



national
union

pensions
backgrounder #11

Pension Plan
Administration

Part 11 in a Series

The full series of pension backgrounders are contained in the National Union's Pensions Manual, Fourth Edition—available from the National Office

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BACKGROUND #11

Pension Plan Administration

Many factors can affect the pension fund that accumulates and the pension benefits that are paid out. Some of these factors – including decisions that are made about how pension contributions are invested and assumptions that are made about things like wage increases, inflation, the costs of future benefits – are strongly dependent on the people who participate in the administration of the pension plan.

••• A Clarifying Note

The objective of this Chapter is to provide a general overview of how a pension fund is managed and how it is administered. In that regard, it deals primarily with decision-making authority and administration practices and procedures of pension plans.

For the purposes of this Chapter, it is assumed that the plan administrator is the ‘Pensions Committee’ – whether the committee is the actual named governing body responsible for the plan or whether the committee has been *delegated* by the plan administrator to oversee the plan.

It should also be noted that *Chapter Twelve – Union Approach and Policy to Joint Trusteeship of Pensions* of this Manual deals specifically with union policy and approaches involving union trustees appointed to union or jointly trusteed pension plans.

••• Plan Administrator

First and most important is the ‘*plan administrator*’. This term is used to describe the party responsible for managing the pension fund and administering the plan in accordance with the plan’s terms.

Generally pension standards legislation does not explicitly state who shall be the plan administrator, but rather gives a list of possible admin-

istrators. Plan administrators can therefore be: the employer, a Pensions Committee generally comprised of employer representatives and / or members of the plan, the insurance company guaranteeing the benefits provided under the plan, or a Board of Trustees of either employer or member representatives or both¹ (see also *Chapter Seven – Legislative Framework Governing Pension Plans*).

While the plan administrator may designate others to carry out certain or all investment and administration functions, the administrator, as the governing body, is ultimately responsible for overseeing the plan.

Administration is also a general term often used to describe all persons and bodies associated with the plan (and their agents) who have governance, management or day-to-day operational responsibilities over matters affecting the benefit entitlements earned by plan members and beneficiaries.

As noted in *Chapter Ten – Pension Plan Governance*, the governance structure of a pension plan plays a major role in how the plan is administered and who in fact has decision-making responsibilities and authority for how the plan is managed.

- In an employer sponsored plan, the plan sponsor – the employer – generally delegates the administration of the plan to a Pensions Committee comprised of representatives of the employer and, possibly, members of the plan.

- In a jointly trustee plan, the Pensions Committee generally consists of an equal number of trustees appointed by the employer and the unions representing members of the plan. Those trustees are responsible for administering the plan.

- In a traditional multi-employer plan, the administration is the responsibility of a Pensions Committee made up of trustees representing each participating employer. In some public sector multi-employer pension plans an equal number of trustees are appointed by the employers and the unions representing members in the plan (e.g. OMERS, HOOP, BC Municipal Employees plan).

Quebec is the only jurisdiction that requires that a Pensions Committee be appointed to administer all aspects of the plan and that the committee consists of at least two members of the plan and one who must be independent of both the employer and the plan members. Legislation in most other jurisdictions allows for some form of representation of plan members on the Pensions Committee. The legislation differs by

jurisdiction in terms of the powers of such representation – whether they have decision-making authority or serve in an advisory capacity.

••• Financial Responsibilities

In order to ensure sound administration of a pension plan, the roles and responsibilities of all parties involved in the operation of the plan must be clearly defined and the persons delegated with those responsibilities must have the education and skills to do the job.

Members of the Pensions Committee (plan administrator and / or trustee), who have decision-making authority over plan administration are responsible to the members and the beneficiaries (retired members). In order to fulfill this responsibility, committee members must carry out the provisions of the plan text and ensure that all legal requirements are met. There are generally transfer agreements that may supplement the plan text which allow members to transfer their benefits to another of the employer's pension plans or to a new employer's plan, when certain conditions exist.

In terms of financial duties, the Pensions Committee must ensure that the pension fund is invested in various types of investments to obtain revenues that will make it possible to pay the pension benefits when members become beneficiaries of the plan. One of the duties of committee members is to ensure the fund's investments do not involve unreasonable risks.

