



February 11, 2011

Financial Services Commission of Ontario
5160 Yonge Street
Box 85, 8th Floor
Toronto, Ontario
M2N 6L9

Attention: Pension Policy Unit

Dear Sirs/Mesdames:

Re: Administrator's Management of Inquiries and Complaints from Plan Beneficiaries

The Ontario Bar Association appreciates the opportunity to comment on the Financial Services Commission of Ontario's ("FSCO") December 2010 Consultation Memorandum on *Administrator's Management of Inquiries and Complaints from Plan Beneficiaries* (the "Consultation Paper")

The OBA

Established in 1907, the OBA is a branch of the Canadian Bar Association. It is the largest voluntary legal association in Ontario and represents 18,000 lawyers, justices, law professors, and law students. The OBA Pensions and Benefits Section has more than 300 members who serve as legal counsel to various stakeholders within the pension and benefits industry. These stakeholders include pension and benefit plan administrators, employers, plan members, pension and benefit consultants, investment managers, actuarial firms and other advisors. Our Members have, over the years, analyzed and provided assistance to the Ontario government on most legislative and policy initiatives in the pension field.

The OBA agrees that complaints from pension plan members should be addressed promptly and fairly and appreciates FSCO taking the time to provide some guidance in this area. We offer the following comments.

Clarity Regarding Duties of Administrators

As you recognize in your Consultation Paper, a one-size-fits-all policy for complaints and inquiries is not appropriate, given the broad variations in the size of pension plans, the sophistication of members and access to information and legal support. The only direction suitable for all plans is, simply, that member's complaints and enquiries should receive prompt and accurate responses and members should be advised of their ability to take their complaints

further (to FSCO etc.) if they are not satisfied with the reply of their administrator. How this overall direction is best achieved will vary from plan to plan. It is, therefore, important that the suggestions made in the Consultation Paper and the reference to FSCO's *Guidelines for Developing a Written Policy on Managing Inquiries and Complaints from Plan Beneficiaries* be explicitly understood to be non-mandatory guidance rather than a prescriptive policy that creates any additional fiduciary obligations.

In this regard, FSCO does explicitly provide in the Consultation Paper that:

This policy is not intended to create additional rights, obligations, or responsibilities for those involved in the administration of the pension plan and pension fund, or for the recipients of pension entitlements, beyond those required under the PBA and Regulation, or by the common law.

However, there may be some confusion given the explanatory note at the beginning of the document. The Note provides:

Where this policy conflicts with the Financial Service Commission of Ontario Act...., Pension Benefits Act....or regulation 990, The FSCO Act, PBA or Regulation governs.

This could be seen to imply that where the Consultation Paper does not conflict with the legislation and regulation, but simply augments them, the guidelines outlined in the Consultation Paper govern. For greater clarity, the Note could provide that:

This policy is not intended to create additional rights, obligations, duties or responsibilities for those involved in the administration of the pension plan and pension fund, or for the recipients of pension entitlements. Where this policy conflicts with or augments the Financial Service Commission of Ontario Act...., Pension Benefits Act....or regulation 990, The FSCO Act, PBA or Regulation governs.

Timing

Given that the suggestions outlined in the Consultation Paper are not, and should not be, prescriptive, the timing or "Effective Date" is not crucial. However, the approach outlined for communicating, managing and, particularly, tracking complaints and inquiries is likely more than most administrators currently have in place. As such, for those plans that do intend to adopt all or most of the guidelines set out, the Effective Date of the policy should not be immediate. There should be some period of time to allow administrators to implement any adjustments to their current processes, procedures and technology.

Additional Suggestions

The following additional guidance may be helpful:

- i) procedures regarding complaints and information requests should be outlined in plain language. This information, including member booklets, should generally be updated whenever there is a significant change in the complaint and inquiries procedure or other procedures or policies relevant to members; and
- ii) administrators should consider appointing a member-representative to whom members could go, at their option, either at first instance when there is a complaint or information required or after receiving an unsatisfactory answer.

Once again, we appreciate the opportunity to comment on your Consultation Paper concerning this important issue. Please do not hesitate to contact us if you have any questions or require further information or assistance.

Yours truly,



Lee Akazaki
OBA President



Ari Kaplan
OBA Pension Law Section Chair