

Pension Commission

Update #16.1

Revised August 2004

Garnishment of Pension Benefit Credits for Purposes of Maintenance Enforcement

Reference: *The Pension Benefits Act Sections 31(1), 31.1, 37(s.1), 38.1; The Pension Benefits Act Regulation Sections 18.1(15)(c), 24.1; The Garnishment Act Sections 14.1, 14.2, 14.3; The Maintenance Act Section 55(2); Court of Queen's Bench Rules 60.08(17) - (32)*

As a result of amendments to The Garnishment Act and The Pension Benefits Act of Manitoba, pension benefits of an active or deferred Manitoba plan member, may now be garnished by a Designated Officer of the Maintenance Enforcement Program of the Department of Justice (Manitoba). Pension benefits of former Manitoba plan members who have had funds transferred to either a locked-in RRSP (pre June 12, 1993), Locked-in Retirement Account ("LIRA"), Life Income Fund ("LIF") or Locked-In Retirement Income Fund (LRIF) may be garnished in the same manner. Please review this Update in conjunction with Pension Commission Update No. 16, July 1995.

Only a Designated Officer acting on behalf of a person entitled to maintenance under a maintenance order or agreement may issue a Notice of Garnishment for this purpose.

DEFINITIONS

This section defines terms frequently used within the Update.

"Designated Officer" means a person employed under The Civil Service Act and designated by the Minister of Justice for the purposes of enforcement of maintenance orders or agreements under Part VI of The Family Maintenance Act.

"garnishee" means an administrator or trustee of a pension plan including an employer who sponsors a pension plan for employees, and a financial or other institution that issues locked-in RRSPs, LIRAs, LIFs or LRIFs.

"Garnishing Order" means a Notice of Garnishment of Pension Benefit Credit (**Form 60 F.2**) as set out in the Court of Queen's Bench Rules.

"Judgment debtor" means a member or former member of a pension plan with an enforceable maintenance obligation.

"Statutory Declaration" means a Statutory Declaration of Pension Benefit.

*Credit Garnishee (**Form 60 G.2**) as set out in the Court of Queen's Bench Rules.*

DISCLOSURE OF INFORMATION

THE FAMILY MAINTENANCE ACT

Section 55(2) of *The Family Maintenance Act* permits the Designated Officer to request basic information from any party involved with the pension benefits of members or former members of pension plans subject to The Pension Benefits Act, including financial institutions providing locked-in RRSPs, LIRAs, LIFs and LRIFs. This information will be used to determine if a person who is in default of their obligation under a maintenance order or agreement, has pension benefits which may be garnished to satisfy the obligation. The information requested by the Designated Officer must be provided, without fee, within 21 days after the day the request is mailed, and this does not require the member's consent.

GARNISHMENT OF THE PENSION BENEFIT CREDIT

THE GARNISHMENT ACT AND COURT OF QUEEN'S BENCH RULES

Section 14.1 of *The Garnishment Act* permits the Designated Officer to enforce a maintenance order or agreement by garnishing the pension benefit credit of a member or former member who is a judgment debtor.

Court of Queen's Bench Rules 60.08(17) to (32) set out the court rules and procedures relating to the garnishment of pension benefits credits. These Rules and applicable forms were registered under *The Regulations Act* on November 20, 1995 and were published in Part II, *Manitoba Gazette* on December 2, 1995.

Service

The Designated Officer may serve a Garnishing Order on a garnishee. A copy of the Garnishing Order will also be sent to the last known address of the member or former member by the Designated Officer.

On the date of service of the Garnishing Order, the Order "binds" the member's net pension benefit credit, to the extent of the amount specified in the Order. The pension benefit credit and net pension benefit credit (i.e. the pension benefit credit less prescribed deductions) are determined for purposes of garnishment, in the manner set out in the regulation under *The Pension Benefits Act*.

The employer, trustee, administrator or financial institution must remit the amount shown in the Garnishing Order to the party identified in paragraph 1 of the Order within 90 days after it is served.

Statutory Declaration

In certain circumstances, the named garnishee may not be able to fully comply with the Garnishing Order, so a Statutory Declaration **must** be completed and filed within a specific period of time. Paragraph 1 of the Declaration must always be completed, with Paragraphs 2 through 4 being completed only under the following circumstances.

Party Served not the "Garnishee"

If the party who was served with the Garnishing Order is not a "garnishee" as defined in *The Garnishment Act*, the Statutory Declaration must be completed and a copy filed with the Designated Officer **within 30 days** after the day of service of the Order. Please refer to paragraph 2 of the Declaration.

Amount Available Less than Garnishing Order

If the member's or former member's net pension benefit credit is less than the amount required in the Garnishing Order, the Statutory Declaration must be completed and a copy filed with the Designated Officer **within 90 days** after the day of service of the Order. Please refer to paragraph 3 of the Declaration.

Potential Entitlement to a Division of Pension Credits

If the employer, trustee, administrator or financial institution has information that a spouse or common-law partner of a member or former member whose pension benefit credits are being garnished **might** be entitled to a division of that person's benefits under Section 31(2) of The Pension Benefits Act (i.e. a court order or written agreement regarding the disposition of family assets exists as of the date of service of the Garnishing Order), the Statutory Declaration must be completed and a copy filed with the Designated Officer and the Court **within 90 days** after the day of service of the Garnishing Order. The Court may then make a determination to finalize the matter. Please refer to paragraph 4 of the Declaration.