The main financial duties include:

- Ensure that the member and employer contributions are paid into the pension fund within the prescribed period and that the contributions received correspond to the amounts required;
- Pay pensions and any other prescribed benefits, and where a member is entitled and applies, refund, or transfer his / her accrued benefits;
- Adopt and periodically revise an investment policy (commonly known as the Statement of Investment Policies and Goals (SIPG) or the Statement of Investment Policies and Procedures (SIPP)) or to define the investments that can be made to the plan by setting, for example, asset mix, investment return targets;
- Ensure the pension fund is properly invested and that the investments are in conformity with the investment policy; and
- Choose an actuary to make an actuarial evaluation of the plan.

‘Prudent Person Rule’ or ‘Fiduciary Responsibility’

Pensions Committee members are subject to the ‘*prudent person rule*’ which requires them to “exercise the care, diligence and skill in the administration and the investment that a person of ordinary prudence would exercise in dealing with the property of another person.”

The term used to describe a person who has a legal obligation to follow the prudent person rule is ‘*fiduciary*’ – an individual who acts in the capacity of trust and confidence to exercise discretionary authority or control over investment decisions of the plan’s funds.

This prudent person rule exists in federal legislation as well as the pensions laws of all provinces except for Alberta, Saskatchewan and Newfoundland and Labrador. A fiduciary relationship, however, exists in all provinces under common law, regardless of whether or not it is contained in pensions benefit legislation of a particular jurisdiction.

This prudent person rule or fiduciary responsibility has been controversial over the course of recent years, as it is somewhat difficult to measure and has been used to argue that trustees or administrators must only consider financial criteria when making investment decisions.

Do committee members violate their fiduciary duties (prudence) by considering the social consequences of investment? Why would public sector pension funds invest in companies that are attempting to take over public services – like private corrections companies that build and run prisons, or private laboratory companies that are bidding to provide public health care services?

Is it prudent to invest plan members’ retirement income in companies that are guilty of environmental degradation, or clothing firms that rely on third world sweatshop labour to produce fashion apparel?.

It’s critical that the members’ pension funds be invested in profitable ventures. But that doesn’t mean that ethical, socially useful and / or other positive considerations cannot be used to assist making investment decisions for our pension funds.

This position has been reinforced by a 2005 comparative analysis of the legal interpretation of fiduciary duties among different Canadian common law jurisdictions done by Shareholder Association for Research and Education (SHARE).²

The results of SHARE's analysis found that the application of non-financial criteria by way of investment screens and economically targeted investing is compatible with the fiduciary obligations of pension trustees. The study noted that while Canadian courts have not yet provided a clear statement on the issue, the weight of current policy and practice indicates that trustee fiduciary duties include, and arguably require, consideration of non-financial factors, provided that it can be demonstrated to be in the financial long-term interests of plan members.³

Indeed, because pension funds are long-term and global investors, consideration of the potential risks and opportunities that political, social, environmental and ethical practices have and will have on financial markets and the fund's investments, is prudent.⁴

••• Administrative Responsibilities

Pensions Committee members are also responsible for the daily administration of the plan. Some of these administrative duties are prescribed by law while others are imposed by the plan's text and internal policies that have been established by the committee.

The main administrative duties prescribed by pension legislation for committee members are as follows:

- Determine which employees meet the eligibility requirements to join the plan as prescribed in the plan text and enrol eligible members in the plan;
- Send out on a regular (annual) basis a statement of benefits accumulated under the plan to each member;
- Answer questions from members about their pension plan and their benefits;
- Submit an Annual Information Return (AIR) to the appropriate pension regulatory body, as well as to the Canada Revenue and Customs Agency;
- Register all plan amendments with the appropriate pension regulatory body and with the Canada Revenue and Customs Agency;
- Inform the plan's members of amendments which adversely impact the plan;
- Issue annual reports and / or hold an annual meeting of all plan members and beneficiaries to inform them of the committee's activi-

ties, the plan's financial situation and any amendments to the plan; and

- Hire staff or consultants to provide advice to the committee or help carry out the committee's duties.

••• Roles and Responsibilities of Staff and Consultants in Plan Administration

The role of a Pensions Committee can be compared to that of a Board of Directors in a union or a business. The committee makes strategic decisions, conducts risk control and monitors the administration. Pension plan administration is complex. Pensions Committee members do not necessarily have the knowledge required for carrying out certain financial and administrative functions. In order to perform its role objectively and with openness, it will enlist the services of staff or certain professional consultants in the field of pensions to help with day-to-day financial and administrative activities.

Some of the professionals that help manage and administer a pension plan include investment manager(s), actuary, custodian, auditor, legal advisor, communication specialist, administrative service provider, pension consultant, asset consultant, investment broker / dealer and performance measurement purveyor.

