

# 1996

## CHAPTER 15

### An Act to amend *The Enforcement of Maintenance Orders Act* and to enact consequential amendments

(Assented to April 30, 1996)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

#### Short title

1 This Act may be cited as *The Enforcement of Maintenance Orders Amendment Act, 1996*.

#### S.S. 1984-85-86, c.E-9.2 amended

2 *The Enforcement of Maintenance Orders Act* is amended in the manner set forth in this Act.

#### Section 8 amended

3 Clause 8(a) is amended by striking out "shall take all" and substituting "may take any".

#### Section 9 amended

4 Section 9 is amended:

(a) in subsection (1):

(i) by striking out "or" after clause (b);

(ii) by adding "or" after clause (c); and

(iii) by adding the following clause after clause (c):

"(d) where it appears to the director that the sum payable under the maintenance order is not readily verifiable"; and

(b) by adding the following subsections after subsection (3):

"(4) A maintenance order that is withdrawn pursuant to clause (1)(d) may be refiled only with the consent of the director.

"(5) Where a maintenance order has been withdrawn pursuant to clause (1)(d), the claimant or the respondent may apply to the court requesting clarification of the sum payable under the maintenance order.

"(6) Where an application is made pursuant to subsection (5), the director is not required to attend the hearing of the application and is not to be joined as a party to that application".

#### New sections 31.1 to 31.9

**5 The following is added after section 31:****“ATTACHMENT OF PENSION ENTITLEMENTS****“Interpretation**

**31.1(1)** In this section and in sections 31.2 to 31.6:

(a) **`administrator'** means a person charged with the administration of a pension plan and includes a financial or other institution that issues, underwrites or is a depository of:

(i) benefits;

(ii) moneys that have been transferred to another plan, to a prescribed RRSP or to any other prescribed retirement plan that is registered pursuant to the *Income Tax Act* (Canada), including moneys transferred before January 1, 1993; and

(iii) moneys earned by those transferred moneys mentioned in subclause (ii);

(b) **`pension entitlement'** means the amount of money in a pension plan of a respondent that is available for attachment pursuant to this Act;

(c) **`pension plan'** means a pension plan governed by an Act that permits a pension entitlement to be attached and includes:

(i) benefits;

(ii) moneys that have been transferred to another plan, to a prescribed RRSP or to any other prescribed retirement plan that is registered pursuant to the *Income Tax Act* (Canada), including moneys transferred before January 1, 1993; and

(iii) moneys earned by those transferred moneys mentioned in subclause (ii).

(2) Words or phrases used in the definitions in subsection (1) that have been defined in *The Pension Benefits Act, 1992* have the same meaning as in that Act.

**“Pension entitlement may be attached**

**31.2** The director may enforce a maintenance order by attaching the pension entitlement of a respondent pursuant to section 31.6 where:

(a) the respondent is in arrears in an amount not less than three months' payments respecting an obligation under a maintenance order that is filed in the office;

(b) in the opinion of the director, all reasonable steps have been taken to enforce the maintenance order;

(c) the director has served the administrator and the respondent with a notice of the director's intention mentioned in section 31.3; and

(d) the respondent has not, prior to the service of a notice of attachment on the administrator pursuant to section 31.6, made arrangements satisfactory to the director to fulfil the obligation under the maintenance order.

**“Notice of the director's intention**

**31.3(1)** The notice of the director's intention to attach the respondent's pension entitlement is to be in the prescribed form and is to:

(a) direct the administrator to provide the director and the respondent, within 30 days, with

information prescribed in the regulations respecting the respondent's pension entitlement;

(b) notify the respondent, in accordance with the regulations, that the respondent may apply to the court pursuant to section 31.5 within 30 days of receipt of the information mentioned in clause (a) for an order that the respondent's pension entitlement is not to be attached; and

(c) notify the respondent, in accordance with the regulations, of the costs, income tax implications and pension reductions that would result from the attachment of the respondent's pension entitlement.

(2) The administrator may provide the information mentioned in clause (1)(a) to the respondent at the most recent address for the respondent in the administrator's records.

(3) Failure of the administrator to provide the information mentioned in clause (1)(a) to the respondent does not render the attachment ineffective.

