

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE)	WEDNESDAY, THE 23 rd
)	
JUSTICE CONWAY)	DAY OF OCTOBER, 2024

IN THE MATTER OF an application under rule 14.05(3)(h) of the *Rules of Civil Procedure*

AND IN THE MATTER of an application by Orkin Canada Corporation with respect to the rectification of the plan text of the registered pension plan for employees of Orkin Canada Corporation

ORKIN CANADA CORPORATION

Applicant

**ORDER
(Motion for Directions)**

THIS MOTION, made by the Applicant, Orkin Canada Corporation (“**Orkin**”), for an Order for directions regarding service of a notice to certain persons with an interest under the Registered Pension Plan for Employees of Orkin Canada Corporation (Financial Services Regulatory Authority of Ontario (“**FSRA**”) No. 0684829) (the “**Plan**”) and other matters was heard this day by videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application issued on September 25, 2024, the Affidavit of Jamie Belitz affirmed on October 17, 2024 (the “**Belitz Affidavit**”), the Notice of Motion and Factum of Orkin, and on hearing the submissions of the lawyers for Orkin:

1. **THIS COURT ORDERS** that Orkin is permitted to post the Notice of this Application, the Belitz Affidavit and this Order on a publicly available website (“**Website**”);

2. **THIS COURT ORDERS** that Orkin is permitted to distribute, or cause to be distributed by the Sun Life Assurance Company of Canada (“**Sun Life**”) the Notice attached as **Schedule “A”** to this Order (the “**Notice**”), which indicates the address of the Website and the date for the hearing of this application, to those Plan members identified in Exhibit “FF” to the Belitz Affidavit by regular mail and/or email to the addresses as they appear on the books and records of Sun Life.

3. **THIS COURT ORDERS** that Orkin is permitted to publish the Public Notice attached as **Schedule “B”** to this Order (the “**Public Notice**”), which indicates the address of the Website and the date for the hearing of the application:

(a) once, in print or online, in the following newspapers (in either English or French, as is appropriate for each newspaper), subject to each having reasonable publication deadlines and costs:

(i) The Globe and Mail (national);

(ii) National Post (national);

(iii) The Toronto Star;

(iv) La Presse (Montreal);

(v) The Gazette (Montreal);

(vi) Le Soleil (Quebec City);

(vii) The Vancouver Sun;

(viii) The Province (Vancouver);

(ix) The Calgary Herald;

(x) The Chronicle Herald (Halifax);

(b) via the news release distribution services of CNW Group Ltd. or a similar service.

4. **THIS COURT ORDERS** that accidental failure or omission by Orkin to give notice to any person entitled by this Order to receive notice, or any failure or omission to give such notice as a result of events beyond the reasonable control of Orkin, or the non-receipt of such notice shall, subject to further order of this Court, not constitute a breach of this Order nor shall it invalidate service of the notice of this application. If any such failure or omission is brought to the attention of Orkin, it shall use its best efforts to rectify it by the method and in the time most reasonably practicable in the circumstances.

5. **THIS COURT ORDERS** that distribution of the Notice and the Public Notice in accordance with paragraphs 1-4 of this Order shall constitute good and sufficient service of the Notice of Application and this Order and no other form of service need be effected and no other material need be served unless a Notice of Appearance is served in accordance with paragraph 6.

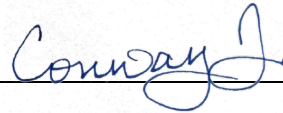
6. **THIS COURT ORDERS** that any Notice of Appearance served in response to the Notice of Application shall be served on the lawyers for Orkin as soon as reasonably practicable and, in any event, no later than November 26, 2024 by email and/or regular mail at the following address:

Graham Splawski
gsplawski@blg.com
BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto ON M5H 4E3
Tel: 416.367.6206

7. **THIS COURT ORDERS** that any materials to be filed by Orkin in support of this Application may be filed up to two days prior to the hearing of this Application without further Order of this Court.

8. **THIS COURT ORDERS** that, in the event the hearing of the Application does not proceed on the date set forth in the Notice and the Public Notice, and is adjourned, only those persons who served and filed a Notice of Appearance in accordance with paragraph 6 shall be entitled to be given notice of the adjourned date.

9. **THIS COURT ORDERS** that Orkin shall be entitled to seek leave to vary this Order on such terms and upon the giving of such notice as this Court may direct.



A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line. The signature is cursive and stylized.

SCHEDULE "A"



TO: All current and former members of the Registered Pension Plan for Employees of Orkin Canada Corporation (formerly known as the Registered Pension Plan for Employees of PCO Services Corporation), registered with the Financial Services Regulatory Authority of Ontario ("FSRA") under No. 0684829 (the "Plan")

FROM: Michelle Gazzellone, Orkin Canada Corporation

DATE: , 2024

RE: Application to Rectify the Portions of the Plan Text

We are writing to give you notice of an application that Orkin Canada Corporation ("**Orkin**") is making to the Ontario Superior Court of Justice seeking an order rectifying (amending) portions of the Plan text to bring the Plan text into conformity with the way the Plan has been consistently administered (the "**Application**"). The Application is scheduled to be heard by the Court in Toronto on **December 2, 2024**. The Notice of Application and an Order of the Court providing directions in relation to appearing at the hearing of the Application are available online at: www.orkinpensionnotice.com.

You are receiving this notice because you are a current or former member of the Plan. **No action is required by you.**

Reason for the Application

The Application concerns the provisions of the Plan related to Orkin's employer contributions. Since its inception, the Plan has been administered so that employer contributions increase from 2% to 4% of the employee's earnings after five years of *Plan membership*. However, Orkin recently discovered that, due to an unintended drafting error, the Plan text has indicated since the early-1990s that the employer contributions increase from 2% to 4% of the employee's earnings after five years of *service*.

