



Canadian Airways Lodge No. 764

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

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NOVEMBER 2011 – LL764 PENSION COMMITTEE REPORT

The governing legislative document for federally regulated pension plans in Canada is the *Pension Benefits Standards Act, 1985* - colloquially referred to as the *PBSA*. It is the statute that contains all of the rules and responsibilities binding on all parties to a federally registered pension plan.

Every pension plan is comprised of a variety of elements but two that are essential to every plan are the plan sponsor and the plan administrator. In the case of a single employer pension plan like Air Canada, the company is bound by the *PBSA* to act as both the plan sponsor and the plan administrator.

Of these two roles, the sponsor's role is the simplest. They are required to provide the money. The pension fund must be held in trust separate from the employer's own monies and the sponsor bears the sole responsibility for ensuring that all monies owed to the pension plan are paid into the fund. They are also responsible to ensure that all monies owed by the pension plan are paid to the benefit of the members. They are required to fund any shortfalls that arise in the plan when the assets are insufficient to pay for the associated liabilities. The buck literally stops with the sponsor.

Section 7(1)(c) of the *PBSA* also requires the employer to be the administrator of a single company pension plan. All of the varied roles and responsibilities of the administrator are set out in Section 7 of the *Act*. The role of the administrator of a pension plan is by far the more complex and involved of the dual roles. It is through this role that the company bears their fiduciary duties to the plan. That is a legal way of saying they have a duty to act reasonably and prudently. They must handle the money as any reasonable person would handle another person's money. They have a duty of loyalty to the people whose interests they represent, both the sponsor and the members. They cannot have a conflict of interest with the interests of the plan. They cannot profit from their role as administrator and they must act with an "even hand" when dealing with competing interests (like the sponsor and the members)

The employer can hire a separate third party person or company to act as the administrator on their behalf but ultimately they retain the fiduciary duties owed to the plan. This is the case with Air Canada having contracted the Mercer Pension Consulting Group to act as the plan administrator for all of their pension plans.

The administrator must oversee the investment of the pension fund acting as a trustee for the employer and ensure that the plan is in compliance with all pension and tax laws and regulations. They must file all required documents and provide all of the required information (like annual statements) to the members. The administrator also must hire an actuary for the plan. The sponsor must provide all of the information required for the administrator to comply with the terms of the plan and to discharge their duties to the plan.

Canadian pension plans are highly regulated and there is a tightly controlled system of oversight established to ensure good governance and financial stability for every plan. The funding, investing and reporting of pension plans is very tightly controlled to protect the assets and thereby the pensions of all plan members. Canadians benefit from a more stringent pension regulation system than our American cousins. The evidence of that was born out a decade ago during Chapter 11 filings of several large US airlines. In every single instance the employees who were members of company sponsored pension plans lost their pensions overnight. Most of them were left with as little as 20% of their pension that was insured by the US government Pension Benefit Guaranty Corporation. The Canadian Federal *PBSA* is the only reason we did not suffer a similar fate during the 2003 CCAA restructuring of Air Canada despite the best efforts of many involved in that CCAA process. That is why we still have a pension plan to explain today.

I may be contacted at president@iam764.ca with any questions or concerns that you may have.

Respectfully Submitted,

Christopher Hiscock
Chairman, LL 764 Pension Committee

