



SECTION: Administrator

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TITLE: Handling of Plan Fund Expenses and Maintenance of Plan Records
PBA, 1987 s. 22, s. 27

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This is the third in a series of articles designed to assist Administrators in understanding the role and responsibilities they have undertaken as Administrators of pension plans registered under the Act. This article will identify the duty of care the Administrator, as a person of ordinary prudence, owes to the beneficiaries of a pension plan in matters concerning the payment of charges from a plan fund and the maintenance of pension plan records.

Note: Due to legislative changes, references to s. 22 and s. 27 of the Pension Benefits Act, 1987 should now read s. 22 and 26 of the Pension Benefits Act, R.S.O. 1990, and references to “PCO” should now read “FSCO.”

Specific direction about the scope of most of the duties and responsibilities of an Administrator of a registered pension plan is provided in the *Pension Benefits Act* (the “PBA”) and/or the Regulation under the PBA. However, the Administrator’s responsibility for maintaining the records of a pension plan is not specifically addressed in either the PBA or the Regulation. Nor is there any legislated or prescribed mechanism to assist the Administrator in determining what constitutes usual and reasonable administrative fees and expenses of a pension plan.

Previously the PCO has provided some direction on these matters. For example, questions concerning negotiating fees, finder’s fees and insurance broker commissions as legitimate fees and expenses of a pension plan, have been addressed in the *PCO Bulletin*. Several articles have dealt with the duty of care the Administrator, as a fiduciary and as a person of ordinary prudence, owes to the members, former members or other persons who have a benefit entitlement under a pension plan (i.e., the “beneficiaries” of a pension plan).

The “prudent person” concept was introduced into pension legislation under the *Pension Benefits Act*, 1987. Subsection 22(1) and 22(2) of the PBA impose a duty on Administrators to exercise care, diligence and skill in the administration and investment of a plan fund and in the administration of a pension plan that persons of ordinary prudence would exercise in dealing with the property of another person.

Administrative Fees and Expenses

Subsections 22(9) and 22(10) of the PBA establish general limitations on the benefits an Administrator may be entitled to from a pension plan. A plan may provide for payment from the plan fund of the Administrator's fees and expenses. That is, of course, fees and expenses related to the administration of the pension plan. In accordance with subsection 22(11), provision may also be made for the payment of the usual and reasonable fees and expenses of an agent of the Administrator billed for services rendered in respect of the pension plan.

Because each pension plan is unique, explicit limitations on the range of fees and expenses that may be paid from a pension fund have not been legislated or prescribed as a standard applicable to all pension plans. Standard limitations could hamper an Administrator's ability to make decisions which would be in the best interest of the beneficiaries of a particular pension plan. For this reason, Administrators are responsible for making prudent decisions about the appropriateness and reasonableness of any existing or potential charge against a plan fund for administrative fees and expenses.

The Administrator must first determine whether payment of the applicable fees and expenses would constitute a prudent use of the plan funds (i.e., whether the service rendered to the pension plan is appropriate and whether it would provide value to the pension plan when compared to the cost of the service). Consideration must also be given to the provisions of the pension plan document(s).

If the administrator decides that a charge against the fund is reasonable and appropriate but the plan documents do not provide a mechanism for making the payment, no payment may be made from the plan fund. Under these circumstances, provided that the plan documents do not prohibit an amendment that would permit the intended use of the fund, an amendment may be filed with the Superintendent. The amendment would normally be considered an "adverse" amendment as described in section 27 of the PBA. Consequently, the Administrator must give written notice of the content of the amendment in accordance with the policy statement which is listed as policy no. A220-201.

Records Retention

Administrators must comply with specific reporting, disclosure and plan and fund administration requirements of the PBA and the Regulation. The exercise of care, diligence and skill in maintaining the records of a pension plan provides the foundation for satisfying those compliance requirements.

Administrators should be aware that under certain circumstances, documents, from the inception of a pension plan, may have to be made available for review. Administrators may also be responsible for reproducing excerpts from old plan documents in disclosure notices required to be distributed to the plan beneficiaries. In situations where an individual's entitlement to a stated amount of benefit is challenged, the Administrator may be required to provide historical data in order to verify benefit calculations. Information concerning an individual's years of employment service, union membership and/or plan membership, employment earnings and pension plan contributions may be requested. The difficulty and high cost of recreating pension plan records from other sources of historical data can be avoided if accurate and complete records are retained for a reasonable period, in relation to the life of a pension plan.

In the best interests of the plan beneficiaries and the Administrator, a good business practice approach should be adhered to regarding the retention of plan records. In consideration of the mechanisms available today for electronic record-keeping, the retention and storage of pension plan records should create few problems for Administrators. Prudent administration of a pension plan cannot realistically be achieved unless the Administrator can be held accountable for responsible record-keeping practices.

Please also refer to applicable published policies which deal with the obligations and functions of the Administrator. These are found at Series A200 and A300.