The proposed rectification would ensure that the Plan terms are consistent with Orkin's intended employer-contribution, which Orkin has provided to the members of the Plan since the inception of the Plan.

Orkin is therefore seeking a court order to "rectify" the Plan terms to fix the drafting error, with retroactive effect to the date the error was introduced. A "rectification" will be consistent with the

way the Plan has always been administered and described in, among other things, notices to Plan members of increases in employer contributions. If the rectification order is granted, **there will be no change in how pension benefits under the Plan are calculated and paid.**

The proposed amendments would therefore retroactively amend the Plan effective September 1, 1988, to confirm that the employer-contribution scale noted in the Plan is based on the members' completed years of **membership in the Plan**, and that Orkin was and is to provide a contribution of 4% of the Members' earnings upon five completed years of membership in the Plan.

The provincial pension regulator, FSRA, is aware of this issue and has been given notice of this Application. FSRA would be required to approve the proposed retroactive amendments, and has stated that it would indeed support a rectification order from the Court in this respect.

Further Information

Orkin has filed with the court a Notice of Application and will be filing affidavits describing the facts and including the relevant documents.

No action is required from you. However, if you wish to obtain additional information, a copy of the Application materials can be found at the following website: www.orkinpensionnotice.com.

If you intend to address the Court at the hearing of the Application, please provide notice no later than November 26, 2024, which is 4 days before the scheduled final order hearing date of December 2, 2024. If you wish to contact a lawyer, we refer you to the Law Society of Ontario's Lawyer and Paralegal Directory: <https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/lawyer-and-paralegal-directory>.

Yours truly,

Michelle Gazzellone

Director of Human Resources

SCHEDULE "B"

LEGAL NOTICE

Are you a former employee of Orkin Canada Corporation (formerly known as PCO Services Inc.) who opted into Orkin's Employee Pension Plan?

If so, a pension rectification application before the Ontario Superior Court of Justice (the "Application") affects you.

WHEN? The Application is scheduled to be heard by the Court in Toronto on **December 2, 2024**. **No action is required from you.**

WHO IS AFFECTED? Former members, pensioners, and active members under the Registered Pension Plan for Employees of Orkin Canada Corporation (Financial Services Regulatory Authority of Ontario ("FSRA") No. 0684829) (the "**Plan**") from September 1, 1988 to present.

WHAT IS THE APPLICATION ABOUT? The purpose of the rectification application is to correct a recently discovered and unintended drafting error in the Plan text, which does not accurately reflect how the Plan has been administered since its inception. The proposed rectification would amend the Plan text regarding the employer-contribution scale, retroactively to September 1, 1988, when the Plan was first registered with FSRA, the provincial pension regulator.

WHAT IS THE ERROR AT ISSUE? The drafting error relates to the employer-contribution scale in the Plan text having been erroneously based on years of service, rather than on years of membership in the Plan. The Plan text contains an employer-contribution scale increasing from 2% to 4% of the member's earnings upon five completed years of "service" or "employment". However, the intent of the Plan was for the employer-contribution scale to be based on completed years of "membership" in the Plan. This error was carried forward in all amended and restated versions of the Plan text since its inception, but the Plan has always been and continues to be administered in accordance with the intention that Orkin's contribution to the Plan increased to 4% of earnings for each Plan member upon five years of Plan membership.

Orkin has evidence to show that the Plan has been carried out consistently as if the drafting error did not exist.

WHY IS RECTIFICATION NEEDED? The proposed rectification would ensure that the Plan text is consistent with how the Plan has always been administered – in accordance with the intended employer-contribution scheme, which Orkin has provided to Plan members since the Plan's inception.

In particular, the rectification would amend the Plan text effective September 1, 1988, to confirm that the employer-contribution scale noted in the Plan is based on the members' completed years of **membership in the Plan** rather than the members' completed years of service or employment with Orkin, and that Orkin was and is to provide a contribution of 4% of the Members' earnings upon five completed years of membership in the Plan.

If the rectification order is granted, there will be no change in how pension benefits under the Plan are calculated and paid.

IS FSRA INVOLVED? The provincial pension regulator of Ontario, FSRA, is aware of this issue and has been given notice of the Application. FSRA would be required to approve the proposed retroactive amendments, and has stated that it would support a rectification order from the Court in this respect.

WHAT ARE YOUR OPTIONS? **No action is required from you.** If you wish to obtain a copy of the Application materials (including affidavit evidence describing the facts and including the relevant documents), they can be found here: www.orkinpensionnotice.com. If you intend to address the Court at the hearing of the Application, please provide notice no later than **November 26, 2024**, which is 4 days before the scheduled final order hearing on **December 2, 2024**. If you wish to contact a lawyer, you may refer to the Law Society of Ontario's Directory:

QUESTIONS? VISIT www.orkinpensionnotice.com

<https://iso.ca/public-resources/finding-a-lawyer-or-paralegal/lawyer-and-paralegal-directory>

IN THE MATTER OF AN APPLICATION UNDER RULE 14.05(3)(h) OF THE *RULES OF CIVIL PROCEDURE*

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

ORKIN CANADA CORPORATION
Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

ORDER

BORDEN LADNER GERVAIS LLP

Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto ON M5H 4E3

Graham Splawski (LSO #68569T)

E: gsplawski@blg.com

T: 416.367.6206

Junho (Tommy) Hong (LSO# 77332B)

E: tommyhong@blg.com

T: 416.367.6462

Alexandra Moser (LSO# 87652M)

E: amoser@blg.com

T: 416.367.6426

Lawyers for the Applicant, Orkin Canada Corporation