



SBF Special Report

This Report Contains Important
Disclosures

Please Review Carefully



From the SBF AGM August 22, 2022 :

To all OPFFA Active and Retired Members in the Sick Benefit Fund

As you all know, I took over as Chair of the SBF in January and it is my intention to only carry out this position for one year. It became apparent to me when looking at opening a window for those active members not in the SBF that there appeared to be a lack of proper governance of the Fund.

After some consultation and review of the history of the fund it became apparent to me that there was a lack of education and training for the Directors of the Fund. As a result, I requested and obtained authorization for Trustee training for the Directors of the Fund. I have now completed the entry level course and the other Directors are following suit.

This gap in training and education have led to many problems with the Fund. I am in no way criticizing those dedicated individuals that served as Directors for the Fund in this report. They were given the duties and the responsibilities without the tools. We are all responsible for that gap and we need to focus on looking forward and improving the SBF for all of its' members.

I want to thank the current Directors Members Chris Wittingham, Tom Gillespie and retired Member Pierre Potvin. I appreciate their motivation and commitment to the SBF and all of its' members. We have all worked hard and will continue to do so to bring the SBF in compliance with tax laws and proper governance.

This report is intended to shine a light on the SBF and to be open and transparent about the SBF and what we have found as well as what we

are doing about these findings. In early March I raised a number of issues with our Lawyer and Auditor and this is a report on those matters.

Benefits Approved by the Board but not Provided in the Policy

When reviewing the documentation received by the Ad hoc Committee looking at a potential buy there were some concerns about payments authorized by the Board of Directors that were outside of the coverages provided for in the SBF Policy.

It is apparent that this has been a long-standing practice by the Directors. Again, this is not to find fault as they were just carrying out business as previous Boards had done. There is little value in going back to beyond 2015 but this is what was found since that date:

1. At the Directors Meeting May 1, 2021, the Directors, at the request of an SBF member, made a motion to accept and pay a claim in the amount of \$452.00 to that SBF member for a procedure clearly not eligible for reimbursement from the Sick Benefit Fund. A review of the Policy Book does not indicate this coverage nor do the minutes reflect the change for all members of the SBF.

No mention of this motion or payment was made at the Annual General Meeting nor was the policy book amended

2. A similar occurrence as above for three other members at the March 22, 2018 meeting for one shoulder and two knee injections to a maximum of \$200 this time. Same comments as in 1. above and there was nothing indicating why these were limited and the other paid in full. This is a concern.
3. Again, at the Directors Meeting January 11, 2017:
 - a. an unknown medical expense for \$433.37 had \$400 paid
 - b. An unknown medical expense for \$2,200 had \$400 paid with the Manager to advise that amount was based on the future viability of the Fund and the Fund is not intended to be the first primary funding source for these procedures but none of the other payments had such notification.
4. The January 12, 2016
 - a. two medical payments not provided for in the policy were paid, a medical device for \$80 and a knee joint lubricant for \$437.43

- b. Erectile dysfunction drugs were removed from active members but there is no debate or rationale for the change.
 - c. A decision to cover cataracts in the optometry section but again no rationale
5. The January 21, 2015 meeting had an unknown medical expense for \$325 paid

Professional Advisors Recommendations

Our lawyer advised that making these payments is improper and we need to disclose that this occurred. These payments go against the idea of equitable treatment of all members of the plan. He further advised that it is essential that payments are only made in accordance with the Plan. He advises we should ensure the Auditors are verifying payments comply with the criteria of the plan.

The Auditor explained that the manner the audit is conducted is to test a sample of the expenses and the controls over expenses and it will not catch these payments. There was no response to our request that these payments be captured in future audits.

Directors' Actions

The Directors have drafted a governance policy and are in the process of adopting that policy. One aspect of that is that there may be no payments for expenses not provided for in the SBF policy document effective January 1, 2022. We considered allowing for coverage for joint injection treatments, but we are unable to determine how this will affect the viability of the fund without knowing if the SBF is funded fully and based on our analysis at this time it will likely not be possible to do so.

Returns on Investment

In finally being able to review the annual audits for all the years the SBF has been in place, I noted very low returns on investments. Every dollar we can make from investments is a dollar more for benefits for members of the SBF.

For the last 13 years our investments have been between 2 to 3%. It is reasonable to believe they should easily average double that. If they had met that low bar, it would have represented at least a quarter of a million

dollars we could have used for more benefits or offset increasing dues during that time.

We can be conservative with investments but not to the point that we get only some of the lowest possible returns. There is no investment policy for the SBF and this year there is no question our investment income will fall well short of inflation.

