

2009 Bill 20

Second Session, 27th Legislature, 58 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 20

CIVIL ENFORCEMENT AMENDMENT ACT, 2009

MR. DENIS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 20
Mr. Denis

BILL 20

2009

CIVIL ENFORCEMENT AMENDMENT ACT, 2009

(Assented to _____, 2009)

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

Amends RSA 2000 cC-15

1 The *Civil Enforcement Act* is amended by this Act.

2 The following is added after section 81:

Registered plan payments

81.1(1) In this section,

- (a) “registered plan” means
 - (i) a registered retirement savings plan as defined in section 146 of the *Income Tax Act* (Canada),
 - (ii) a registered retirement income fund as defined in section 146.3 of the *Income Tax Act* (Canada), or
 - (iii) a deferred profit sharing plan as defined in section 147 of the *Income Tax Act* (Canada);
- (b) “registered plan payment” means a payment out of a registered plan.

(2) The Lieutenant Governor in Council may make regulations respecting the garnishing of an enforcement debtor’s registered

Explanatory Notes

1 Amends chapter C-15 of the Revised Statutes of Alberta 2000.

2 Pension payment.

plan payments, including, without limitation, regulations respecting

- (a) the determination of the amount of a registered plan payment that is attached by a garnishee summons, including the determination of any registered plan payment exemptions;
- (b) when the amount that is attached by a garnishee summons is to be paid;
- (c) information that must be provided by the garnishee to assist in determining the amount of a registered plan payment that is attached by a garnishee summons.

(3) Sections 79(3)(b) and 80 do not apply to a garnishee summons issued against registered plan payments.

(4) This section does not apply with respect to a maintenance order enforced under the *Maintenance Enforcement Act*.

3 Section 83 is amended by adding the following after subsection (3):

(3.1) Where registered plan payments of an enforcement debtor are paid directly into a deposit account by or on behalf of the plan administrator, the enforcement debtor may apply to the Court for an order directing that the enforcement debtor be entitled to a registered plan payment exemption similar to that which the enforcement debtor would have been entitled to if the registered plan payments had been garnished under section 81.1.

(3.2) In subsection (3.1),

- (a) “plan administrator” means
 - (i) an issuer of a registered retirement savings plan as defined in section 146 of the *Income Tax Act* (Canada),
 - (ii) a carrier of a registered retirement income fund as defined in section 146.3 of the *Income Tax Act* (Canada), or

3 Section 83 presently reads:

83(1) For the purposes of determining whether a deposit account obligation has arisen or is payable, a condition of the account agreement

- (a) that the account holder must apply in person to make or give notice before making a withdrawal, or*
- (b) that any person making a withdrawal must present a pass-book or other document to the garnishee,*

is to be disregarded for the purposes of this Part.

(2) A garnishee summons that attaches a joint deposit account only attaches the portion of the joint entitlement that is a current obligation.

(3) Where the employment earnings of an enforcement debtor are paid directly into a deposit account by or on behalf of the enforcement debtor's employer, the enforcement debtor may apply to the Court for an order directing that the enforcement debtor be entitled to an employment earnings exemption similar to that which

- (iii) a trustee of a deferred profit sharing plan as defined in section 147 of the *Income Tax Act* (Canada);
- (b) “registered plan payment” means a registered plan payment as defined in section 81.1.

4 The following is added after section 92:

Exemption of registered plans and registered disability savings plans

92.1(1) In this section,

- (a) “current obligation or future obligation” means a current obligation or future obligation within the meaning of section 77;
- (b) “DPSP” means a deferred profit sharing plan as defined in section 147 of the federal Act;
- (c) “enforcement process” means writ proceedings, attachment orders under Part 3 and any other pre-judgment and post-judgment remedies under any other enactment or law that may result in a money judgment, but does not include a remedy of a secured creditor enforcing the secured creditor’s security;
- (d) “federal Act” means the *Income Tax Act* (Canada);
- (e) “plan holder” means
 - (i) with respect to an RRSP, an annuitant as defined in section 146 of the federal Act,
 - (ii) with respect to an RRIF, an annuitant as defined in section 146.3 of the federal Act,
 - (iii) with respect to a registered disability savings plan, a beneficiary within the meaning of section 146.4 of the federal Act, and
 - (iv) with respect to a DPSP, a beneficiary within the meaning of section 147 of the federal Act;

the enforcement debtor would have been entitled to if the employment earnings had been garnished from the employer.

(4) The Court may on application make any order necessary to prevent a garnishee from being prejudiced by the operation of this section.

4 Exemption of registered plans.

- (f) “registered disability savings plan” means a registered disability savings plan as defined in section 146.4 of the federal Act;
 - (g) “registered plan” means a DPSP, an RRIF or an RRSP;
 - (h) “RRIF” means a registered retirement income fund as defined in section 146.3 of the federal Act;
 - (i) “RRSP” means a registered retirement savings plan as defined in section 146 of the federal Act.
- (2) Property in a registered plan, including any current obligation or future obligation under the plan, is exempt from any enforcement process, but a payment out of a registered plan to a plan holder is not exempt.
- (3) Property in a registered disability savings plan, including any current obligation or future obligation under the plan and any payments out of a registered disability savings plan to a plan holder are exempt from any enforcement process.
- (4) For the purposes of subsection (2), a transfer of property held in one registered plan to another registered plan does not constitute a payment out of a registered plan.
- (5) A transfer of property held in one registered plan to another registered plan does not constitute a fraudulent or preferential transfer under the *Fraudulent Preferences Act*.
- (6) This section does not apply to a contract of life insurance under Part 5 of the *Insurance Act* that is a registered plan.
- (7) This section does not apply to an enforcement process commenced in respect of a registered plan or registered disability savings plan before this section comes into force.

5 This Act comes into force on Proclamation.

5 Coming into force.

