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Miscellaneous

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TITLE: Tips for Dealing with the PCO

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This article informs plan administrators, agents and their staff about how to approach the PCO and how to obtain better service and more timely approvals.

The Importance of Demonstrating Compliance

It is the responsibility of individuals in the pension industry, when dealing with the PCO, to **demonstrate** that applications, filings and submissions are in compliance with the *Pension Benefits Act* (the “PBA”), the Regulations and PCO policies.

Applicants should ensure they have received appropriate professional, actuarial, or legal advice **before** making submissions or filings to the Commission. This will certainly reduce delays when members of the pension industry submit applications or filings.

PCO staff will advise applicants about the practices and policies of the PCO. However, PCO staff cannot act as independent consultants. Interested parties should obtain independent, professional advice regarding their obligations under the PBA and Regulations.

The Relationship Between PCO Staff, the Superintendent of Pensions and the Commission

PCO staff, in the course of carrying out their duties, provide advice to both applicants to the PCO and to the Superintendent. Staff will review the facts of a submission or an application, and make recommendations based on these facts to the Superintendent or to the Commission (tribunal).

Advice provided by PCO staff is not binding upon the Superintendent. Neither is advice provided by the Superintendent or PCO staff binding upon the Commission (tribunal).

In each case, after considering the facts of an issue, the Superintendent or the Commission (tribunal) will render a decision. While such decisions are made independently, the Superintendent and the Commission (tribunal), as a matter of course, will review the material provided to them by the applicant and other interested parties. Consequently, it is in the interest of applicants to discuss their proposed application with the appropriate Pension Officer or Analyst prior to filing the application.

Important Considerations When Making Applications or Submissions

1) Timing

The PCO and, on occasion, the Commission (tribunal) have been in situations where applicants request a response to last-minute proposals, generally for a compelling business reason. In one case, an employer suddenly realized, a day or two before the planned announcement of an early retirement program for plan members, that it had failed to obtain agreement of the Superintendent in advance of offering the package. This resulted in considerable inconvenience to everyone concerned.

Applicants should be mindful that consultation with staff is especially important where the terms of a proposal, for instance, the terms of a proposed early retirement program, fall outside the parameters of the PCO's published guideline.

In cases such as the example cited above, it is impossible for the applicant to receive an immediate response to the application.

2) Content and the Need to Demonstrate Compliance

Plan administrators and their agents should be aware of the PCO's published guidelines and administrative practices. When making a submission to the Commission, it is necessary to follow the guideline or practice appropriate to the particular submission. Moreover, applicants should demonstrate that they are in compliance with the PCO guideline or the practice that is relevant to their submission.

3) Submissions that Deviate from Policy Guidelines

Sometimes clients may propose a course of action that deviates from PCO policies and guidelines. For all such proposals, applicants must provide to PCO staff:

- a summary of the background and reasons leading to the proposed course of action;
- a description of the business purpose of the proposed course of action;
- an analysis of the legal and policy issues that form part of the proposed course of action;
- a summary of the applicant's opinion in the matter, including reasons why the proposed course of action should be allowed;
- references to the relevant sections of the PBA, Regulations and PCO policies which support the proposed course of action; and
- all arguments in support of any exemptions sought from the Superintendent or the Commission.

To further support the applicant's position, it may be necessary for the applicant to provide a numerical analysis of results expected from the proposed course of action. We strongly recommend, in these cases, that applicants consult with PCO staff well in advance of the event to determine the type of information they must provide.

4) Exercise of Discretion by the Superintendent or the Commission (Tribunal)

Under the PBA, it is open to the Superintendent of Pensions or the Commission to exercise discretion in certain matters.

In many such cases involving the exercise of discretion, policies have been published which attempt to indicate, in a conceptual manner, how this discretion will be exercised. It is important to note, however, that these policies may not fetter the discretion of the Superintendent or the Commission and every case will be considered on its merits.

Nevertheless, these policies provide guidance as to the issues that will be considered in exercising discretion and consequently, may assist in the preparation of an application.

5) Meetings with PCO Staff to Discuss a Proposed Application

In general, the purpose of a meeting with staff to discuss a proposed application is to clarify or obtain direction with respect to PCO guidelines, practices and rulings. In most cases, such meetings are held after an applicant has made a submission to the Commission. However, applicants are urged to consider convening a meeting prior to making the application or filing the submission so that the applicant will be aware of all the relevant considerations before preparing an application.

Applicants are advised that upon receipt of the completed application, staff require approximately three months to process the application and prepare the case for presentation to the Commission. (Please refer to the article in the last issue of the *PCO Bulletin* concerning deadlines for the submission of applications to the Commission.)

**The Pension Plans Branch:
Restructured to Improve Service**

While the focus of this issue is on measures that plan administrators, agents and their staff can take to ensure accurate, certified and complete filings and submissions, readers should be aware that efforts have been expended to improve service to stakeholders.

For instance, the branch underwent a major restructuring in May 1992 to deal with the substantial backlog of filings that had developed in the early years following pension reform. Re-engineering of review processes and practices continues.

The key feature of the restructuring was the recognition that Pension Officers and Pension Analysts should assume responsibility for managing caseloads of plans from “birth to death”. (Pension Officers are responsible for managing a caseload of defined benefit plans and Pension Analysts are responsible for defined contribution plans.)

Officers and Analysts are aided and supported in managing all aspects of individual plans plus caseloads of up to 250 plans per Officer and 500 per Analyst by the creation of three technical consultant positions. The consultants’ expertise relates to:

- filing, financial reporting and funding requirements,
- registrations and special situations in ongoing plans namely, asset transfers, conversions and early retirements windows, and
- special situations in wind ups namely, wind up and surplus issues, PBGF and insolvencies.

Typically Officers and Analysts seek advice from the consultants and monthly professional development seminars are held to review common solutions to the problems and issues of the day. Accordingly, Officers and Analysts can administer the legislation with greater certainty and consistency.

Furthermore, the opportunity presented by such a structure is that plan administrators, their agents and staff, as well as plan members and others such as collective bargaining agents can build a working relationship with the individual Officer or Analyst assigned to the plan. The result is a more systematic, thorough and therefore, efficient regulatory process.