

ENFORCEMENT OF MAINTENANCE ORDERS

A bulletin to assist in the understanding of the administration of maintenance enforcement orders that impact pension moneys which are subject to of *The Pension Benefits Act, 1992*.

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ENFORCEMENT OF MAINTENANCE ORDERS **Under *The Pension Benefits Act, 1992***

Introduction

The Maintenance Enforcement Office of Saskatchewan collects court-ordered maintenance payments on behalf of Saskatchewan children and families. Maintenance Enforcement is given a variety of collection mechanisms including garnishment of wages, interception of federal government payments, seizure of property and suspension of driver's licences.

The Enforcement of Maintenance Orders Act, 1997 ("EMOA") authorizes the Director of the Maintenance Enforcement Office ("Director") to attach pension funds as a last resort remedy for enforcing maintenance orders. *The Pension Benefits Act, 1992* (the "Act") also was amended to permit such an attachment. This bulletin explains the attachment process as well as some other issues.

The bulletin has no legal authority. The Act, *The Pension Benefits Regulations, 1993* (the "Regulations"), EMOA and *The Enforcement of Maintenance Orders Regulations, 2009* should be referred to for specific requirements. Please note, in particular, section 50 of the Act and sections 35 to 40 of EMOA.

This bulletin does not set out the provisions related to the enforcement of maintenance orders under *The Pooled Registered Pension Plans (Saskatchewan) Act*. If you have questions related to pooled registered pension plans ("PRPP") and maintenance orders, please contact your PRPP administrator.

Conditions Necessary for an Attachment

Several conditions must exist before the Director may attach pension entitlements:

1. The respondent must be in arrears in an amount not less than 3 months' maintenance payments. "Respondent" means the person who has an obligation to pay a maintenance order.
2. The respondent must be neither a member in the pension plan nor a former member in receipt of a pension from the plan. An attachment, therefore, is limited to the pension entitlements of former members who are not yet in receipt of their pensions. Members and pensioners are excluded because both have sources of income (wages and pensions, respectively) which can be garnisheed pursuant to the EMOA.
3. In the opinion of the Director, all reasonable steps have been taken to enforce the maintenance order. Attachment must be a last resort.
4. The Director has served the pension plan administrator and the respondent with a notice of the Director's intention to attach the pension entitlement.
5. The respondent has not made arrangements to fulfil the obligation under the maintenance order, to the satisfaction of the Director, prior to the service of the notice of attachment.

The Attachment Process

1. Notice of the Director's Intention to Attach

To initiate an attachment, the Director must send a notice of the Director's intention to attach the respondent's pension entitlement to the pension plan administrator and the respondent.

The "Notice to the Administrator of Intention to Attach Pension Entitlement" (copy can be found in *The Enforcement of Maintenance Orders Regulations, 2009*) directs the administrator to provide the Director and the respondent with the following information within 30 days of the receipt of the notice:

- (a) the most recent address of the respondent in the administrator's records;
- (b) confirmation that:
 - (i) neither the respondent nor the respondent's employer on his or her behalf is currently making contributions to the pension plan, and
 - (ii) the respondent is not receiving a pension benefit from the pension plan;
- (c) the value of the respondent's pension entitlement:
 - (i) as at a date provided by the Director on the notice,
 - (ii) whether or not the respondent could actually transfer that amount from the pension plan, and
 - (iii) calculated in accordance with section 24 of the Regulations.

An attachment can proceed even if the respondent does not have right to transfer money from the pension plan under a portability provision. As well, the amount of the pension entitlement which may be attached is not limited to the amount which may be transferred where a transfer deficiency exists per section 28 of the Regulations.

Section 24 of the Regulations prescribes the method for calculating the commuted value of a pension entitlement. With respect to most¹ defined benefit provisions, the value of benefits must be determined in accordance with the Canadian Institute of Actuaries' Recommendations for the Computation of Transfer Values from Registered Pension Plans. With respect to a defined contribution provision, the value of benefits must be determined on the basis of the contributions made by or for the credit of the respondent and interest and any other amounts allocated with respect to the respondent.

¹ A Limited Liability Plan ("LLP") is a defined benefit plan in which the employer's funding obligations are limited by collective bargaining agreement or contract, but does not include a Specified Plan (see section 36.7 of the Regulations for a definition of a Specified Plan). An LLP can be amended such that commuted values are determined on a going concern basis. Please refer to our publications "Administrator's Guide – Limited Liability Plans" and "Member's Guide" for more information about LLPs and commuted values.

