



PENSION PLAN ADMINISTRATORS COULD SAVE MILLIONS BY WRITING TO THE DEAD: “DEAR RETIREE: ARE YOU STILL ALIVE?”

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Many administrators of Canadian pension plans send letters to pensioners¹ on a regular basis, asking them to certify that they continue to be entitled to receive their monthly pensions. The process is sometimes referred to as a retiree/survivor audit. The letters require pensioners to sign and mail a form back to the administrator, confirming that they remain alive. Such letters often state that the pension will be cut off if the pensioner does not return the required form.

Is this a reasonable thing for administrators to do? Administrators think it is. Pensions often continue to be paid when they should have stopped on the death of a pensioner, simply because the administrator is not notified of the death. By seeking confirmation (“are you still alive?”), administrators are merely attempting to protect the interests of all members of the pension plan by ensuring that the pension plan assets are not depleted by improper payments.

This article will examine the problem of payments to dead pensioners, and consider whether Canadian law permits a pension plan administrator to stop payments if a pensioner fails to certify that they are still breathing.

HOW BIG IS THE DEAD PENSIONERS SOCIETY?

Media reports from around the world suggest that many intrepid survivors collect mummy’s pension for years after she dies. Jail time often ensues. A Washington man was sentenced to prison for fraudulently collecting his deceased mother’s pension from the Ohio Public Employees Retirement System for 23 years.² There are many similar stories of convictions for pension larceny.³ A recent U.S. investigation revealed that a majority of Illinois’ government pension funds lost millions of dollars during the five-year period of 2010 to 2014 by sending pension payments to the grave.⁴ And there have been gruesome reports of Japanese relatives living with decomposing corpses for decades, Bates-like, in order to collect pension income.⁵

We know that the Canada Pension Plan has been similarly abused. The RCMP has publicly reported on several charges laid under the *Criminal Code* against individuals who fraudulently received the CPP benefits of their dead relatives for years.⁶

This problem of pension payments to dead people is not limited to criminals who don grey wigs and forge signatures. Bereaved relatives and overwhelmed estate representatives inadvertently continue to receive pensions that should have ceased on the death of a pensioner. An advisor aptly commented, “*Pensions don’t automatically ‘sort themselves out’ when someone dies.*”⁷

Understandably, several months’ worth of pension payments can continue after death, simply because survivors do not think to notify the pension plan administrator immediately, or do not know who to contact. Monthly statements from financial institutions that confirm pension payments often do not identify the true source of direct deposits of pension payments.

¹ References to “pensioners” in this article include survivors of plan members who are entitled to a lifetime pension.
² Report of the Office of the Inspector General, Social Security Administration, Monday, January 13, 2014 [<https://oig.ssa.gov/audits-and-investigations/investigations/jan13-wash>].
³ “N.J. woman headed to jail for stealing dead mother’s pension,” by Jeff Goldman, reported on the website of N.J.com, June 21, 2016 [http://www.nj.com/news/index.ssf/2016/06/nj_woman_headed_to_jail_for_stealing_dead_mothers_pension.html].
⁴ “The Watchdogs: Pensioners die, but retirement pay keeps coming,” by Sun-Times Staff, September 13, 2015, on-line edition of Chicago Sun-Times [<http://chicago.suntimes.com/politics/the-watchdogs-pensioners-die-but-retirement-pay-keeps-coming/>].

⁵ The Economist, on-line edition, September 11, 2010 [<http://www.economist.com/blogs/freexchange/2010/09/pensions>].
⁶ Media release of the RCMP Media Relations “O” Division (Ontario), April 1, 2014 [<http://www.rcmp-grc.gc.ca/on/news-nouvelles/2014/14-04-01-gta-rgt-eng.htm>]. Benefits Canada articles, “Ontario man accused of pension fraud,” September 5, 2013 [<http://www.benefitscanada.com/pensions/other-pensions/ontario-man-accused-of-pension-fraud-43529>] and “78-year-old fraudulently collected CPP, OAS benefits for 14 years,” July 31, 2013 [<http://www.benefitscanada.com/news/78-year-old-fraudulently-collected-cpp-oas-benefits-for-14-years-42057>].
⁷ “What to do about someone’s pension when they’ve died,” published in the on-line newsletter, “The Money Advice Service,” June 2016 [<https://www.moneyadviceservice.org.uk/en/articles/what-to-do-about-someones-pension-when-theyve-died>].

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WHAT ARE THE CANADIAN LEGAL REQUIREMENTS?

Pension legislation in Canada requires administrators to act prudently in protecting the interests of all plan members but fails to set out specific guidance as to whether and how an administrator should guard against fraudulent or inadvertent receipt of a pension that should have stopped following death of a pensioner. Fortunately, several pension regulators have provided guidance.

