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SECTION: Administrator

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TITLE: Role and Responsibilities  
PBA, 1987 s. 8, 9, 12, 21, 23, 26-29, 36, 88, 107, 111  
O. Reg. 708/87 s. 37, 38, 40

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### **The Administrator: Key Role - Key Person**

The Administrator is at the centre of pension plan management and conduct, and as such is the person who is ultimately responsible to all participants - the plan beneficiaries, the plan sponsor and the regulatory authorities. Both the *Pension Benefits Act*, 1987 (the "PBA") and the common law impose a binding duty on the Administrator to ensure that the pension plan functions according to the requirements of the law and in the best interest of the beneficiaries.

### **Who is the Administrator?**

Which person or persons can be the Administrator? The PBA, 1987 sets this out in subsection 8(1): either the employer or employers, a pension committee, an insurance company if it guarantees all of the pension benefits of the plan, a board of trustees for a multi-employer plan, or a special body authorized by an Act of the Legislature.

Pension committee requires special mention. A pension committee may be composed of one or more representatives of the employer or another person required to make contributions under the plan, and members of the plan; or, it may be composed solely of representatives of members of the plan and include a representative of members currently receiving pensions. Generally, it is a joint responsibility of plan members and the employer to determine whether such a committee will be established and to select the committee's membership.

It is important not to confuse the Administrator with other persons involved in the administration of the plan. The employer who established and contributes to a plan is not the Administrator - if another person is designated to assume that role. Unless an insurance company which holds pension monies guarantees to provide annuities in all circumstances, its responsibilities are not those of the Administrator. Professionals who advise about certain aspects of plan management or administration - investment managers, actuaries, lawyers, accountants, or brokers, whether any or all are part of consulting firms - may be employees, independent contractors, or agents, but they are not Administrators. Nor are the trust companies which hold the assets of the pension plan.

Finally, it is important to differentiate between the person who has the ultimate responsibility and authority for the pension plan - bookkeepers, secretaries, processors, or any of the previously mentioned professionals or advisors.

### **The Administrator's Areas of Responsibility**

#### 1. Making the Plan and Amendments

##### Making Fees Payments

According to the PBA, 1987, the Administrator is responsible for making application to register the plan within 60 days of its establishment [subsection 9(1)], and to apply for registration of any plan amendment within 60 days of the date on which the plan is amended [subsection 12(1)]. Further, the Administrator must ensure that the appropriate fees are paid when the plan is registered [subsection 9(2)].

#### 2. Filing Required Reports and Making Payments of Recurring Fees

The Administrator must file the Annual Information Return and ensure that the appropriate fees are paid [subsection 21(1)]; any additional reports prescribed by the Regulation also must be filed [subsection 21(2)]. This requirement includes adopting, filing and amending the Statement of Investment Policies and Goals (Regulation: section 63).

In every instance, the Administrator is accountable for filing forms accurately, completely and on time. Penalties are provided for late filings and extensions of time are not normally granted for filing of forms and payment of overdue fees. The Administrator also must ensure that the filed reports are properly and duly signed. If they are not, the PCO must assume the plan to be in non-compliance with the legislation.

#### 3. Providing Required Information to Plan Members and Interested Parties

The PBA, 1987 contains a number of requirements for the disclosure of information to plan members, former members, spouses of members or other appropriate persons. It is the duty of the Administrator to guarantee that disclosure requirements are met on a timely basis. The Administrator must be familiar with the disclosure requirements in a variety of circumstances required by the PBA, 1987 and the Regulation.

Examples of information to be disclosed:

- \* Each person who becomes a plan member or is eligible to become a member is entitled to an explanation of the plan provisions that apply to each person, an explanation of his rights and obligations under the plan, and any other prescribed information (section 26).
- \* Those persons who would be affected by any plan amendment that would result in a reduction of pension benefits or would adversely affect the rights or obligations of a member or anyone entitled to payment and are specified by the Superintendent must receive notice (section 27).
- \* Each plan member must receive an annual statement of all pension benefits and ancillary benefits, containing the prescribed information (Regulation: subsection 36(1) and section 28).
- \* When a plan member terminates employment or ceases to be a member of a plan, the member is entitled to a statement of benefits containing the information provided in sections 37, 38 or 40 of the Regulation (and PBA, 1987 section 29). In addition, there are a number of specific situations in which information must be given to parties, such as notice for election of options

for portability of pensions, information to surviving spouses in situations of pre-retirement death, and many others which are found in the PBA, 1987.

The Administrator must be knowledgeable about the numerous disclosure requirements contained in the PBA, 1987 and the Regulation and must make the information available to those who are entitled to receive it. This is not an optional service that may be provided, but a legislative requirement that must be honoured.

