

For your review - Pension Asset Expert Advisory Panel (Expert Panel)

From: "Nelson, Dane (TBS)" <dane.nelson@ontario.ca>
To: "Angus, Helen (TBS)" <helen.angus@ontario.ca>
Cc: "MacIntyre, Kyle (TBS)" <kyle.macintyre@ontario.ca>, "Simone, Nicole (TBS)" <nicole.simone@ontario.ca>
Date: Thu, 17 Nov 2016 16:30:08 -0500

Hey Helen,

- OTB is flagging that the panel member Murray Gold had a professional relationship with the Ontario Teachers Federation and Ontario Teacher's Pension Plan.
- His relationship with OTF was disclosed in advance of him joining the panel.
- TBS legal, EDU (Pension Unit Manager) and OPCD have discussed the matter and the general consensus seems to be that Murray does not have a conflict of interest; however, they have noted that there could be a perceived conflict of interest by the media.

Please see below for additional details.

-----Original Message-----

From: Laughton, Patrick (TBS)
Sent: November-17-16 8:21 AM
To: Nelson, Dane (TBS); Simone, Nicole (TBS)
Cc: Hosick, Sarah (TBS)
Subject: RE: Pension Asset Expert Advisory Panel (Expert Panel)

Oops, meant to say, Karen raised with Helen below.

-----Original Message-----

From: Laughton, Patrick (TBS)
Sent: November-17-16 8:18 AM
To: Nelson, Dane (TBS); Simone, Nicole (TBS)
Cc: Hosick, Sarah (TBS)
Subject: FW: Pension Asset Expert Advisory Panel (Expert Panel)

Dane/Nicole -

Flagging some conversations which occurred yesterday with regards to a potential conflict with one of the panel members, Murray Gold, who is also sat as a lawyer for the OTF. Folks, including TBS legal/EDU, are working through the issue and I believe Helen raised with Karen at the PRRT SC meeting. While I'm no expert, the sticking point seems to be that while there seems to be general comfort that there is no technical conflict (which is why it was not picked up through the screening process), there is still a potential for a perceived conflict in the public eye.

There is some additional context below and I'll continue to keep your office apprised of any new developments (a believe a meeting will be planned to discuss today). In the meantime, would appreciate if you could bring the notes below to our DM/Minister's Office attention and let us know if they need anything further from us.

Thanks,

P.

-----Original Message-----

From: Kaufman, Paul (TBS)

Sent: November-16-16 7:04 PM

To: Veinot, Cindy (TBS); Hughes, Karen (TBS); Hatzis, Len (TBS); Duffy, Paul (EDU)

Cc: Tam, Nelson (TBS); Laughton, Patrick (TBS); Hosick, Sarah (TBS)

Subject: RE: Pension Asset Expert Advisory Panel (Expert Panel)

Cindy, the only thing I would add is that the reason that Mr. Peebles thought there wasn't an actual conflict here seemed to be that the panel wouldn't be dealing with substantive funding issues. He seemed fairly confident that the likelihood of an actual conflict was remote.

Paul

From: Veinot, Cindy (TBS)

Sent: Wednesday, November 16, 2016 6:45 PM

To: Hughes, Karen (TBS); Hatzis, Len (TBS); Duffy, Paul (EDU); Kaufman, Paul (TBS)

Cc: Tam, Nelson (TBS); Laughton, Patrick (TBS); Hosick, Sarah (TBS)

Subject: FW: Pension Asset Expert Advisory Panel (Expert Panel)

We (Paul Duffy, Paul Kaufman and I) had a discussion with Ross Peebles this afternoon to ascertain his views re: whether Murray Gold is conflicted from being on the Panel. A brief summary of his comments are as follows:

n He does not believe Murray is in a conflict by being appointed to the Panel, but does acknowledge some may perceive this as a conflict

n He has had a discussion with Ronda Kimberley-Young at OTF re: Murray being appointed to the Panel and noted she did not perceive this to be a conflict

n He holds Murray in very high regard re: his ethical standards in evaluating whether he would be in a conflict

n He believes Murray would be a huge resource to the Panel in connection with his knowledge of the governance structures of jointly sponsored pension plans

n He believes that in connection with any future negotiation between the Province and OTF that Murray would at the table as he sees OTF as very reliant on Murray

It was also raised that Minister Sandals, as the previous Minister of Education, would likely be very familiar with Murray's role with OTF and so may have already considered his role in signing the appointments.