#### **"Restrictions**

**31.4(1)** The director shall not enforce a maintenance order by attaching the pension entitlement of a respondent where:

(a) the respondent is a member of a pension plan and:

(i) the respondent is required to make contributions to the plan that the director proposes to attach; or

(ii) the respondent's employer is required by the plan to make contributions on the respondent's behalf to the plan that the director proposes to attach; or

(b) the respondent is receiving a pension benefit pursuant to the pension plan that the director proposes to attach.

(2) Where an administrator is served with a notice of the director's intention, the administrator shall not pay out any of the respondent's pension entitlement at the direction of the respondent until 60 days have elapsed from:

(a) if no application is made to the court, the date that the director received the information mentioned in clause 31.3(1)(a); or

(b) if an application is made to the court, the date that the court orders that the respondent's pension entitlement may be attached.

#### **"Court application**

**31.5(1)** The court, on application by the respondent, may order that the respondent's pension entitlement is not to be attached where the court is satisfied that:

(a) the respondent is not in arrears in an amount not less than three months' payments respecting an obligation under a maintenance order that is filed in the office;

(b) the respondent is a member of a pension plan and:

(i) is required to make contributions to the plan that the director proposes to attach; or

(ii) the respondent's employer is required by the plan to make contributions on the respondent's behalf to the plan that the director proposes to attach; or

(c) the respondent is receiving a pension benefit pursuant to the pension plan that the director

proposes to attach.

(2) A respondent applying to the court shall serve the director and the administrator with notice of the application.

**“Attachment of pension entitlement**

**31.6(1)** The director may serve the administrator with a notice of attachment of the respondent's pension entitlement in the form prescribed in the regulations where:

(a) an application pursuant to section 31.5:

(i) has not been made to the court by the respondent; or

(ii) has been made to the court by the respondent but the court has not ordered that the respondent's pension entitlement is not to be attached; and

(b) not more than 60 days have elapsed from:

(i) if no application is made to the court, the date that the director received the information mentioned in clause 31.3(1)(a); or

(ii) if an application is made to the court pursuant to section 31.5, the date that the court orders that the respondent's pension entitlement may be attached.

(2) Where the director serves a notice of attachment, the administrator shall:

(a) immediately deliver, personally or by ordinary mail, a copy of the notice to the respondent; and

(b) comply with the notice of attachment within 45 days of receiving the notice.

- (3) The administrator may deliver the notice of attachment to the respondent at the most recent address for the respondent in the administrator's records.
- (4) Failure of the administrator to comply with clause (2)(a) does not render the attachment ineffective.
- (5) Sections 22 to 24 apply, with any necessary modification, to an administrator served with a notice of the director's intention to attach the respondent's pension entitlement.

#### "LICENCE SUSPENSION

##### "Licence may be suspended

**31.7(1)** In this section and in sections 31.8 and 31.9:

(a) **'administrator'** means the administrator designated pursuant to section 3 of *The Vehicle Administration Act*;

(b) **'licence'** means driver's licence within the meaning of *The Vehicle Administration Act*.

(2) The director may direct the administrator to suspend a respondent's licence where:

(a) the respondent is in arrears in an amount not less than three months' payments respecting an obligation under a maintenance order that is filed in the office;

(b) in the opinion of the director, all reasonable steps have been taken to enforce the maintenance order;

(c) the director has served the respondent with written notice pursuant to subsection 31.8(1) of the director's intention to direct the administrator to suspend the respondent's licence; and

(d) after receiving notice pursuant to subsection 31.8(1), the respondent has not, within the notice period, made arrangements satisfactory to the director to fulfil the obligation under the maintenance order.

##### "Suspension process

**31.8(1)** Before directing the administrator to suspend a respondent's licence, the director shall serve the respondent with:

(a) not less than 30 days' written notice by ordinary mail; and

(b) not less than 15 days' written notice by personal service or registered mail.

(2) Where the director directs the administrator to suspend a respondent's licence, the administrator shall immediately suspend that licence and the respondent's ability to secure a licence until the administrator has been notified by the director that the suspension may be cancelled.

