



Court File No.: _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION UNDER RULE 14.05(3)(H) OF THE *RULES OF CIVIL PROCEDURE*, O.REG. 194

AND IN THE MATTER OF AN APPLICATION BY ORKIN CANADA CORPORATION WITH RESPECT TO THE RECTIFICATION OF THE TEXT OF THE REGISTERED PENSION PLAN FOR EMPLOYEES OF ORKIN CANADA CORPORATION

ORKIN CANADA CORPORATION

Applicant

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be fixed at 10:00 a.m. or as soon thereafter as it may be heard, at 330 University Avenue, Toronto, Ontario, or at such other location as the Court may advise.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: September 24, 2024

Issued by:

Local Registrar

330 University Avenue
Toronto, Ontario
M5G 1R7

TO: THE CURRENT AND FORMER MEMBERS OF THE REGISTERED PENSION
PLAN FOR EMPLOYEES OF ORKIN CANADA CORPORATION

APPLICATION

THE APPLICANT, Orkin Canada Corporation (“**Orkin**”) makes an application for:

1. An order for the rectification of, or for other equitable relief with respect to, the written text of the Registered Pension Plan for Employees of Orkin Canada Corporation (the “**Plan**”) as registered with Financial Services Regulatory Authority of Ontario (“**FSRA**”) under registration number 0684829 pursuant to the *Pension Benefits Act, R.S.O. 1990, c. P.8* with retroactive effect to September 1, 1988, in the form appended hereto as Schedule “A” (the “**Proposed Amendments**”);
2. If necessary, an order validating the service of notice of this application;
3. The costs of this application, if opposed, and Orkin seeks such costs at the hearing of this application; and
4. Such further and other relief as counsel may request and the Court may consider just.

THE GROUNDS for the application are:

Overview of the Application

1. In this application, Orkin seeks to rectify the text of the Plan to reflect Orkin’s original intention and the manner in which the Plan has been consistently administered throughout its history.
2. The Plan currently operates, and at all material times operated, as a defined contribution pension plan.

3. Participation was voluntary for employees who satisfy the eligibility requirements:
 - (a) After two years of “Continuous” employment, all full-time employees are eligible to join the Plan; and
 - (b) After two years of “Continuous” employment (as defined in the Plan), all part-time employees are eligible to join the Plan, provided that the employee earned at least 35% of the “Year’s Maximum Pensionable Earnings” or completed 700 hours of employment in each of the two consecutive calendar years immediately prior to application for membership.
4. Pursuant to the Plan, employees who choose to participate contribute 4% of their “Earnings” to the Plan.
5. Also pursuant to the Plan, Orkin makes contributions to the Plan to match these employee contributions to a certain level – initially Orkin matches employee contributions in respect of 2% of the employee’s Earnings, and, at a certain point, increasing to 4% matching (the “**Matching Contributions**”).
6. This application concerns the point at which the Matching Contributions increase from 2% to 4%. Orkin’s intention is and has always been that the Matching Contributions increase from 2% to 4% after five years of *Plan membership* (the “**Intended Matching Provision**”). Conversely, the Plan text was erroneously amended between 1988 and 1994 from the Intended Matching Provision to provide that the Matching Contributions increase from 2% to 4% after five years of *service* (the “**Incorrect Matching Provision**”).

7. Since full-time employees are eligible to participate in the Plan after two years of employment, the difference for full-time employees between the Intended Matching Provision and the Incorrect Matching Provision is a difference of two years of increased Matching Contributions – i.e. between Matching Payments increasing from 2% to 4% after five years of service (the Incorrect Matching Provision) or after seven years of service (the Intended Matching Provision).

The Applicant and the Plan

8. The applicant, Orkin, is a corporation incorporated pursuant to the laws of Nova Scotia. Orkin has operations throughout Canada, including extensive operations in Toronto. Orkin's head office is located in Mississauga, Ontario.
9. The Plan was first registered with FSRA's predecessor effective September 1, 1988 as the "Registered Pension Plan for Employees of PCO Services Corporation".
10. At that time, the Plan sponsor was Orkin's predecessor, PCO Services Corporation, also known as PCO Services, Inc. ("**PCO**").
11. Prior to an amendment dated December 21, 1994, with retroactive effect to June 27, 1990, the Plan reflected the Intended Matching Provision. The Plan has been administered consistently with the Intended Matching Provision throughout its existence.
12. On December 21, 1994, the Plan was amended effective June 27, 1990, and this amended version introduced the Incorrect Matching Provision.

