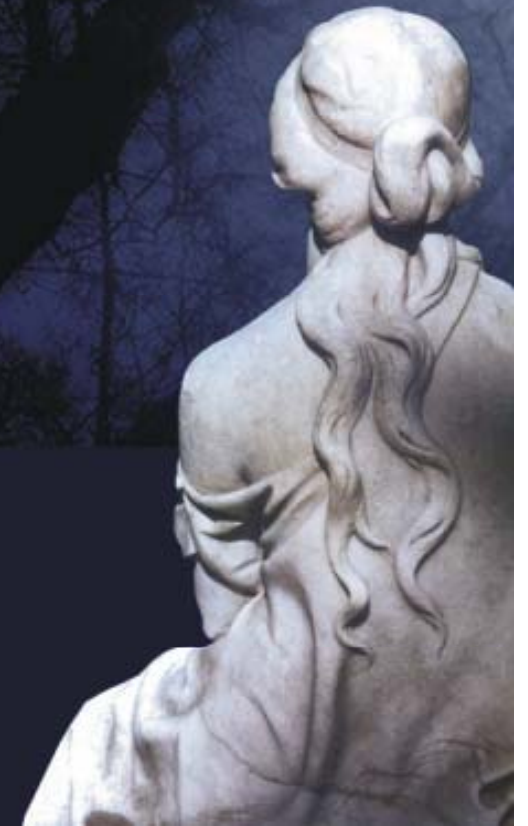


HOW TO EXERCISE A DISCRETION

Patrick Bracher

DENEYS | REITZ
ATTORNEYS

Midnight
in the
garden of good and evil





Midnight
in the
garden of good and evil



Section 37D(1)(b)
gives a discretion
to pension funds



Exercise discretion with care
and in the process balance
the competing interests



Section 37C:

Identify eligible dependants

Make an equitable distribution



Investigate and evaluate
the factual circumstances



There is a Constitutional
imperative to behave justly



The common law requires

lawful

reasonable and

procedurally fair administrative action



Principles of natural justice

Particularly the right to be heard



Look at the amount at stake

Midnight
in the
garden of good and evil



Investigations:

Find out who is going to be affected



Give adequate notice of the
nature and purpose
of the process



Reasonable opportunity
to make representations



A hearing can be conducted
by written submissions



Careful thought to facts
and any proposed conditions



Bias must be avoided



Issue a preliminary order



Give brief reasons
for your decision



Comply with procedural requirements



No single perfect way

