

Office of the Superintendent - Pension Commission

Policy Bulletin #11

Issue Date: December 5, 2013
Last Updated: October 5, 2022

Maintenance Enforcement - Garnishment of Pension Benefit Credits

Reference: *The Pension Benefits Act s. 31(1), 31.1, 38.1 and Pension Benefits Regulation Division 9, Part 10*

The Garnishment Act s. 14.1, 14.2, 14.3

The Family Support Enforcement Act s. 41

Court of King's Bench Rules s.60.08 (17) - (32), Notice of Garnishment of Pension Benefit Credit (Form 60F.2), Statutory Declaration of Pension Benefit Credit Garnishee (Form 60G.2)

Sections 14.1 to 14.3 of *The Garnishment Act* provide for the enforcement of certain maintenance orders by way of garnishment of a pension benefit credit under a pension plan or a pension benefit credit that has been transferred to a prescribed plan. Division 9 of Part 10 of the Pension Benefits Regulation (regulation) sets out additional rules for such a garnishment.

DEFINITIONS

"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 Support Enforcement Act*.

"Creditor" means a person who is entitled to maintenance payments under a court order or agreement.

"Garnishee" includes the institution that issues, underwrites or is a depository of a prescribed plan and an administrator of a pension plan.

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

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

"Prescribed Plan" is a locked in Registered Retirement Savings Plan (RRSP), a Locked-In Retirement Account (LIRA) or a Life Income Fund (LIF) to which an amount that is attributable to a pension benefit credit of the owner under a pension plan has been or may be transferred.

"Statutory Declaration" means a Statutory Declaration of Pension Benefit Credit Garnishee ([Form 60G.2](#)) as set out in the Court of King's Bench Rules.

DISCLOSURE OF INFORMATION

THE FAMILY SUPPORT ENFORCEMENT ACT

Subsection 41 of *The Family Support Enforcement Act* permits the Designated Officer to request basic information from any party involved with the pension of members or former members of pension plans subject to *The Pension Benefits Act* (Act), including financial institutions holding locked-in RRSPs, LIRAs and LIFs. 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 benefit credits 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 can be provided without the judgment debtor's consent.

GARNISHMENT OF THE PENSION BENEFIT CREDIT

THE GARNISHMENT ACT AND COURT OF KING'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 judgment debtor.

Court of King's Bench Rules 60.08(17) to (32) set out the court rules and procedures relating to the garnishment of pension benefits credits.

Service

The Designated Officer may serve a Garnishing Order on a garnishee. A copy of the Garnishing Order will also be sent to the judgment debtor's last known address by the Designated Officer.

On the date of service of the Garnishing Order, the Order "binds" the judgment debtor's net pension benefit credit, to the extent of the amount specified in the Order. The pension benefit credit and net pension benefit credit are determined in the manner set out in Division 9 of Part 10 of the regulation.

Within 90 days after the Garnishing Order is served, the plan administrator or financial institution must forward the amount shown to the party identified in paragraph 1 of the Order.

Statutory Declaration

The garnishee must complete **Paragraph 1** of the Statutory Declaration ([Form 60G.2](#)) and provide it to the Designated Officer within 90 days after the day of service of the Order unless otherwise indicated.

If the named garnishee is not able to fully comply with the Garnishing Order **Paragraphs 2, 3 or 4** must *also* be completed as applicable.

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*, **Paragraph 2** must *also* be completed and provided **within 30 days** after the day of service of the Order.

Amount Available Less than Garnishing Order

If the judgment debtor's net pension benefit credit is less than the amount required in the Garnishing Order, **Paragraph 3** must *also* be completed.

Potential Entitlement to a Division of Pension Credits

If the plan administrator or financial institution has information that a spouse, or former spouse or common-law partner of a judgment debtor whose pension benefit credits are being garnished is entitled to a division of that person's benefits under subsection 31(2) (division of pension on breakdown of relationship) of the Act as a court order or written agreement regarding the disposition of family assets exists as of the date of service of the Garnishing Order, **Paragraph 4** must *also* be completed. The Court may then make a determination to finalize the matter.

In this circumstance, DO NOT PAY any money sought in the Garnishing Order until the court determines the payment required. Further, the garnishee should be prepared to disclose to the Court, upon request, the amount of the judgment debtor'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

Section 31.1 of the Act provides that when a Garnishing Order is served to enforce a maintenance order or agreement against a judgment debtor, 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. Division 9 of Part 10 of the regulation sets out the rules for determining the pension benefit credit and net pension benefit credit for such a garnishment.

Benefit Calculation

Subsection 10.80(1) of the regulation provides that the **pension benefit credit**, or the value of the judgment debtor's pension, is calculated on the basis that the judgment debtor's active membership terminated as of the date the Garnishing Order is served. In the case of funds in a locked-in RRSP, a LIRA or a LIF, the judgment debtor's pension benefit credit is the account balance as of the date the Garnishing Order is served on the garnishee.

Subsection 10.80(2) provides that the **net pension benefit credit** of a judgment debtor is the pension benefit credit stated above, less the following:

- (a) any portion of the judgment debtor's pension benefit credit that a spouse or former spouse or common-law partner **is** entitled to under subsection 31(2) of the Act;

Note: As all calculations are made as of the date the Garnishing Order is served, under this clause (a) the spouse's or partner's share of the judgment debtor's pension benefit-credit that is to be divided under subsection 31(2) of the Act 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 the rate of return required under section 11.5 of the regulation.

(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 by calling 1-800-959-2221 or visit their website at www.cra.gc.ca.

(c) any costs awarded to the garnishee against the judgment debtor by the Court due to a determination under subsection 14.2(5) (hearing to determine right to pension benefit credit, of The Garnishment Act);

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

(d) the administrative costs incurred according to clause 10.80(3)(c) of the regulation.

Note: The following are the administrative costs allowed to the garnishee under clause 10.80(3)(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 plan in which some benefits, other than any based on voluntary additional contributions, are determined as if the plan were a money purchase pension plan and some benefits are determined on the basis of a defined benefit provision, \$650.

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, **Paragraphs 1 and 2** of the Statutory Declaration must be completed as noted above.

Satisfaction of the Garnishing Order

A cheque payable to the Minister of Finance or the Creditor equal to the lesser of the amount required in the Garnishing Order and the judgment debtor'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 judgment debtor's remaining pension benefit credit, the following:

- (a) the tax 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 judgment debtor due to a determination under subsection 14.2(5) of *The Garnishment Act*;
- (c) the administrative costs incurred to comply with the Garnishing Order in the amounts stated in clause 10.80(3)(c) of the regulation.

The Maintenance Enforcement Act, The Family Support Enforcement Act, The Garnishment Act and Court of King's Bench Rules are available on the [Manitoba Laws website](#).

Who to contact for information

If you have any questions concerning the Maintenance Enforcement Program please contact:

Maintenance Enforcement Program
Canada Building
100 - 352 Donald Street
Winnipeg MB R3B 2H8
Phone the MEPLine: (204) 945-7133 in Winnipeg or
or 1-866-479-2717
e-mail: manitobamepinquiries@gov.mb.ca

If you have any questions regarding the Act or regulation please contact:

Office of the Superintendent - Pension Commission
500 – 400 St. Mary Avenue
Winnipeg MB R3C 4K5
Tel: 204-945-2740
Email: pensions@gov.mb.ca
Website: www.manitoba.ca/pension

This bulletin has no legal authority. The Pension Benefits Act of Manitoba and the Pension Benefits Regulation 39/2010 should be used to determine specific requirements.