- (3) The director shall notify the administrator that a suspension may be cancelled where:
- (a) the respondent has made arrangements satisfactory to the director to fulfil the obligation under the maintenance order; or
  - (b) the maintenance order has been withdrawn pursuant to section 9.
- (4) The director may give notice to the administrator for the purpose of clause 15(2)(g.2) of *The Vehicle Administration Act* where:
- (a) the respondent is evading service; and
  - (b) the director is unable to effect service pursuant to subsection (1).

**“Application to the court**

**31.9(1)** The court, on application, may order the administrator to cancel a suspension mentioned in subsection 31.8(2) or not to suspend a respondent's licence pursuant to that subsection where the court is satisfied that:

- (a) the respondent is not in arrears in an amount not less than three months' payments respecting an obligation under a maintenance order that is filed in the office; or
  - (b) a person's health is or would be seriously threatened by the suspension.
- (2) A person applying to the court shall serve the director with notice of the application”.

**New section 53**

**6 Section 53 is repealed and the following substituted:**

**“Action for arrears**

**53(1)** Notwithstanding *The Limitation of Actions Act*, there is no limitation period respecting the enforcement of arrears of any payment pursuant to a maintenance order.

- (2) Subsection (1) applies only to those arrears that exist on or after the coming into force of this section”.

CONSEQUENTIAL AMENDMENTS AND COMING INTO FORCE

**S.S. 1979, c.M-12.1 amended**

**7(1)** *The Members of the Legislative Assembly Superannuation Act, 1979* is amended in the manner set forth in this section.

(2) **Subsection 37(2) is repealed and the following substituted:**

“(2) Notwithstanding any other provision of this Act or any other Act, for the purpose of enforcing a maintenance order as defined in *The Enforcement of Maintenance Orders Act*:

- (a) payments made pursuant to this Act or any former Act or any annuities provided pursuant to this Act are subject to garnishment pursuant to that Act;
- (b) the entitlement of a person to an allowance pursuant to section 11 or 16 is subject to attachment pursuant to that Act; and
- (c) the amount standing to the credit of a person in the fund is subject to attachment pursuant to that Act.

“(3) Where an amount has been attached pursuant to subsection (2), the Minister of Finance shall deduct from the commuted value to which the person is entitled:

- (a) the cost of complying with the attachment calculated in the prescribed manner;
- (b) the total amount of taxes, if any, that are required to be deducted or withheld as a result of the attachment; and
- (c) the lesser of:
  - (i) the amount attached; and
  - (ii) the remainder of the person's commuted value.

“(4) Where an amount has been attached pursuant to subsection (2):

- (a) the person has no further claim or entitlement to any pension or benefit pursuant to the plan respecting the amount attached;
- (b) the entitlement of the person is to be calculated on the basis of the commuted value after the attachment or on the amount standing to his or her credit after the attachment, as the case may be; and
- (c) neither the Minister of Finance nor the plan is liable to any person by reason of having made payment pursuant to an attachment mentioned in subsection (2).

“(5) For the purposes of this section, ‘**commuted value**’ means the value of benefits as of a certain date, determined:

- (a) on the basis of actuarial assumptions and methods that are adequate and appropriate and in accordance with generally accepted actuarial principles; and
- (b) in accordance with the conditions, if any, that are prescribed in the regulations”.

**(3) The following clause is added after clause 39(1)(e.1):**

“(e.2) for the purposes of section 37, governing the manner of calculating the cost of complying with an attachment”.

**R.S.S. 1978, c.M-26 amended**

**8(1)** *The Municipal Employees' Pension Act* is amended in the manner set forth in this section.

**(2) Subsection 53(2) is repealed and the following substituted:**

“(2) Notwithstanding any other provision of this Act or any other Act, for the purpose of enforcing a maintenance order as defined in *The Enforcement of Maintenance Orders Act*, payments:

- (a) that are payable to a member are subject to garnishment pursuant to that Act; and
- (b) to which a member is entitled pursuant to section 20 are subject to attachment pursuant to that Act.

“(2.1) Where an amount has been attached pursuant to subsection (2), the commission shall deduct from the commuted value of the benefits to which the member is entitled:

- (a) the cost of complying with the attachment calculated in the prescribed manner;
- (b) the total amount of taxes, if any, that are required to be deducted or withheld as a result of the attachment; and
- (c) the lesser of:
  - (i) the amount attached; and
  - (ii) the remainder of the commuted value of the member's benefits.