Professional Advisors Recommendations

Our lawyer advised we must disclose this to the members of the SBF. He advised that the SBF Constitution requires the funds to be on deposit and that limits us as to what we are able to do. He pointed out the Ontario Trustee Act and what that requires us to consider when investing the fund. This gives us a good guideline and he states that we must ensure the investment strategy is appropriate for the fund.

1. General economic conditions.
2. The possible effect of inflation or deflation.
3. The expected tax consequences of investment decisions or strategies.
 4. The role that each investment or course of action plays within the overall trust portfolio.
5. The expected total return from income and the appreciation of capital.
6. Needs for liquidity, regularity of income and preservation or appreciation of capital.
7. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

In doing so, the trustee must diversify the investment of trust property to an extent that is appropriate both to the trust and to general economic and market conditions.

The requirement to consider these criteria do not relieve a trustee from obligations created directly in the trust document. A trustee must act in a manner that is consistent with the terms of the trust, according to subsection 10 of the Act.

Our lawyer also recommended seeking the advice of a portfolio management professional to determine an appropriate investment policy. He recommends disclosing this to the members of the Fund.

Our Auditor advised there were no issues raised in the many Audits done by their firm as the funds were on deposit as required by the Constitution.

The actuary hired to assess the 2003 and 2004 members buying into the SBF is in the process of finalizing his work, but one of his largest concerns was the very low return on investments.

Directors' Actions

Every dollar we can save or earn on investments can be used to improve benefits. In fact, it is our duty to do so, and we take that very seriously. Therefore, any investment strategy we consider will, like a pension plan, seek to protect those investments. When one considers that the average retiree claim for all retired members in the SBF is less than the dues they are paying it is apparent there are problems with the Fund that we are addressing and must be addressed quickly.

As this work occurred after the deadline for amendments to the SBF Constitution this year, the Directors were not in a position to propose an amendment to change this language in the Constitution. However, there is a proviso that the OPFFA Executive Board is able to call a special meeting of the SBF. Depending on the investment policy being completed we may be able to have that meeting.

The reason we have not approached the OPFFA Executive Board at this time is because we are in the process of retaining a portfolio management professional to assist us with preparing an investment policy and to have them attend the previously mentioned special SBF meeting to speak to it. Our understanding that a typical balanced portfolio, such as a pension plan uses, has 40% fixed income (bonds) and 40% equities (stocks) and 20% in bank accounts and short-term investments. We have contacted a few portfolio management consultants but have not retained them due to the high cost. We continue to seek that assistance.

The advice from our lawyer raised the concern that there is no trust document or proper definition of the fund and its' legal standing. This will be discussed later in this report.

Most recently, our SBF manager brought forth a motion to reinvest at Frontline Financial Credit Union at a higher yield over 4% on the current model we were running. The Board of Directors approved this action.

Viability of the SBF

In my review of the documentation, I was not able to find any analysis that indicates what the status of the fund is. Are we fully funded or is there an unfunded liability? I questioned how can we make any decisions without knowing this fundamental issue? Yet we have increased dues, cut benefits, and made other decisions without this knowledge.

Professional Advisors Recommendations

Our lawyer pointed out the confusion provided in the auditors notes where in one place they say they evaluate the fund as a going concern and the next where they say that determination is up to the management of the fund (The Directors).

The Lawyer advised we should clarify that scope with the Auditor and take whatever actions to ensure the plan is managed and viable as a going concern. He further suggests we ask if the auditor can do a wind-up analysis, not necessarily actuarial, but an assurance that "there is an equilibrium between the assets and revenues of the fund and the costs and obligations".

The Auditor advised the "going concern" finding in the Audit is based on a 12 - month period from the date of the balance sheet and is significantly different from what members and the Board considers long term viability. They also advised that dues are a decision by the Board, and the auditors have no role in it. They advised that costs were going up annually and that may have been what the dues increases were based on.

Directors' Actions

We are waiting for the delivery of the actuarial report concerning allowing the 2003 and 2004 members not currently in the SBF the opportunity to buy-in. We received a draft report but that has had to be redone due to a dues increase that was not considered. As there was a considerable actuarial work in that we asked him to continue from that work and make an actuarial valuation of the Fund. Only then can the Directors make truly informed decisions about the Fund and not merely guess.

Compensation Issues

When reviewing the Audits it became clear to me that \$6000 of the SBF Manager's salary is shown as an Executive Expense Allowance unsure if

this was appropriate. It is clear that this expense allowance was used in the calculation of salary increases as it was added to the salary and then the percentage increase was calculated. I wished to ensure this was proper.

Professional Advisors' Recommendations

Our lawyer advised that in our administration of a trust fund it is important that reporting of expenditures be captured, transparent, and available to the members especially salaries and executive expenses.