Often plan members address plan-related enquiries to the PCO which ought to be directed to the Administrator of the pension plan. It is also a duty and obligation of the Administrator to respond to any member enquiries and inform them of available options responsibly. The policy of staff of the PCO is whenever possible, to refer plan member enquiries to the Administrator.

4. Ensuring Pension Plan and Fund are Administered in Accordance with the PBA, 1987 and the Regulation. This responsibility goes to the heart of the Administrator's duty. It compels the Administrator to understand statutory requirements that govern Administrator conduct and provide the context for the requirements set out in the terms of the plan text or trust agreement. The PCO staff take the view that the provisions of the PBA, 1987 that describe the duty of care the Administrator owed to beneficiaries of the plan is that of a fiduciary and as such, the fiduciary must act in keeping with one who holds a trust. The PBA, 1987 sets out the duty of care of the Administrator in section 23:

- (1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.
- (2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of his or her profession, business or calling, ought to possess.

The Administrator then, in administering the pension plan must meet the standard of ordinary prudence which demands the care which a reasonable person would exercise in dealing with the property of another person. If any special skills are possessed, the Administrator is held to an even higher standard.

### **What Can Be Delegated?**

One of the key questions Administrators ask is whether they themselves must carry out all the responsibilities or may delegate some to others. Section 23 of the PBA, 1987 states:

- (5) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.
- (7) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.
- (8) An employee or agent of the administrator is also subject to the standards that apply to the administrator under subsections (1), (2) and (4).

It is clear that an Administrator may delegate virtually all tasks to others as long as the requirements in subsections 23(7) and (8) are satisfied, and that it is reasonable and prudent in the circumstances to do and is within his authority.

### **Conflicts of Interest**

The Administrator must ensure that personally and otherwise there is no conflict of interest in regard to the pension fund, as indicated in section 23 of the PBA, 1987:

- (4) An administrator or, if the administrator is a pension committee or board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit his or her interest to conflict with his or her duties and powers in respect of the pension fund.

The Administrator must consider the interests of plan beneficiaries and not permit personal interests to conflict with the goals of the pension fund. However, the existence of conflicts is recognized. For instance, the Regulation does allow an agent or employee of the Administrator to have an investment in the pension fund (which would otherwise be a conflict) if complete disclosure of the fact - or conflict - is made. The investment also must comply with the requirements of the Statement of Investment Policies and Goals as noted under section 65 of the Regulation.

### **Professionals and Conflict of Interest**

Professionals who advise the plan must ensure they do not contravene the conflict of interest rules. In some instances, professionals may have a contractual relationship with the plan sponsor in respect of the plan sponsor's affairs, but are also agents of the Administrator in respect of the plan.

All professionals should be familiar with the rules regarding conflict of interest in the PBA, 1987, the Regulation and other applicable statutes, as well as the professional standards for conduct and ethics embodied in the codes established by professional associations, and conduct themselves accordingly.

Any questions regarding conflicts of professionals or agents in the context of pension issues and the requirements of the PBA, 1987 should be directed to the appropriate individual or committee of the professional association for consultation.

### **Failure of the Administrator to Fulfill Responsibilities**

If it is determined that the Administrator has failed to discharge his responsibilities, the following consequences may ensue:

- 1) If the Superintendent has reason to believe that a plan or fund is not being administered in accordance with the PBA, 1987 or Regulation, or the plan does not comply with the legislation, or the Administrator has contravened a requirement, the Superintendent can require an Administrator to take or refrain from taking any action in respect of a plan or fund under section 88 of the PBA, 1987.
- 2) The offense provisions of the PBA, 1987 provide that every person who contravenes the PBA, 1987 and Regulation, or an order under the PBA, 1987, is guilty of an offense under section 110 and is subject to the statutory penalties described in section 111. In determining whether a breach has occurred, the Superintendent has the authority to thoroughly investigate the administration of a plan or fund and may enter into business premises, make examinations, investigations and enquiries, and have access to books and records to ensure proper management under section 107 of the PBA, 1987.

This article has identified the primary obligations and responsibilities of the pension plan Administrator. It is not intended to be comprehensive or exhaustive; the PBA, 1987 and Regulation deal with numerous specific functions or activities which Administrators must fulfil. It is essential that Administrators familiarize themselves thoroughly with all statutory provisions and requirements.

\*Concordance Table:

PBA, R.S.O. 1987

ss. 8(1)  
ss. 9(1) & (2)  
ss. 21(1) & (2)  
ss. 23(1) - (8)

s. 27  
s. 29  
s. 88  
s. 107  
s. 110  
s. 111

PBA, R.S.O. 1990

ss. 8(1)  
ss. 9(1) & (2)  
ss. 20(1) & (2)  
ss. 22(1) - (8)& (2) & (4) - with modification of wording from "his or her" to "the administrator")

s. 26  
s. 28  
s. 87  
s. 106  
s. 109  
s. 110