“(2.2) Where an amount has been attached pursuant to subsection (2):

- (a) the member has no further claim or entitlement to any payment or allowance pursuant to the plan respecting the amount attached;
- (b) the entitlement of the member is to be calculated on the basis of the commuted value of his or her benefits after the attachment or on the amount standing to his or her credit after the attachment, as the case may be; and
- (c) neither the commission nor the fund is liable to any person by reason of having made payment pursuant to an attachment mentioned in subsection (2)”.



**(3) The following clause is added after clause 57(1)(h):**

“(h.1) for the purposes of section 53, governing the manner of calculating the cost of complying with an attachment”.

**S.S. 1992, c.P-6.001 amended**

**9(1)** *The Pension Benefits Act, 1992* is amended in the manner set forth in this section.

**(2) Section 50 is repealed and the following substituted:**

**“Enforcement of maintenance orders**

**50(1)** Notwithstanding any other provision of this Act or any other Act, for the purpose of enforcing a maintenance order as defined in *The Enforcement of Maintenance Orders Act*, pension benefits that are:

- (a) payable to a former member are subject to garnishment pursuant to that Act; and
- (b) payable to a former member at a future date are subject to attachment pursuant to that Act.

(2) Where an amount has been attached pursuant to subsection (1), the administrator shall deduct from the commuted value of the pension benefits to which the former member is entitled:

- (a) the cost of complying with the attachment calculated in the prescribed manner;
- (b) the total amount of taxes, if any, that are required to be deducted or withheld as a result of the attachment; and
- (c) the lesser of:
  - (i) the amount attached; and
  - (ii) the remainder of the commuted value of the former member's pension benefits.

(3) Where an amount has been attached pursuant to subsection (1):

- (a) the former member has no further claim or entitlement to any pension or benefit pursuant to the plan respecting the amount attached;
- (b) the entitlement of the former member is to be calculated on the basis of the commuted value of his or her pension benefits after the attachment; and
- (c) neither the administrator nor the plan is liable to any person by reason of having made payment pursuant to an attachment mentioned in subsection (1)”.

**(3) The following clause is added after clause 69(1)(g):**

“(g.1) for the purposes of section 50, governing the manner of calculating the cost of complying with an attachment”.

**R.S.S. 1978 (Supp.), c.P-30.1 amended**

**10(1)** *The Provincial Court Act* is amended in the manner set forth in this section.

**(2) Subsection 46(2) is repealed and the following substituted:**

“(2) Notwithstanding any other provision of this Act or any other Act, for the purpose of enforcing a maintenance order as defined in *The Enforcement of Maintenance Orders Act*, a pension:

- (a) that is payable to a judge is subject to garnishment pursuant to that Act; and
- (b) to which a judge is entitled pursuant to section 34 is subject to attachment pursuant to that Act.

“(2.1) Where an amount has been attached pursuant to subsection (2), the commuted value of the pension to which the judge is entitled is reduced by:

- (a) the cost of complying with the attachment calculated in the prescribed manner;
- (b) the total amount of taxes, if any, that are required to be deducted or withheld as a result of the attachment; and
- (c) the lesser of:
  - (i) the amount attached; and
  - (ii) the remainder of the commuted value of the judge's pension.

“(2.2) Where an amount has been attached pursuant to subsection (2):

- (a) the judge has no further claim or entitlement to any pension or benefit pursuant to this Act respecting the amount attached;
- (b) the judge's pension is to be calculated on the basis of the commuted value of his or her pension after the attachment; and
- (c) neither the Minister of Finance nor the fund is liable to any person by reason of having made payment pursuant to an attachment mentioned in subsection (2).

“(2.3) For the purposes of this section, ‘**commuted value**’ means the value of benefits as of a certain date, determined on the basis of actuarial assumptions and methods that are adequate and appropriate and in accordance with generally accepted actuarial principles”.

**(3) The following clause is added after clause 47(1)(c):**

“(c.1) for the purposes of section 46, governing the manner of calculating the cost of complying with an attachment”.

**S.S. 1986, c.S-32.2 amended**

11(1) *The Saskatchewan Pension Plan Act* is amended in the manner set forth in this section.

