONS**

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All employers and the Civic Pension and Benefits Committee that represents employees in the LTD Plan have been consulted on the Bylaw changes. Once the changes have been passed in the Bylaw, Mobius, on behalf of the Administrative Board, will provide notice of the changes to all employees in the Plan.

### **DISCUSSION**

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#### **Background**

The LTD Plan is a multi-employer long term disability plan that provides benefits to employees of the following employers: City of Regina, Saskatchewan Health Authority, Regina Board of Education (non-teaching staff), Regina Public Library, Buffalo Pound Water Treatment Corporation and Mobius Benefit Administrators Inc.

The LTD Plan was established on January 1, 1992 and is currently constituted under Bylaw 9566. The long-term disability benefits are set out in Schedule A to Bylaw 9566. The governance structure is contained in the body of Bylaw 9566. The LTD Plan has a unique governance structure, which has made it very difficult for the parties to make changes to the Plan. Changes to the LTD Plan can only be made where City Council and the Civic Pension and Benefits Committee agree to the changes.

Benefits are funded equally by employee and employer contributions (premiums) based on recommendations from the LTD Plan actuary as well as investment earnings on the contributions.

For many years now, the Civic Pension and Benefits Committee, the Administrative Board for the LTD Plan, and the employers in the Plan have wanted to modernize the LTD Plan and conform its structure to the one adopted for the Pension Plan in 2016. To this end, Mobius conducted a review of the LTD Plan's governance structure and provided drafts of new governance documents for the parties to discuss. These documents were intended to make the LTD Plan's governance structure substantially similar to that of the Pension Plan. During these discussions, there were some disagreements as to the proposed governance changes. These disagreements have not been resolved yet so further negotiations are required. In terms of governance changes to the LTD Plan, the parties intend on continuing negotiations in 2023 with a view to bringing something forward in 2023.

Despite this impasse on governance changes, the parties would like to avoid adverse tax consequences to the LTD Plan so are receptive to making the compliance changes to the Bylaw.

### **Income Tax Changes**

The Federal Government amended the ITA to require all "health and welfare trusts" to convert to "employee life and health trusts" if they wished to continue to receive favorable tax treatment. In the case of the LTD Plan, which to date has been treated for tax purposes as a "health and welfare trust", it has until the end of 2022 to make such a conversion. If the LTD Plan does not qualify as an "employee life and health trust" it would lose several tax advantages, including its effective exemption from having to pay income tax on its investment income.

Legal counsel for the LTD Plan has recommended the following changes be made to the Bylaw so that the LTD Plan can qualify as an employee life and health trust:

- changes to confirm that the contributions paid to the Treasurer are received by the Treasurer on behalf of the Administrative Board, that those funds are not funds of the City, and that the Administrative Board holds those funds in trust for the purpose of providing benefits to members of the LTD Plan in accordance with the terms of the LTD Plan;
- the addition of a provision to indicate that if the LTD Plan is wound up or reorganized, the fund must be distributed in accordance with section 144.1 of the ITA and that no portion of the fund shall be distributed to an employer.

Section 144.1 of the ITA requires that on wind-up or reorganization, that the property of the trust may only be distributed to:

- a beneficiary who is an employee of a participating employer or former employer; or an individual who is the spouse or common law partner of the employee or related to the employee and either a member of the employee's household or dependent on the employee for support;
- another employee life and health trust, or
- after the death of the last beneficiary described in the first bullet point, the federal or provincial government.

Section 144.1 also prohibits any distribution from the Fund to any employer that participated in the LTD Plan.

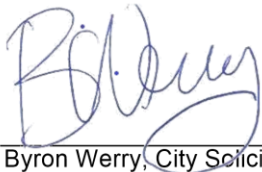
The more specific wording of the changes is set out in Appendix A.

## **DECISION HISTORY**

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The recommendations in this report require Council approval.

Respectfully Submitted,



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Byron Werry, City Solicitor

11/24/2022

Prepared by: Byron Werry, City Solicitor

## **ATTACHMENTS**

Appendix A - Proposed Amendments to Bylaw 9566