The British Columbia and Alberta pension regulators have confirmed that an administrator can discontinue pension payments if a pensioner fails to respond to written requests for confirmation they are alive.⁸ A representative of the Financial Services Commission of Ontario has noted, correctly, that there is no mechanism in Ontario pension legislation that allows an administrator to stop payments simply because a retired member fails to respond to a letter. The representative of the Ontario regulator suggested following administrative practices similar to those used for locating lost members, in order to confirm whether a pensioner is deceased.

Canadian pension regulators expect administrators to act reasonably and demonstrate due diligence in contacting pensioners. The federal pension regulator, the Office of the Superintendent of Financial Institutions (“OSFI”), has provided a playbook that sets out very specific guidance as to what an administrator should do, taking a position that is slightly different from that of other pension regulators. In its November 2013 newsletter,⁹ OSFI confirmed that conducting retiree and survivor audits is a good governance practice, and made the following comments:

“It has come to OSFI’s attention that some pension plans may be stopping pension benefit payments without performing due diligence to conclude that the retiree or survivor is deceased. A retiree’s or

survivor’s failure to complete a form requested by the plan administrator, or respond to a series of letters, should not be considered sufficient evidence or reasonable basis to conclude that the retiree or survivor is deceased.” [emphasis added]

OSFI’s newsletter describes several actions that an administrator could carry out in order to establish “sufficient evidence for a reasonable basis to conclude that the retiree or survivor is deceased”, including the following:

- (i) send the letter to the pensioner by registered mail;
- (ii) contact a family member to obtain written confirmation that the member is dead;
- (iii) review obituary announcements in local newspapers and/or funeral homes;
- (iv) contact the financial institution where the pension cheques are deposited or cashed; and
- (v) hire a search firm or agency to search public records.

WHAT’S A PENSION PLAN ADMINISTRATOR TO DO?

Steps that a pension plan administrator can take include: Have a written policy as to exactly what steps will be taken to confirm continuing pension payments and, if appropriate, cut them off. Get legal advice as to whether the policy is appropriate, especially if the pension plan is federally regulated, since OSFI has a very clear policy as to what it considers to be appropriate. Keep a record of all actions taken to follow the policy. Even if a judge or regulator subsequently determines that the administrative action was inappropriate, there is merit in having put time and effort into attempting to formulate a reasonable policy. In a worst-case scenario, the very existence of and

⁸ Pension benefits legislation of B.C. and Alberta places the onus on the individual to demonstrate that he or she has a benefit entitlement. See section

67 of the Pension Benefits Standards Act, SBC 2012, c 30, and section 69 of the Employment Pension Plans Act, SA 2012, c E-8.1.

⁹ <http://www.osfi-bsif.gc.ca/Eng/Docs/ip/20131126/cng/index-eng.html>

consistent adherence to the policy will be favourably viewed, even if the policy is found to be deficient.

At a minimum, consider including the following steps in the policy:

- (i) Do not send only one letter before cutting off a pension. If a decision is made to stop paying a pension, provide several weeks' prior notice, and send that notice by registered mail. Always include prepaid postage.
- (ii) Track whether the "are you alive?" letter is returned "address unknown." If it is, implement a search process to attempt to locate the member, similar to the process followed to locate missing plan members in the ordinary course.
- (iii) Consider implementing a secondary contact procedure, such as attempting to contact the pensioner by phone, and attempting to contact family members, before stopping payment of a pension.
- (iv) Investigate governmental "death registries" that can provide confirmation of death at a reasonable cost. Service Ontario, for example, provides such a service for only \$15.¹⁰

Use friendly and clear language in the "are you alive" letter. Explain in plain terms why the certification is needed, and do not be draconian about the

consequences if the pensioner does not reply. For example:

Why are you required to complete and return the enclosed form? As the administrator of the plan, we have a duty to ensure that all pension payments are made correctly to eligible recipients under the terms of the plan. In order to fulfil that duty, we must ask you to confirm that the information on the enclosed form is accurate.

Please return the form by [a date that is six to eight weeks following the mailing]. If we have not heard from you, we could suspend your pension payments as a precaution until we confirm that your information is accurate. If you have any questions or concerns, please contact [phone number].

Administrators of pension plans have a legal obligation to act prudently and to avoid erroneous payments from their plans. They must also consider the risk of injuring pensioners, and should recognize the potential for damage to reputation, and unwanted regulatory scrutiny, in the event that they stop paying a pension to a needy pensioner who for some reason fails to respond to a letter. Administrators are advised to put some careful thought into an appropriate process, and document the policy and the practice in dealing with this challenge.

¹⁰ <https://www.ontario.ca/page/how-get-copy-ontario-death-certificate-online>