The following is a brief description of what each of these professionals do and their specific roles and responsibilities.

- **Investment manager** – A company or person that is hired by the plan to manage plan assets. They decide on how to invest fund assets and select securities on a day-to-day basis within the discretion determined by the Pensions Committee, usually in the form of an investment policy statement (Statement of Investment Policies and Goals (SIPG) or the Statement of Investment Policies and Procedures (SIPP)). The investment manager may be an independent counselor, an insurance company, a trust company or a bank (or their investment subsidiaries).

Choosing an investment manager is a critical decision for the plan. Consideration should be given to the investment manager's style, objectives and risk tolerance. Whether or not the investment manager has a track record in terms of solid pension experience and association with well-established investment companies should also be considered.

- **Actuary** – This is a professional who calculates and certifies the value of the liabilities of a defined benefit pension plan, the plan's funded status and the level of required contributions for funding purposes and pension expense for accounting purposes. They also prepare reports, in accordance with pension legislation. There is a more detailed explanation of the role of actuaries in *Chapter Eight – How Pensions are Funded*.

- **Custodian** – Custodial services are offered by a company (usually a trust or insurance company) or person performing functions related to the administration of the pension fund, including: safekeeping of assets and security certificates; maintaining accounts and records; providing regular statements of fund transactions and holdings; receiving plan contributions and investment earnings; making payments to beneficiaries and paying expenses as directed; and settling trades with investment dealers on instructions from the investment manager(s).

It is important when choosing a custodian to take into account experience, fees, reporting capabilities and compatibility with the plan's investment manager(s).

- **Auditor** – This is a professional accountant who prepares an audit of the transactions affecting the pension plan and / or pension fund and verifies financial statement.

- **Legal advisor** – The legal advisor provides legal advice and interprets plan provisions, pension legislation and regulations.

- **Communication specialist** – The role of this individual would be to foster openness and accountability with the plan's members. Given the complex and specialized nature of pensions, it's important to have a specialist to help communicate the plan's administration and performance to members and beneficiaries to help instill confidence and interest in the plan.

- **Administrative service provider** – The role of this person or company is to be record keeper of the plan. It involves maintaining information on beneficiaries for the ongoing administration of the plan. Functions include recording members' contributions and other related information, determining benefit entitlements and providing information to other interested parties.

A Pensions Committee may decide to have the plan hire its own staff, contract with a company or have the custodian firm hired by the plan do these functions.

- **Pension consultant** – This is a person who assists and advises the plan sponsor, unions or other employee groups, in the management of the pension plan. Areas of expertise may include plan design, documentation, compliance with an interpretation of pension legislation, preparation of employee benefit statements and other communications, calculation of plan member benefit entitlements and administration.

- **Asset consultant** – A person who assists and advises in the investment of fund assets. Areas of expertise include investment policy and asset allocation, management structure, investment strategies, selection of investment managers and custodians and performance evaluation.

- **Investment broker / dealer** – A company or person matching buyers and sellers of securities and / or providing research for investment managers.

- **Performance measurement purveyor** – This is a company or person performing the function of calculating rates of return and related statistics to measure and compare the performance of the fund.

••• Basic Principles of Sound Administration

Administering a pension plan somewhat resembles administering a union. Like elected officers and senior staff of the union who are responsible for administering the union's policies, services and assets, Pensions Committee members must act in a competent, responsible and prudent manner.

Sound administration of a pension plan is achieved when a set of procedures and internal control mechanism are put in place to manage the pension fund and administer the plan.

Sound administration entails numerous advantages, thus facilitating:

- accountability;
- informed decision-making;
- by and large better investment performance;
- better control of risks;
- satisfactory monitoring of the plan's operations; and
- appropriate division of responsibilities amongst the plan's key players.

In addition, sound administration prevents contradictions between the plan text and the administrative policies, inappropriate expenditures, poor

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communication to members and beneficiaries, legislative breaches and conflict of interest.

¹ B. Berthune, A. Whiston and Lois C. Gottlieb, *Morneau Sobeco Handbook of Canadian Pension and Benefit Plans*, 13th edition CCH Canadian Limited, Toronto: 2005. p. 86-88.

² Gil Yaron, *Fiduciary Duties, Investment Screening and Economically Targeted Investing: A Flexible Approach for Changing Times*, Shareholder Association for Research and Education (Vancouver: May 2005).

³ *Same Source*

⁴ *Same Source*