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June 18, 2014

Via email: tami.dove@gov.sk.ca

Ms. Tami Dove
Senior Policy Analyst
Pensions Division
Financial and Consumer Affairs Authority
Suite 601, 1919 Saskatchewan Drive
Regina, SK S4P 4H2

Dear Ms. Dove:

Re: Consultation Paper – Non Residency Unlocking

I am writing on behalf of the Canadian Bar Association's National Pensions and Benefits Law Section (CBA Section) in response to the consultation paper dated May 12, 2014 on proposed new non-residency unlocking rules under the *Pension Benefits Act, 1992* and its regulations. The CBA Section appreciates the opportunity to participate in the consultation process.

The Canadian Bar Association is a national association of 37,500 lawyers, Quebec notaries, students and law teachers, with a mandate to promote improvements in the law and administration of justice. The CBA Section is comprised of lawyers from across Canada who practise in the pensions and benefits areas of law, including counsel to benefit administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefits consultants and investment managers and advisors.

Question 1: Do you agree the government should amend the Regulations to allow for Non-residency unlocking?

The CBA Section supports in principle the proposed amendment to the Act introducing non-residency unlocking and its rationale. The introduction conceptually harmonizes with the non-residency unlocking rules in the pension standards legislation of most other Canadian jurisdictions.

Except in Nova Scotia, Newfoundland and Labrador, and Prince Edward Island, where pension standards legislation is not yet in force, federal and provincial pension standards legislation provide unlocking for former members or spouses who become non-residents in accordance with the *Income Tax Act (Canada)* (ITA), for pension benefits under a pension plan or monies in a locked-in vehicle. There are, however, differences in availability. Unlocking in some jurisdictions is only

available to pension plans, while in others it is only available to a particular type of locked-in vehicle. Other jurisdictions allow for both. The eligibility requirements also differ, as some jurisdictions require spousal waiver. Proving non-residency has different requirements as well depending on the jurisdiction.

The consultation paper proposes that non-residency unlocking be available only to former members for their pension under a pension plan or monies in a locked-in retirement account (LIRA). The CBA Section recommends that non-residency unlocking also be available to spouses and include monies in other locked-in vehicles.

Question 2: Do you agree with this provision being mandatory?

The CBA Section agrees that non-residency unlocking be mandatory for all pension plans registered under the Act and for all LIRA contracts which hold locked-in pension monies under the Act. The plan administrator (for a pension plan) and the financial institution (for a LIRA contract) must allow the unlocking if a member or the owner elects at their option on proving non-residency.

Non-residency unlocking should also be available to a person entitled to pension benefits payable in accordance with the Act, regardless of where the pension plan is registered (See Item 1 – Purpose of Consultation Paper).

Question 3: Do you agree with the requirements (i.e. the confirmation letter from CRA and the spousal waiver form, if applicable) to provide proof to the plan administrator or financial institution of non-residency?

We support the requirements to provide CRA's written confirmation that a person is a non-resident and a spousal waiver form, if applicable.

Obtaining CRA's written confirmation that a person is a non-resident is required under the pension standards legislation of several other Canadian jurisdictions that have similar unlocking provisions. We support including this requirement to help promote consistency and uniformity. Written confirmation on non-residency from CRA would avoid the difficulty a pension plan administrator or a financial institution faces in determining whether the applicant has met the requirements for non-residency for purposes of the *ITA*.

Questions 4: Are there any reasons why you feel that a person should be required to be a non-resident of Canada for a period of time (such as two years) before they are allowed to unlock?

To promote consistency and uniformity with other Canadian jurisdictions, the CBA Section supports the requirement for a person to be a non-resident of Canada for two years before they are able to unlock their pension entitlement.

One main purpose of requiring pension funds to be locked in is to ensure a person has access to the funds during retirement. Access to this money during retirement helps alleviate dependence on other forms of government-assisted retirement income, such as OAS and GIS. Requiring a person to be a non-resident for some period, such as two years, before applying to unlock pension funds would provide evidence that the person's non-residency status is of a more permanent nature (not only for the calendar year referred to in the CRA confirmation letter) which is consistent with the

rationale of introducing non-residency unlocking. While the CRA form refers only to one tax year, several other Canadian jurisdictions have two-year non-residency requirements.

Question 5: What, if any, additional information or requirements would you suggest?

We do not believe that additional information or requirements would be necessary.

We trust that our comments are helpful. We would be pleased to further assist the FCAA of Saskatchewan in their work wherever possible.

Yours very truly,

(original signed by Noah Arshinoff for Lawrence Swartz)

Lawrence Swartz
Chair, National Pensions and Benefits Law Section