

Form 3-49
(Rule 3-49)

COURT FILE NUMBER QBG 324 of 2022

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

APPLICANT CONSUMERS' CO-OPERATIVE REFINERIES LIMITED

RESPONDENT THE SUPERINTENDENT OF PENSIONS

ORIGINATING APPLICATION

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Where Court House, 520 Spadina Crescent East
Saskatoon, Saskatchewan

Date May 12, 2022

Time 10:00 am

Due to the health risks posed by the COVID-19 pandemic, all chambers applications will be heard by telephone unless the presiding judge has decided otherwise. To confirm the telephone number where you can be reached on the date of the application, you must immediately contact the office of the local registrar at (306) 933-5135 and provide your telephone number. You must remain available by telephone at that number on that date until your matter is heard.

Go to the end of this document to see what you can do and when you must do it.

PARTICULARS OF APPLICATION

The applicant seeks the following remedy or order:

1. A declaration that the notice of registration of the Superintendent of Pensions (the "**Superintendent**") dated December 30, 2020, is valid and binding;

2. A declaration that the Superintendent's written reasons, issued February 24, 2021, are void and of no effect in so far as they purport to amend or alter the notice of registration dated December 30, 2020;
3. An Order pursuant to section 23(1) of *The Pension Benefits Act, 1992*, S.S. 1992, c. P-6.001, as amended (the "**Act**"), that the Superintendent register Amendment P-23 (the "**Amendment**") to the CCRL Petroleum Employees' Pension Plan, Registration Number 0358986 (the "**Plan**");
4. Costs of this proceeding; and
5. Such further and other relief as this court may deem just.

The applicant's grounds for making this application are:

6. The applicant, Consumers' Co-operative Refineries Limited ("**CCRL**"), is the administrator of the Plan.
7. On October 19, 2020, pursuant to s. 17(1) of the Act, CCRL filed an amendment to the Plan (the "**Amendment**").
8. On December 30, 2020, the Superintendent issued a decision to register the Amendment (the "**Registration Decision**") in which he stated the following:

This letter is to advise you that I have decided to register the Amendment to the Plan that was filed for registration under the Pension Benefits Act, 1992 on October 19, 2020.

The written reasons for my decision will follow shortly.

9. The Superintendent was authorized to deliver the Registration Decision by s. 17(3) of the Act. The decision did not indicate that registration of the Amendment was subject to any caveat, restriction or limitation.
10. On the same date, December 30, 2020, the Amendment was noted as registered in the digital licensing and registration system utilized by the Superintendent's office to record registrations.
11. Between January 29, 2021 and February 22, 2021, in reliance on the Registration Decision, CCRL administered the Plan in a manner that reflected the Amendment, as permitted by s. 18(2) of the Act.

12. On February 24, 2021, the Superintendent delivered written reasons for the Registration Decision (the "**Written Reasons**"). Contrary to the Registration Decision, which confirmed that the Amendment was registered without restriction, the Written Reasons stated that a portion of the Amendment was not to be registered and was instead to be severed. The Written Reasons direct CCRL to amend the wording of the Amendment to give effect to the severance.
13. Pursuant to s. 22 of the Act, on April 16, 2021, CCRL delivered a notice of objection (the "**Notice of Objection**") to the Superintendent's decision as articulated in the Written Reasons.
14. On March 11, 2022, the Superintendent issued a decision under s. 22(4) of the Act confirming his decision to refuse to register an aspect of the Amendment (the "**Reconsideration Decision**").
15. This application is brought pursuant to Rule 3-49(2) of the Queen's Bench Civil Rules and s. 23(1) of the Act. Section 23(1) permits an administrator to appeal to the court where the Superintendent has confirmed a decision pursuant to s. 22(4) of the Act.
16. The Superintendent erred in the Reconsideration Decision by failing to apply the doctrine of *functus officio* to the Registration Decision.