The “Notice to Respondent of Intention to Attach Pension Entitlement” (copy can be found in *The Enforcement of Maintenance Orders Regulations, 2009*) informs the respondent that he or she can apply to the court within 30 days of the receipt of the information from the pension plan administrator for an order that his or her pension entitlement not be attached. The respondent also is informed that an attachment would result in a reduction of his or her pension entitlement of administrative costs, income tax and the amount of the attachment itself. A copy of the Notice to Administrator of Intention to Attach Pension Entitlement is attached to the respondent’s notice.

2. Waiting Period

Where a pension plan administrator has been served with a Notice to Administrator of Intention to Attach Pension Entitlement, the administrator cannot pay out or transfer any of the respondent’s pension entitlement until 60 days after:

- (a) if no application is made to court by the respondent challenging the attachment, the date that the Director receives the information requested from the plan administrator on the Notice to Administrator of Intention to Attach Pension Entitlement form;
- (b) if the respondent applies to the court, the date that the court orders the attachment of the respondent’s pension entitlement.

On application by the respondent, the court may order that the respondent’s pension entitlement not be attached because the respondent is not at least 3 months in arrears or the respondent is an active member of the pension plan or the respondent is a retired member of the pension plan. A respondent applying to court must serve the Director and the plan administrator with notice of the application.

3. Attachment of Pension Entitlement

If the respondent does not apply to the courts or has his or her application dismissed, the Director will serve the pension plan administrator with a “Notice of Attachment of Pension Entitlement” (copy can be found in *The Enforcement of Maintenance Orders Regulations, 2009*). The administrator is required to deliver, personally or by ordinary mail, a copy of the notice to the respondent.

The notice will direct the administrator to deduct and remit an amount specified in the notice to the Maintenance Enforcement Office. The notice also permits the administrator to deduct from the respondent’s pension entitlement an amount to reimburse the administrator for costs incurred in complying with the order and income tax.

A plan administrator may recover, by way of deduction from the respondent’s pension entitlement, costs incurred in complying with the notice. The amount of the recovery must reasonably represent the costs actually incurred and cannot exceed \$500, respecting a defined benefit plan, and \$250, respecting a defined contribution plan.

In determining the amount of income tax to be withheld, the administrator must gross up the amount of attachment using the appropriate withholding rate in order to be able to pay the required amount of the attachment net of income tax. For example, if the attachment is in the amount of \$10,000, then \$2,500 ($[\$10,000/.8] - \$10,000$) would be withheld and remitted to the Canada Customs and Revenue Agency. The respondent would be required to declare the attachment amount as income in the year of payment and his or her pension entitlement would be reduced by \$12,500 plus administrative expenses.

The administrator must comply with the notice within 45 days after receiving the notice.

In no case can the amount of the attachment, plus the withholding tax, plus the expense deduction, exceed the total commuted value of the respondent's pension entitlement. However, the whole of the commuted value of a former member's pension entitlement may be attached. In other words, an attachment is limited to the lesser of the amount demanded by the attachment notice and the remainder of the commuted value of the former member's pension benefits after accounting for income tax and administrator's costs.

After the attachment, the former member has no further claim or entitlement to any pension or other benefit respecting the amount attached. The pension entitlement which remains payable to the former member must be calculated on the basis of the commuted value of his or her pension after the attachment.

Legislation ensures that neither the administrator nor the plan is liable to any person by reason of having made payment pursuant to an attachment.

Garnishment

Section 50 of the Act also permits the garnishment of a pension in payment for purposes of enforcing a maintenance order. Enforcement by garnishment is covered in Part III of EMOA . Generally speaking, a garnishment will require the pension plan administrator to retain a portion of the respondent's pension each time the pension is paid and to surrender the sum to the Maintenance Enforcement Office.

Locked-in Retirement Account (LIRA) and Prescribed Registered Retirement Income Fund (pRRIF)

Money in a LIRA or a pRRIF is subject to attachment in the manner described above for pension plans. The financial or other institution that issues, underwrites or is a depository of the LIRA or RRIF is responsible for the duties described for a pension plan administrator.

Contact Us

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