

## Policy Bulletin #36 ***Maintenance Enforcement Act Provisions***

Issued August 2006

In response to requests by plan administrators, financial institutions and service providers, this Update will clarify the provisions contained the *Maintenance Enforcement Act* (the MEA) as they relate to the *Employment Pension Plans Act* (the EPPA).

Effective March 23, 2006, Bill 6, the *Maintenance Enforcement Amendment Act, 2006*, received Royal Assent and came into force. The provisions within the bill that concern the EPPA, and in particular, locked-in accounts, came into force on the Royal Assent date.

Sections 17.1(2), (2.1) and (2.2) of the MEA now state:

*(2) Notwithstanding any other law, the Director may enforce a maintenance order by serving the financial institution with a support deduction notice in respect of the debtor's entitlement under a retirement savings vehicle.*

*(2.1) The amount required to be paid in accordance with a support deduction notice referred to in subsection (2) is net of*

- (a) the contractual payment that may be payable to the financial institution as a result of the institution's compliance with the support deduction notice, and*
- (b) the tax that the financial institution is required to withhold on account of the debtor's income tax liability in order to comply with the institution's legal obligations in that regard.*

*(2.2) For the purposes of section 17(2)(a), on service of a support deduction notice the aggregate of the following is deemed to be owing and payable to the debtor or an agent of the debtor by a financial institution in respect of a debtor's entitlement in relation to a retirement savings vehicle:*

- (a) the amount required to be paid in accordance with the support deduction notice;*
- (b) the tax the financial institution is required to withhold on account of the debtor's income tax liability in order to comply with the institution's legal obligations in respect of the amount referred to in clause (a);*
- (c) the contractual payment payable to the financial institution as a result of the institution's compliance with the support deduction notice.*

Section 17.1(1) of the EPPA defines a retirement savings vehicle as LIRA, LIF, or LRIF.

*85(1) Subject to subsections (1.1) and (2), benefits, money that has been transferred under section 30(5), 37(2), 38, 39(6) or 64(3) or the regulations made in respect of section 80 or pursuant to a similar transfer made before January 1, 1987 and money earned by such transferred money may not be assigned, charged, alienated or anticipated and are exempt from execution, seizure or attachment either at law or in equity, and any transaction purporting to assign, charge, alienate or anticipate benefits or any such money is void.*

*(1.1) Subsection (1) does not apply in respect of an attachment of a retirement savings vehicle within the meaning of and under section 17.1 of the Maintenance Enforcement Act.*

Therefore, financial institutions and individuals with LIRAs, LIFs, and LRIFs should be aware that a support deduction notice served on a financial institution in respect of a locked-in account is a valid attachment to the funds within the account. The attachment will have the effect of deeming an amount to be payable from the account in satisfaction of a maintenance order issued by the Director of Maintenance Enforcement on and after March 23, 2006, and that amount may be seized. Any financial institution (as trustee of a locked-in account in respect of a client) that is served with a maintenance enforcement order is required by the MEA to act upon that order.

The ability of the Director of Maintenance Enforcement to enforce a maintenance order applies only to Alberta locked-in accounts. It does not apply to pension plans or to accounts locked in under the legislation of another Canadian jurisdiction.

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