As a final step before concluding, we thought it prudent for Paul Duffy to have a conversation with his MO in Education given Education will be at the table negotiating with OTF in the future. My current leaning is if that if Education does not view this as a conflict then we should be fine with Murray on the Panel.

Paul and Paul – please add any additional considerations from our conversation earlier today.

Thanks,

Cindy

From: Veinot, Cindy (TBS)

Sent: November-16-16 3:49 PM

To: Hughes, Karen (TBS)
Cc: Laughton, Patrick (TBS)
Subject: FW: Pension Asset Expert Advisory Panel (Expert Panel)

fyi

From: Murray Gold [<mailto:mgold@kmlaw.ca>]
Sent: November-16-16 2:13 PM
To: Hatzis, Len (TBS)
Cc: Veinot, Cindy (TBS); Kaufman, Paul (TBS)
Subject: Pension Asset Expert Advisory Panel (Expert Panel)

Hi Len,

You asked me on our call this morning for some additional information on my work for the Ontario Teachers Federation (OTF), as disclosed in my conflict of interest form with respect to the Expert Panel.

I have worked on a number of files for the OTF since the Ontario Teachers Pension Plan was formed as a jointly sponsored pension plan in 1990. For the most part, and especially in the last decade or so, the OTF and the Crown have had a similar view, as sponsors of the OTPP, concerning the Plan. OTF and the Crown have been of similar views for example, in regard to the OTPP's Funding Management Policy (FMP), while the OTPP Board has sometimes taken a different view of that agreement. In human rights litigation, another area in which I have worked for the OTF in regard to the OTPP, all of the Crown, the OTF and the OTPP Board have typically been named as co-defendants, and all three parties have historically cooperated and mounted similar or complementary defenses. In the most recent of these cases (2015), we worked with the Crown to amend the Teachers Pension Act with respect to the status of retired teachers who return to active employment. I have also given advice to the OTF about OTPP Plan terms and about other compliance issues. Future engagements by the OTF are unpredictable. They may of course include FMP issues, as they have in the past, which may, in turn, be affected by or affect pension accounting issues. Once again, however, there is every possibility that the OTF and the Crown will be aligned in their views of FMP changes, as they have been for the past many years.

The relationship between the OTF and the Crown has been, for a decade or more, quite collegial and cooperative, and we would expect (and want) it to continue in this way.

We discussed my OTF relationship at the time of the retainer to provide advice concerning the OTPP, the OPTrust and the BC Plans. At that time, we agreed that the engagement presented no conflict of interest.

In regard to the Expert Panel, I expect that its mandate is as a non-partisan expert board. This is not a client retainer, but is rather an expert inquiry into the way or ways forward within technical constraints. In principle, I don't believe that expert panel work engages conflict of interest considerations with OTF or other clients, precisely because it is expert and non-partisan.

I also assume that all non-public materials before the Expert Panel are strictly confidential. I would not disclose them to OTF or to any other client or person.

I hope this helps, but if you have additional questions, please don't hesitate to ask.

Regards,

Murray

 Original Message
From: Hatzis, Len (TBS)
Sent: Tuesday, November 15, 2016 6:50 PM
To: Murray Gold
Cc: Veinot, Cindy (TBS); Kaufman, Paul (TBS)
Subject:

Murray,

We've been working with our clients to prepare for the Pension Asset Panel's upcoming work and wanted to follow up with you on a disclosure that you made in the conflict of interest section of your application form. We were hoping to talk to you about the work with the OTF that you referred to in section 2 of your COI disclosure and how that might intersect with information that you could have access to as part of the panel. Would you have time to discuss this with myself and Cindy Veinot tomorrow?

Thanks
Sent from my BlackBerry 10 smartphone on the Rogers network.

Murray Gold

Partner

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