

EPPA Update 01-01

MAINTENANCE ENFORCEMENT ORDERS AND PENSIONS

Pension plan administrators and financial institutions holding locked-in funds in individual accounts should be aware of an amendment to the *Maintenance Enforcement Act* of Alberta effective November 18, 1999, which may affect pensions in payment from registered pension plans, and incomes being received from Life Income Funds (LIFs), Locked-in Retirement Income Fund (LRIFs), or annuities that were bought with pension funds.

The amendment does NOT allow amounts still held in the pension fund on behalf of a member, or amounts held in a Locked-in Retirement Account (LIRA), LIF or LRIF or to be attached. The money is attachable only as it flows out of the fund in the form of income to the former plan member.

The issue arises where a former plan member who is receiving a pension or life annuity or income from a Retirement Income Arrangement (LIF or LRIF) is not meeting his or her obligation to pay support to an ex-spouse (whether for the spouse's own support or to pay for child support).

The wording of section 13(2) of the *Maintenance Enforcement Act* now reads:

Notwithstanding any other Act [*emphasis added*], service in accordance with the regulations of a notice of continuing attachment on the person required to pay under the notice binds in accordance with the regulations and without further service

- (a) all money owing or payable on the date of service to the debtor by the person required to pay,
- (b) all money, including wages or salary, that becomes owing or payable from time to time after the date of service to the debtor by the person required to pay, and
- (c) the portion of jointly owed money that is deemed under subsection (2.1) to be owned by the debtor.

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The effect of this change is that *Maintenance Enforcement Act* section 13(2) clearly takes precedence over section 85 of the *Employment Pension Plans Act* (EPPA), and sections 39 to 41 of the *Employment Pension Plans Regulation*. These sections of the EPPA and Regulation otherwise prohibit funds either in a pension plan or transferred to a locked-in account from a pension plan from being attached or assigned. The amendment also overrides the *Insurance Act* and therefore makes money being paid to a former plan member under a life annuity purchased with pension funds also attachable for maintenance enforcement purposes.

There has been some inconsistency in interpretation of the EPPA's anti-attachment provisions over the years – some have taken the position that it is not merely the capital amounts but also the income flowing from them that is exempt from attachment or assignment. The amendment puts income directly or indirectly from a pension plan on the same footing as other forms of income as potential sources to satisfy maintenance arrears.

When a former pension plan member receiving an income from a pension plan, life annuity or Retirement Income Arrangement has defaulted in the payments required under a maintenance order, the Director of Maintenance Enforcement or a Court may issue a notice of continuing attachment. This will require the pension plan administrator to divert funds from the pension payments to satisfy the spousal maintenance requirements, in accordance with the terms of the notice.

Plan administrators and financial institutions holding locked-in funds should be prepared to implement continuing attachment orders as long as they do not purport to attach the capital in a pension fund or annuity or locked-in account. The Order is enforceable only against income amounts and therefore the administrator or financial institution should ensure that an income flow is emanating from the funds. In the case of a LIF or LRIF, such an order does not override the maximum withdrawal rules set out in the *Employment Pension Plans Regulation*. If the Order appears to attach the capital of a LIF or LRIF or to attach money still in a LIRA, the office of the Alberta Superintendent of Financial Institutions should be alerted.

For more information please contact:

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Or

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