The Auditor advised that to their understanding the SBF does not view these amounts as "salary". They advised that historically these amounts have been viewed as reimbursement for phone, use of vehicle, and other incidental expenses that are not reimbursed. They did not give advice to how they protect this allowance from being taxable when it is basically salary.

Directors' Actions

To date we have not been able to reconcile the salary being paid to the SBF Manager from the minutes of the meetings of the Board of Directors. What is clear is that the \$6000 expense allowance is being included in salary calculations. This does not match up with the auditor's statement that this expense allowance is not considered salary as, in fact, it is salary shown as an expense allowance. Some Directors did not know this was a payment made without receipts.

This is still being reviewed by the Directors and hopefully will be resolved at the next meeting.

Legal Status of the Fund

This issue was raised by our lawyer in response to my previous inquiries in this report. There is very minimal information as to how the SBF was established and there is no existing Trust Document which is fundamental to a Fund that provides benefits to its' members.

Professional Advisors Recommendations

Our lawyer pointed out there may be tax implications for any contributions to the fund if it is designated a benefit plan. If it is a benefit plan, and he did not know the answer to that question, any contributions made to the SBF have to be taxed.

After discussions our lawyer advised that this issue requires a specialized area of legal expertise and we requested he refer us to a lawyer with that expertise.

Directors' Actions

Our lawyer has located a law firm with the expertise to undertake a review of the status of the fund and the best way to move forward. As discussed with our lawyer, there is simply no choice as we may not be in legal compliance. This is a very serious governance issue and a grave concern for us. The Board of Directors must and will take actions to ensure proper compliance. This work will guide us in preparation of a Trust Document which has to be the basis of the Fund.

The legal firm that our lawyer provided has done a review of the status of the fund and referred us to a taxation lawyer to finalize this work.

SBF Benefit Policy

The SBF Benefit Policy needed updating both for clarity and accuracy. The SBF and its' administration has changed over the years and the Policy has not been changed to reflect those changes.

The Directors have had the Policy rewritten and are in the process of adopting it. At this time, there are no changes to any benefit provisions being considered and this is simply a long overdue rewrite of the Policy.

Governance Issues

When reviewing the SBF files I found no documents on proper governance, how the fund would be operated and the roles and responsibilities of those involved in its operations.

A draft of Policies for the Directors of the Fund has been prepared and circulated to the Board of Directors for consideration on March 29, 2022. This is a very detailed document outlining the roles of the Directors and what they must consider at least annually.

The policies provide for meetings of the Directors, Director's responsibilities reporting, education, audits, fund valuation, control measures to prevent error or fraud, ethics, privacy, recordkeeping (digital files as currently only paper), use of professional services etc. We request your appreciation that this is a very detailed seven-page document and that is why it has not yet been adopted. While we are working our way through this process, we have implemented a few governance issues that were pressing and important:

1. After speaking to numerous portfolio management professionals, we are finalizing arrangements to assist in creating an investment policy for the SBF
2. That on the advice of our Lawyer, the SBF seek to change Auditors at lease every five years. On March 29, 2022, we passed a motion to use a new auditor next year with RFP occurring in 2023, and there will be no motion concerning this at the SBF AGM. A request for proposals will be sent to at least three other firms for consideration of their selection.
3. That as a new control measure, the signing authority of the SBF be limited to any two of the SBF Manager and three Directors of the SBF. The past practice of having the OPFFA Vice President and Executive Treasurer, who have no oversight on the Fund, was deemed not proper by the Board of Directors and follows suit with many trust management principles. In addition, any payment for benefits must include the documentation for payment of those benefits when the second signature is requested on the cheque.
4. After speaking and consulting with numerous actuaries the Directors selected Jacques Boudreau to conduct an actuarial valuation regarding the 2003 and 2004 OPFFA members not in the SBF and an opportunity to allow their participation. He will also be able to do a 20-year fund valuation as part of this work.

We all know the potential of the SBF to supplement benefits, especially in retirement. The Directors are diligently working to make sure the Fund complies with law, proper governance and that we are open and

transparent in what we do. The Directors know it is their duty and obligation to improve the Fund and therefore to be able to improve benefits for the members of the fund.

Future Communication Efforts

The realization that not all retirees who are part of the Fund are being reached regarding regular updates. Stated at the AGM and recent Committee meetings, the Chair has put this back to the Board of Directors to create the communication flow for the future. This may or may not include usage of ROFFA. But guaranteed, communication will flow out to all active and retired members. With hopes of a survey to reach out and determine how everyone receives their communication via a mail out to all SBF Members.

Doug McLennan (Chair)

Chris Whittingham

Tom Gillespie

Pierre Potvin

