

Updated January 16, 2018

Missing Members, Present Obligations

Authors: [Elizabeth Brown](#), [Lisa Mills](#), [Terra Klinck](#), [John Prezioso](#), [Jason Paquette](#), and [Nicolas Guadagnolo](#)

Missing former members have long been an issue for pension plan administrators. Historically, missing beneficiaries posed challenges when pension payments were scheduled to commence and at the time of a plan wind-up. In 2017, administrators were for the first time required to provide a biennial benefit statement to Ontario former members and retired members. In the context of ongoing disclosure to inactive members, a plan administrator's obligations toward missing beneficiaries have greater significance from a legal and compliance perspective. In this Sidebar, we explore a number of noteworthy policy and legislative developments relating to missing Ontario pension plan beneficiaries.

FSCO Policy A300-900 – Searching for Plan Beneficiaries

Under the Ontario *Pension Benefits Act* (the "PBA") one of an administrator's primary responsibilities is to pay benefits in accordance with the plan terms. This responsibility, and other PBA duties, requires administrators to maintain accurate member records and to search for plan beneficiaries whose contact information becomes outdated. Recently released Financial Services Commission of Ontario ("FSCO") Policy A300-900 (*Searching for Plan Beneficiaries*) sets out the Ontario pension regulator's expectations of administrators with respect to searching for missing beneficiaries. The Policy specifically notes the following individual-directed search methods which administrators may consider employing:

- sending email notifications to the last known email address;
- making inquiries with any union, professional or similar association (if applicable);
- utilizing the search services of a government agency, where available;
- retaining a professional search company;
- searching internet sites and social media platforms;
- reviewing newspaper obituaries and/or funeral home announcements; and



- retaining private detectives.

The Policy also suggests using broad-based communications in circumstances where individual-directed searches are unproductive. In all cases, the Policy provides that administrators should document the search methods used and the dates on which search methods were undertaken.

Missing Beneficiaries Registry

Recent amendments to the PBA, which we highlighted in our [November 21, 2017 Sidebar](#), will require the Superintendent of Financial Services (the “Superintendent”) to create and maintain an electronic registry for missing plan beneficiaries.

Under the pending regime, if an administrator fails to locate a plan beneficiary through applicable search efforts, the administrator will be required to notify the Superintendent. The Superintendent will maintain a missing beneficiary registry based on the information provided by administrators if it is satisfied that the beneficiaries are indeed missing.

Individuals will be able to apply to the Superintendent for a determination of their status as a beneficiary of an Ontario registered pension plan. If sufficient proof is provided, the individual will be given information about the employer, the plan and the plan administrator. Plan administrators will be responsible for notifying the Superintendent of any located plan beneficiary so that information relating to the beneficiary can be removed from the registry.

The registry represents a new concept in Canada. Whereas other jurisdictions have created depositories for amounts owing to missing beneficiaries, under the Ontario regime pension plans will be required to retain any amounts due to missing beneficiaries, and the registry will assist with “reuniting” missing beneficiaries with the plan administrator that holds their benefit. The PBA amendments requiring the creation of the registry have been passed into law but are not yet in force. We will continue to monitor developments and communicate them as they arise.

FSCO Policy A300-901 – Waiver of Biennial Statements for Missing Former and Retired Members

As noted earlier, commencing in 2017 administrators are required under subsection 27(2) of the PBA to provide biennial benefit statements to former members and retired members. Subsection 27(3) of the PBA allows the Superintendent to provide dispensation from this obligation if there are reasonable and probable grounds to believe that the former member or retired member is missing.



Coincident with the release of FSCO Policy A300-900 regarding the administrator's obligation to search for beneficiaries, FSCO released Policy A300-901 regarding the process to make an application to apply to the Superintendent for a waiver from the obligation to send biennial statements to missing former and retired members. FSCO Policy A300-901 (*Waiver of Biennial Statements for Missing Former and Retired Members*) sets out what the Superintendent will require from administrators before providing a waiver.

Under this Policy, former members and retired members are considered missing after an administrator who is reasonably certain that the individual's last known address is outdated has undertaken an individual-directed search for that individual. Details regarding the search in respect of each missing member – i.e., what was done and when – form an integral part of the waiver application. As a result, it is imperative that plan administrators keep fulsome records in respect of beneficiary searches.

The Policy clarifies that a separate application must be submitted for each biennial statement for which a waiver is sought (i.e., every two years). However, fresh individual-directed searches need not necessarily be performed for each round of waiver applications.

Next Steps

These new FSCO Policies provide detailed guidance for administrators as to the steps that should be taken to find former members and retired members and, when necessary, to obtain a waiver from the requirement to deliver biennial statements under the PBA.

Please let us know if you have any questions about your obligations in respect of missing plan beneficiaries.

Elizabeth M. Brown
416-922-0678
elizabeth.brown@bmkplaw.com

Lisa J. Mills
613-369-5477 | 416-922-9865
lisa.mills@bmkplaw.com

Terra L. Klinck
416-922-1106
terra.klinck@bmkplaw.com

John Prezioso
416-922-6697
john.prezioso@bmkplaw.com

Jason R. Paquette
416-922-9084
jason.paquette@bmkplaw.com

Nicolas J. Guadagnolo
416-922-8348
nicolas.guadagnolo@bmkplaw.com