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Via email: [thomasduggan@gov.nl.ca](mailto:thomasduggan@gov.nl.ca)

Thomas Duggan  
Director, Policy and Strategic Planning  
Service NL  
100 Prince Phillip Drive  
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Dear Mr. Duggan,

**Re: *Pension Benefits Act* – Proposed Amendments for Financial Hardship Unlocking**

The Canadian Bar Association's Pensions and Benefits Law Section (CBA Section) is pleased to comment on Newfoundland and Labrador's proposal to amend the *Pension Benefits Act* to allow unlocking of pension benefits that have been transferred from provincially registered pension plans to locked-in retirement savings vehicles. The proposed amendments aim to respond to numerous requests from individuals seeking access to their pension funds and would allow early unlocking in cases of financial hardship.

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section contributes to national policy, reviews developing pensions and benefits legislation and promotes harmonization. Our members are involved in all aspects of pensions and benefits law and include counsel who advise pension and benefit plan administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

**Importance of Locking-In**

“Locking-in” refers to rules requiring that accumulated pension benefits be maintained for retirement. Permitting substantial unlocking would undermine the principal policy objective of private pension plans, which is to secure income to meet the needs of employees when they retire.

As a general proposition, we support continued locking-in to ensure pension benefits that accumulate on a tax deferred basis are used for retirement income, subject to specific and enumerated exemptions.

## Harmonization

Due to the multi-jurisdictional aspect of pension regulation in Canada, the CBA Section has long encouraged harmonization. Lack of harmonization creates unnecessary regulatory burdens and increases administrative costs. Ultimately, harmonization enables broader pension coverage and promotes efficiency.

While we generally support locking-in rules, we recognize the need for flexibility in certain circumstances, such as financial hardship. Financial hardship unlocking currently exists in British Columbia, Alberta, Ontario, Nova Scotia and for federally registered pension plans for locked-in accounts only (e.g. Locked-In Retirement Accounts (LIRAs), and Life Income Funds (LIFs)). No Canadian jurisdiction currently allows unlocking of pension funds for financial hardship directly from a pension plan.

We acknowledge that the proposed amendments to the *Pension Benefits Act* would permit limited unlocking, and only for individuals who have transferred funds from a registered pension plan into a locked-in retirement savings arrangement. Individuals who are active pension plan members and those already receiving retirement income would not be permitted to unlock their pension funds.

## Unlocking Rules – Comparative Review

We believe a comparative review of the current rules in jurisdictions allowing limited unlocking in cases of financial hardship is instructive. See Appendix A for a more detailed table.

**Needs Assessment:** All jurisdictions allowing financial hardship unlocking incorporate a needs assessment for unlocking some or all of an individual's pension funds, including where:

- (i) the individual has low expected income (in British Columbia, Alberta, Ontario and Nova Scotia, the income must be less than 2/3 of the year's maximum pensionable earnings (YMPE). For federally regulated plans, it must be less than 75% of YMPE),
- (ii) the individual has high medical or dental expenses not covered by insurance (available in all jurisdictions but for federally regulated plans, expenses must be over 20% of income),
- (iii) the individual is at risk of defaulting on their mortgage or has fallen into rent arrears (available in British Columbia, Alberta, Ontario and Nova Scotia but not for federally regulated plans), and
- (iv) it is necessary to pay the first month's rent and security deposit to secure a principal residence (available in British Columbia, Alberta and Ontario but not in Nova Scotia and for federally regulated plans).

**Maximum amounts:** The maximum amounts that may be unlocked depend on the grounds for withdrawal and the needs of the individual. For example, for low expected income unlocking applications in British Columbia, Alberta, Ontario and Nova Scotia, the maximum withdrawal amount is 50% of YMPE minus 75% of total expected income. For unlocking applications based on risk of mortgage default or rent arrears, the maximum is the amount required to rectify default or pay arrears. Currently, only Nova Scotia and Ontario specify a minimum withdrawal amount (\$500).

**Processing:** In Nova Scotia and Alberta, the provincial Superintendent must process all applications. In the other three jurisdictions (Ontario, British Columbia and federal), the relevant financial institution may also process applications for withdrawal. Of jurisdictions that allow

applications to the Superintendent, Nova Scotia currently charges a fee (\$116.65) and Ontario instituted a waiver in April 2009. All jurisdictions that allow financial hardship unlocking generally cap the number of applications at one per year, per ground, per account.

### **Limited Unlocking**

We recognize the importance of reforms to alleviate financial distress for pension beneficiaries who have not reached retirement age, particularly in light of the economic impact of the COVID-19 pandemic. We generally support the continued locking-in of pension benefits but accept the policy imperative to permit limited unlocking in cases of financial hardship.

The CBA Section supports a regime for financial hardship unlocking from locked-in accounts that is consistent with and not more expansive than existing rules in Nova Scotia, Ontario, Alberta, British Columbia and federally. This approach allows financial relief in urgent cases and increases interjurisdictional pension legislation harmonization while maintaining the integrity of the province's pensions system.

