

Office of the Superintendent - Pension Commission

Update #11-06

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Enforcement of *The Pension Benefits Act* and Multi-jurisdictional Pension Matters

Reference: The Pension Benefits Act, Subsections 8(3), 8(5), 8(9.1), 8(11)-(12), 8.1(1)-(4), 8.2(1)-(3), 11(3), 11(3.1)-(3.2), 28(4)-(15), 28.0.1(1)-(8), 37.1(1)-(8) and 37.2(1)-(3), the Pension Benefits Regulation Schedule B (Section 11A.1) and C (Section 11A.1)

The Pension Benefits Amendment Act SM 2011, C. 23 (Amendment Act) received Royal Assent on June 16, 2011 and will come into force and effective on January 1, 2012. Regulation XX comes into force on the same date. The amended legislation provides additional ways to enforce *The Pension Benefits Act* (Act) and to give clear legal authority respecting multi-jurisdictional pension plans.

ENFORCEMENT OF THE ACT

The Amendment Act gives the superintendent

- additional order making powers under section 8 of the Act. Orders made under that section that require money to be paid to a pension plan can be filed in court and enforced as if they were a court judgment;
- authorization to file a lien against the assets of an employer who has failed to remit employee contributions to a pension plan or failed to pay the employer's contributions to a plan;
- authorization to file a lien against a director's assets in specified circumstances. When an employer is a corporation, directors of the corporation are liable to pay contributions to a pension plan that the employer has failed to pay, subject to certain exceptions;
- authorization to impose administrative penalties on anyone who fails to comply with an order of the superintendent or with specified provisions of the legislation.

Orders

The Amendment Act gives the superintendent additional powers under the Act to order:

- a director of a corporation to pay pension contributions that the corporation itself has failed to pay into a pension plan, and
- that the assets and liabilities of a pension plan with members in more than one jurisdiction be split or allocated.

Orders filed as Judgments

The Amendment Act permits the superintendent or the commission to file orders for the payment of pension contributions an employer failed to pay into a pension plan in the Court of King's Bench, which can then be enforced as a judgment.

The order is deemed to include the collection costs and interest on the pension contributions an employer failed to pay into a pension plan.

The person owing amounts to a pension plan will be required to pay or reimburse the superintendent for the collection fees and disbursements if a collection agent is hired.

Liens for Contributions Owning

The Act places a lien on both employee and employer contributions that are to be paid to a pension plan. New provisions in the Amendment Act strengthen the enforcement of these provisions.

The superintendent is authorized to file a lien in the Land Titles Office against all property of the employer, including real estate, in the amount of the contributions the employer failed to pay contributions to a plan, any additional contribution that become payable after the lien takes effect, and costs incurred by the superintendent in enforcing the lien.

A lien filed by the superintendent for pension contributions does not have priority over a security interest or mortgage that is filed in the Personal Property Registry or Land Titles Office prior to the lien being registered.

Director's Liability

New provisions in the Amendment Act hold directors of corporations liable to pay any contributions to a pension plan that the corporation as an employer has failed to pay, subject to certain exceptions.

The superintendent is permitted to file a lien against the assets of the directors of a corporation, where the corporation has failed to make contributions into the pension plan. The lien would cover the outstanding employee and employer contributions but not those related to a going concern liability or solvency deficiency.

A director would not be liable if:

- the superintendent serves an order on the director to pay outstanding pension contributions more than two years after he or she last ceased to be a director, or
- the director exercised the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances to prevent the corporation's failure to pay contributions.

Administrative Penalties

New provisions in the Amendment permit the superintendent to impose an administrative penalty up to a maximum of \$10,000.00 for failure to comply with the Act or regulation or an order of the superintendent which could include failure to file documents or information required

by the legislation. The administrative penalties amounts are set out in Schedule B (Section 11A.1) of the regulation which is attached to this Update. The notice of administrative penalty is set out in Schedule C (Section 11A.1) of the regulation. Any penalty issued by the superintendent will be appealable to the Pension Commission.

MULTI-JURISDICTIONAL PENSION MATTERS

Multi-Jurisdictional Pension Plans

New provisions in the Amendment Act permit the minister to enter into a new multi-lateral agreement for the regulation of multi-jurisdictional pension plans that would provide a clear legal framework for regulating of these plans.

Given the ever increasing complexities around pension plans and their regulation, a new multi-lateral agreement has been developed by the association of Canadian pension regulators for consideration by all Canadian governments with pension standards legislation.

The Agreement will provide a clear legal framework for the administration and regulation of multi-jurisdictional pension plans. The Agreement is also intended to help protect member entitlements while facilitating the administration and regulation of multi-jurisdictional pension plans.

Reciprocal Enforcement

A new provision in the Amendment Act permits other Canadian jurisdictions to be designated as reciprocating jurisdictions to allow for the reciprocal enforcement of orders requiring money to be paid into a pension plan.

If you have any questions regarding this update you may contact us at:

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

Appendix A - Administrative Penalties

Provision	Description of contravention	Number of Contraventions	Administrative Penalty
Contravention of <i>The Pension Benefits Act</i> (the "Act") and the <i>Pension Benefits Regulation</i> (the "Regulation")			
2.7(1) of the Regulation	Fails to file an amendment	First contravention	10% of the fee for the most recent annual information return filed with the commission, for each 30 days the filing is late, up to a maximum of 100% of that fee
		Second and subsequent contravention	15% of the fee for the most recent annual information return filed with the commission, for each 30 days the filing is late, up to a maximum of 100% of that fee
18(4) of the Act and 3.26(1), 7.16(2) and 7.16(3) of the Regulation	Fails to file an annual information return	First contravention	10% of the fee for the most recent annual information return filed with the commission, for each 30 days the filing is late, up to a maximum of 100% of that fee
		Second and subsequent contravention	15% of the fee for the most recent annual information return filed with the commission, for each 30 days the filing is late, up to a maximum of 100% of that fee
3.28(1) of the Regulation	Fails to file audited financial statements	First contravention	10% of the fee for the most recent annual information return filed with the commission, for each 30 days the filing is late, up to a maximum of 100% of that fee
		Second and subsequent contravention	15% of the fee for the most recent annual information return filed with the commission, for each 30 days the filing is late, up to a maximum of 100% of that fee
4.15 of the Regulation	Fails to file an actuarial valuation report or cost certificate	First and subsequent contravention	20% of the fee for the most recent annual information return filed with the commission, for each 30 days the filing is late, up to a maximum of 100% of that fee
7.7(1) and 7.7(2)(a) or 7.7(2)(c) of the Regulation	Fails to file a termination report		10% of the fee for the most recent annual information return filed with the commission, for each 30 days the filing is late, up to a maximum of 100% of that fee
7.7(1) and 7.7(2)(b) of the Regulation	Fails to file a termination report		15% of the fee for the most recent annual information return filed with the commission, for each 30 days the filing is late, up to a maximum of 100% of that fee