13. In or around July 2018, in the context of revising other portions of the Plan text in response to legislative amendments, the provider of certain delegated administrative services for the Plan (“**Sun Life**”) informed Orkin of the discrepancy between the Incorrect Matching Provision and the Intended Matching Provision.
14. This was the first time that Orkin became aware of any actual or potential discrepancy between the Incorrect Matching Provision and the Intended Matching Provision. Notably, no Plan member has raised this issue with Orkin to date.
15. Following this discovery, Orkin, through Sun Life, sought approval from FSRA to retroactively amend the Incorrect Matching Provision to conform with the Intended Matching Provision (the “**Proposed Amendment**”).
16. On January 20, 2023 and May 25, 2023, FSRA took the position that it could not register the Proposed Amendment unless the Plan administrator took steps retroactively fixing the issue from inception. However, any such steps could be held in abeyance pending any application that Orkin may choose to bring to the Court to seek rectification of the Plan text.

Request for Rectification of the Plan

17. At all times, the Intended Matching Provision reflected Orkin’s intention with respect to the Matching Contributions.
18. The Incorrect Matching Provision never reflected Orkin’s intention with respect to the Matching Contributions, and therefore resulted from a drafting mistake.

19. At all times, Orkin has administered the Plan consistent with the Intended Matching Provision, and it continues to do so. With limited exceptions, all of Orkin's communications with its employees concerning the Matching Contributions have reflected the Intended Matching Provision. On this basis, it would not have been reasonable for Plan members to expect that the Plan would be administered pursuant to the Incorrect Matching Provision.
20. Despite being on notice of how Orkin was administering the Plan consistent with the Intended Matching Provision, no current or former Plan members have objected to or questioned Orkin's consistent practice of increasing its Matching Contributions after five years of Plan membership.
21. It is just and equitable in the circumstances to rectify the Plan text to reflect the Intended Matching Provision.
22. In addition to the above grounds, Orkin pleads and relies on:
 - (a) Rules 1.04, 14.05, 17.02(a), (d), (f) and (h), 38 and 39 of the *Rules of Civil Procedure*, O.Reg. 194; and
 - (b) Such further and other grounds as counsel may advise and the Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:

23. The affidavit of Jamie Belitz, to be sworn, and the exhibits thereto; and

24. Such further and other evidence as counsel may advise and the Court may consider just.

September 24, 2024

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Lawyers for the Applicant,
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Schedule “A” – Intended Plan Text

The provisions of every version of the Plan in force from September 1, 1988 to present, which establish “Plan Sponsor Contributions” or “Employer Required Contributions”, will be modified, including the below provisions of the following Plan versions:

1. Section 4.2.3 of the Plan amendment dated December 21, 1994 (retroactive to June 27, 1990): “Upon completion of 5 years of service, each plan year, the Plan Sponsor is required to contribute 4% of each non-executive Member’s Earnings”;
2. Section 3.3 of the Plan restatement dated May 7, 1999 (retroactive to May 1, 1999): “Upon completion of 5 years of service, each plan year, the Plan Sponsor is required to contribute 4% of each non-executive Member’s Earnings”; and
3. Section III of the Plan restatement dated July 22, 2013 (retroactive to July 1, 2012):

Schedule of Required Contributions

Employee Class	Member Required Contributions	Employer Required Contribution
All employees	4% of Earnings	according to the following contribution scale

Contribution Scale:

Completed Years of Employment	Percentage of Earnings
Less than 5 years	2%
5 years or more	4%

Subject to any non-substantive revisions required to conform with the document as a whole (e.g., to maintain consistency with defined terms), the above provisions will be deleted and replaced with the following (revisions underlined):

1. Section 4.2.3 of the Plan amendment dated December 21, 1994: “Upon completion of 5 years of Plan membership, each plan year, the Plan Sponsor is required to contribute 4% of each non-executive Member’s Earnings”;
2. Section 3.3 of the Plan restatement dated May 7, 1999 (retroactive to May 1, 1999): “Upon completion of 5 years of Plan membership, each plan year, the Plan Sponsor is required to contribute 4% of each non-executive Member’s Earnings”; and
3. Section III of the Plan restatement dated July 22, 2013 (retroactive to July 1, 2012):

Schedule of Required Contributions

Employee Class	Member Required Contributions	Employer Required Contribution
All employees	4% of Earnings	according to the following contribution scale

Contribution Scale:

Completed Years of Plan Membership Percentage of Earnings

Less than 5 years

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