We would not support a regime that allowed unlocking of pension funds at any point directly from the pension plan itself. In addition to different policy considerations, practically, it would impose too high a burden on plan administrators.

### **CONCLUSION**

The CBA Section appreciates the opportunity to comment on the proposed pension benefits reform. We trust our comments are helpful and would be pleased to offer further details if necessary.

Yours truly,

*(original letter signed by Marc-Andre O'Rourke for Jessica Bullock)*

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## APPENDIX A

## SUMMARY OF PROVISIONS FOR UNLOCKING OF RETIREMENT SAVINGS FUNDS IN ALBERTA, BRITISH COLUMBIA, ONTARIO, NOVA SCOTIA AND FOR FEDERALLY REGULATED PENSIONS

	Grounds	Max. withdrawal amount	Min. withdrawal amount	Frequency of application or withdrawal	To whom is the application made?	Relevant legislation and additional info
Federal	Low expected income (less than 75% of YMPE)	50% of YMPE minus 2/3 of expected income	None	One withdrawal per calendar year, but subsequent withdrawals can be made within 30 days of first application for withdrawal.	Financial institution holding the savings vehicle	<a href="#">Pension Benefits Standards Regulations, 1985 SOR/87-19</a> , ss 20(1)(d) (LRSPs), 20.1(1)(m) (LIFs), 20.2(1)(e) (RLSPs), 20.3(1)(m) (RLIFs)  See also: OSFI unlocking <a href="#">info</a> and <a href="#">financial hardship FAQ</a>
	High medical expenses (over 20% of expected income)	Expected medical expenses for the 12 months following application up to 50% of YMPE				
Alberta	Low expected income (less than 2/3 of YMPE)	50% of YMPE minus 75% of total income	None	One application per calendar year, per ground, per account.	Superintendent	<a href="#">Employment Pension Plans Regulation, Alta Reg 154/2014</a> , ss 121 (LIRAs) and 140 (LIFs)  See also <a href="#">program summary</a> and <a href="#">FAQ</a>
	High medical expenses (fund owner unable to pay)	Amount required to cover expenses for the 12 months following submission of application				
	Rent arrears	Amount required to pay arrears				
	Mortgage default	Amount required to rectify default				
	First month's rent and security deposit to secure principal residence	Amount required to pay first month's rent and security deposit				
BC	Low expected income (less than 2/3 of YMPE)	50% of YMPE minus 75% of total income	None	One application per calendar year, per ground, per account.	Financial institution holding the savings vehicle	<a href="#">Pension Benefits Standards Regulation, BC Reg 71/2015</a> , ss 110 (LIRAs) and 129 (LIFs) See also: information included with <a href="#">application form</a>
	High medical expenses (fund owner unable to pay)	Amount required to cover expenses for the 12 months following submission of application				

	Rent arrears	Amount required to pay arrears				
	Mortgage default	Amount required to rectify default				
	First month's rent and security deposit to secure principal residence	Amount required to pay first month's rent and security deposit				
<b>Ontario</b>	Low expected income (less than 2/3 of YMPE)	50% of YMPE minus 75% of total income	\$500	One application per calendar year, per ground, per account. (But more than one application for medical expenses can be filed provided the expenses are incurred by different people)	Financial institution holding the savings vehicle	<a href="#">General, RRO 1990, Reg 909</a> under Pension Benefits Act, RSO 1990, c P.8, Schedule 1, ss 10.1 – 10.4 (Old LIFs); Schedule 1.1, ss 11.1 – 11.4 (New LIFs); Schedule 2, ss 9.1 – 9.4 (LRIFs); Schedule 3, ss 8.1 – 8.4 (LIRAs)  See also: <a href="#">FSRA User guide for Financial Institutions</a>
	High medical expenses	Lesser of a) 50% of YMPE, and b) medical expenses already incurred and expected to be incurred in 12 months after application made				
	Rent arrears/mortgage default	Lesser of a) 50% of YMPE, and b) amount of arrears or debt in default plus rent payable or mortgage and interest payments for 12 months after application made				
	First and last months' rent to secure principal residence	Lesser of 5% of YMPE and first and last months' rent				
<b>Nova Scotia</b>	Low expected income (less than 2/3 of YMPE)	50% of YMPE minus 75% of total income	\$500	One application per calendar year, per ground, per account. (But no subsequent application for rent arrears or mortgage default where previous application has been granted)	Superintendent	<a href="#">Pension Benefits Regulations, NS Reg 200/2015</a> , ss 212 to 230
	High medical expenses (fund owner unable to pay)	Amount required to cover expenses for the 12 months prior to and 12 months following submission of application				
	Rent arrears	Amount required to pay arrears				
	Mortgage default	Amount required to rectify default				