It should be noted that in these circumstances, no pension funds are to be deposited with the Court.

Pension monies must remain in the fund pending the Court's decision. Further, the garnishee should be prepared to disclose to the Court, upon request, the member's or former member's pension benefit credit. Depending on the direction given by the Court, the garnishee may then be required to proceed with calculating the net pension benefit credit.

Liability

Section 14.3 of *The Garnishment Act* protects the garnishee from liability when an amount is paid in good faith under a Garnishing Order issued under these sections of this Act.

THE PENSION BENEFITS ACT

Entitlement

The purpose of Section 31.1 of the Act is to provide that when a Garnishing Order is served to enforce a maintenance order or agreement against a member or former member, that person *becomes entitled, but only for purposes of satisfying the Order*, to a benefit equal to the lesser of the amounts arising from the formulas set out in the section. This section is **not** used to determine the amount available for payment to the Designated Officer to satisfy the Garnishing Order. The method of calculating this amount is set out in Section 24.1 of the regulation.

Benefit Calculation

Section 24.1 of the regulation provides that the **pension benefit credit**, or the value of the member's pension benefit, is calculated on the basis that the person's employment terminated as of the date the Garnishing Order is served. In the case of funds in a locked-in RRSP, a LIRA, LIF or a LRIF, the former member's pension benefit credit is the amount in the fund as of the date the Garnishing Order is served.

Section 24.1(3) states that the **net pension benefit credit** of a member is the pension benefit credit stated above, less the following:

(a) any portion of the member's or former member's pension benefit credit that a former spouse or common-law partner **has** an entitlement to under Section 31(2) of the Act (i.e. a court order or written agreement exists regarding the disposition of family assets as of the date of service of the Garnishing Order);

Note: *As all calculations are made as of the date the Garnishing Order is served, the spouse's or partner's share of the member's or former member's pension benefits credit under clause (a) must also be calculated as of this date. If the spouse's or partner's share had been previously determined, the value resulting from the initial calculation must be adjusted with interest to the date the Garnishing Order is served, at a rate no less than that required under Section 22 of the Act. In the case of a defined benefit, interest adjustments may be made in accordance with the Recommendations for the Commutation of Minimum Transfer Values of the Canadian Institute of Actuaries by using the "select" rate used in the initial calculation, if greater than that required by Section 22.*

(b) any tax required to be deducted or withheld in respect of the amount of money being remitted to satisfy the Garnishing Order;

Note: *The amount of withholding tax required by Canada Revenue Agency, Taxation must be determined by calculating the gross amount that, when reduced by the amount resulting from application of the marginal tax rate, will result in the amount being paid to the Designated Officer. For example, if the amount being paid to the Designated Officer is \$5,000. and the Marginal Tax Rate is 20%, the amount withheld for payment to the Canada Revenue Agency is \$1,250. or $[(\$5,000. / .80) - \$5,000.]$. For further information regarding taxation requirements, please contact Canada Revenue Agency, Taxation.*

(c) any costs awarded to the garnishee against the member or former member by the Court due to a determination under Section 14.2(5) of *The Garnishment Act*,

Note: *If the Designated Officer made a motion to Court for a determination of issues under Section 14.2(5) of The Garnishment Act, it is possible for the Court to award costs to the garnishee against the plan member or former member. **Only if awarded by the Court**, the amount so awarded is subtracted from the person's pension benefit credit.*

(d) the administrative costs incurred according to the schedule in Section 24.1(4)(c).

Note: *The following are the administrative costs allowed to the garnishee under Section 24.1(4)(c):*

- (i) in the case of a defined benefit plan, \$500.
- (ii) in the case of a money purchase pension plan, deferred profit sharing plan and retirement benefit plan, \$250, and
- (iii) in the case of a hybrid or combination plan, \$650.

The result is the **net pension benefits credit**, which is the amount available to satisfy the Garnishing Order. Should the net pension benefit credit be less than the amount required in the Garnishing Order, and the garnishee is therefore not able to forward the required amount in the Order, the Statutory Declaration must be completed and filed as mentioned previously.

Satisfaction of the Garnishing Order

A cheque equal to the lesser of the amount required in the Garnishing Order and the member's net pension benefit credit, must be issued in the manner set out in the Order, and forwarded to the Designated Officer.

Recovery

Following satisfaction of the Garnishing Order, either in whole or in part, the garnishee is permitted to recover on behalf of the plan, from the member's remaining pension benefit credit, the following:

- (a) the tax required to be deducted or withheld in respect of the amount of money being remitted to satisfy the Garnishing Order;
- (b) the costs, if any, awarded by the Court to the garnishee against the member or former member by the Court due to a determination under Section 14.2(5) of *The Garnishment Act*;
- (c) the administrative costs incurred to comply with the Garnishing Order in the amounts stated in Section 24.1(4)(c).

It should be noted that a defined benefit plan which permits voluntary additional contributions is not considered hybrid or combination plan.

Required Plan/Contract Amendments

Please note that registered pension plans may be modified when the plan is next amended. LIRA and LIF endorsements/contracts must be amended and filed with the Pension Commission before January 1, 1997.

Copies of Bill 3, The Maintenance Enforcement Act, *Family Maintenance Act*, *The Garnishment Act* and Court of Queen's Bench Rules are available through **Statutory Publications** at (204) 945-3101.

For further information, please call our office.

This update has no legal authority. The Pension Benefits Act of Manitoba and The Pension Benefits Regulation, 188/87 R amended should be used to determine specific requirements.