The Registration Decision was Final

17. The Reconsideration Decision concluded that the Registration Decision was not final, and therefore the doctrine of *functus officio* does not apply, because the Registration Decision was delivered with notice that written reasons would follow.
18. Section 17 of the Act sets out the procedure for registering an amendment. Under s. 17(3), where the Superintendent determines that the amendment complies with the Act, he may issue a notice of registration with respect to the amendment. On December 30, 2020, the Superintendent delivered the Registration Decision, providing CCRL with notice that he had decided to register the Amendment. Upon delivery of notice that an amendment has been registered the Superintendent has no further authority to reconsider and revise that decision.
19. There is no dispute that the Superintendent may issue a decision with reasons to follow. However, the subsequent reasons must be consistent with the decision made and communicated to the parties. The delivery of subsequent written reasons was not an opportunity for the Superintendent to review and change the Registration Decision.

20. The conclusion that the Registration Decision must be treated as final and binding is consistent with the specific pension administration scheme established by the Act and the duty of procedural fairness, which contemplates that reasons are provided to explain the basis for an administrative decision reached, not to alter it.

The Act Does Not Permit the Superintendent to Reopen the Registration Decision

21. The Superintendent erred in his determination that the doctrine of *functus officio* should not apply strictly to plan amendment registration decisions. This decision is based on the Superintendent's view that the Act grants him a general discretion to unilaterally reopen amendment registration decisions. In support of this view, he asserts that the scheme established by the Act should be interpreted as requiring flexibility over finality in plan amendment registration decisions.
22. This conclusion is incorrect and fails to acknowledge the language of the Act and the consequences if discretion of this nature could be exercised by the Superintendent in the manner he suggests. The Act contemplates that a registration decision that has been communicated by the Superintendent is final and can be relied on by an administrator when administering a plan.
23. If the Superintendent's conclusion were correct, no registration decision would ever be final, any decision could be reopened, and refusal to register the amendment could be communicated to the administrator at any time. Without certainty that an amendment is finally registered, an administrator cannot know how it may administer a plan to remain compliant with the Act.
24. The Superintendent's concern that he must be able to reopen registration decisions to protect the interests of plan members is inconsistent with the Act and fails to acknowledge that the application process itself is designed to address that issue. The legislature created a process by which an administrator files a proposed amendment; the Superintendent considers the proposed amendment; and the Superintendent makes a decision pursuant to s. 17(3) to register the amendment or not. In the present case, that decision was clearly and finally made on December 30, 2020, when the Superintendent issued his decision to register the Amendment without qualification.


In support of this application, the applicant relies on the following material or evidence:

25. This Originating Application;
26. Affidavit of Peter Gruening sworn April 6, 2022;

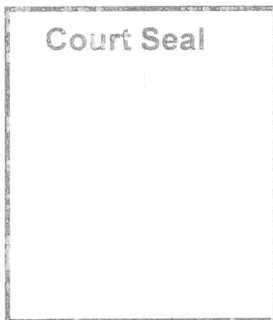
27. Brief of Law of the Applicant (to be filed); and
28. Such further and other materials as counsel may advise and this Honourable Court may allow.

DATED at Saskatoon, Saskatchewan, this 7th day of April, 2022.

Lawson Lundell LLP

Per: 
per Marko Vesely,
Solicitors for the Applicant,
Consumers' Co-operative
Refineries Limited

This notice is issued at the above-noted judicial centre on the 7 day of April, 2022.



H. Stoëcklein
Deputy Local Registrar

Local Registrar

NOTICE

You are named as a respondent because you have made or are expected to make an adverse claim with respect to this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form.

The rules require that a party moving or opposing an originating application must serve any brief of written argument on each of the other parties and file it at least 3 days before the date scheduled for hearing the originating application.

If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must serve a copy of the affidavit and other evidence on the originating applicant at least 10 days before the originating application is to be heard or considered.

CONTACT INFORMATION AND ADDRESS FOR SERVICE:

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