**(2) Subsection 19(2) is repealed and the following substituted:**

“(2) Notwithstanding any other provision of this Act or any other Act, for the purpose of enforcing a maintenance order as defined in *The Enforcement of Maintenance Orders Act*:

- (a) pension benefits, as they become payable, are subject to garnishment pursuant to that Act; and
- (b) the amount standing to the credit of the participant is subject to attachment pursuant to that Act.

“(3) Where an amount has been attached pursuant to subsection (2), the board shall deduct from the amount standing to the credit of the participant:

- (a) the cost of complying with the attachment calculated in the prescribed manner;
- (b) the total amount of taxes, if any, that are required to be deducted or withheld as a result of the attachment; and
- (c) the lesser of:
  - (i) the amount attached; and
  - (ii) the amount standing to the credit of the participant.

“(4) Where an amount has been attached pursuant to subsection (2):

- (a) the participant has no further claim or entitlement to any pension benefits pursuant to the plan respecting the amount attached;
- (b) the amount standing to the participant's credit is reduced by the amount deducted pursuant to subsection (3); and
- (c) neither the board nor the plan is liable to any person by reason of having made payment pursuant to an attachment mentioned in subsection (2)”.

**(3) The following clause is added after clause 21(1)(h):**

“(h.1) for the purposes of section 19, governing the manner of calculating the cost of complying with an attachment”.

**R.S.S. 1978, c.S-64 amended**

12(1) *The Superannuation (Supplementary Provisions) Act* is amended in the manner set forth in this section.

**(2) Section 48.1 is amended:**

(a) in subsection (1) by adding “and section 48.2” after “section”; and

(b) by repealing subsection (3).

**(3) The following section is added after section 48.1:**

**“Enforcement of maintenance orders**

**48.2(1)** Notwithstanding any other provision of this Act or any other Act, for the purpose of enforcing a maintenance order as defined in *The Enforcement of Maintenance Orders Act*:

(a) a payment made pursuant to a superannuation Act is subject to garnishment pursuant to that Act; and

(b) any amount that is transferable by an employee pursuant to subsection 43(2.1) and the amount to which the employee would be entitled if the employee had applied for a refund of contributions pursuant to a superannuation Act are subject to attachment pursuant to that Act.

(2) Where an amount has been attached pursuant to subsection (1), the board shall deduct from the amount mentioned in clause (1)(b):

(a) the cost of complying with the attachment calculated in accordance with the regulations;

(b) the total amount of taxes, if any, that are required to be deducted or withheld as a result of the attachment; and

(c) the lesser of:

(i) the amount attached; and

(ii) the remainder of the amount mentioned in clause (1)(b).

(3) Where an amount has been attached pursuant to subsection (1):

(a) the employee has no further claim or entitlement to an allowance or other payment pursuant to this Act respecting the amount attached;

(b) the entitlement of the employee is to be calculated on the basis of the remainder of the commuted value after the attachment; and

(c) neither the board nor the superannuation fund is liable to any person by reason of having made payment pursuant to an attachment mentioned in subsection (1).”

**(4) The following clause is added after clause 55(1)(c):**

“(c.1) for the purposes of section 48.2, governing the manner of calculating the cost of complying with an attachment”.

**S.S. 1986, c.V-2.1 amended**

**13(1)** *The Vehicle Administration Act* is amended in the manner set forth in this section.

**(2) Subsection 15(2) is amended by adding the following after clause (g):**

“(g.1) the administrator, pursuant to subsection 31.8(2) of *The Enforcement of Maintenance Orders Act*, has suspended his or her driver's licence and his or her ability to secure a driver's licence; or

“(g.2) the administrator has received notice from the Director of Maintenance Enforcement pursuant to subsection 31.8(4) of *The Enforcement of Maintenance Orders Act* that the person is evading service of a notice mentioned in subsection 31.8(1) of that Act”.

**(3) Subsection 23(1) is amended:**

**(a) by striking out “or” after clause (b);**

**(b) by adding “or” after clause (c); and**

**(c) by adding the following clause after clause (c):**

“(d) where the Director of Maintenance Enforcement has directed the administrator to suspend a person's driver's licence pursuant to subsection 31.8(2) of *The Enforcement of Maintenance Orders Act*”.

**Coming into force**

**14** This Act comes into force on proclamation.