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Via email: [holly.ballan@gov.sk.ca](mailto:holly.ballan@gov.sk.ca), [pensions@gov.sk.ca](mailto:pensions@gov.sk.ca)

Holly Ballan  
Financial and Consumer Affairs Authority of Saskatchewan  
Director, Pensions  
Pensions Division  
601-1919 Saskatchewan Drive  
Regina, SK S4P 4H2

Dear Ms. Ballan:

**Re: *The Pension Benefits Act, 1992 Consultation Paper – Financial Hardship Unlocking from a Locked-In Retirement Account***

The Canadian Bar Association Pensions and Benefits Law Section (CBA Section) is pleased to comment on the Financial and Consumer Affairs Authority's proposal to amend *The Pension Benefits Regulations, 1993* (Regulations). The amendments would permit early unlocking of benefits transferred to locked-in retirement savings vehicles in cases of financial hardship.

The CBA is a national association of over 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

To address the challenges associated with Canada's multi-jurisdictional pension regulatory regime, the CBA Section has long advocated for the harmonization of pension laws. Lack of harmonization creates unnecessary regulatory burdens and increases administrative costs, creating a disincentive for the establishment and maintenance of registered pensions. Ultimately, harmonization enables broader pension coverage, promotes efficiency, and supports the sustainable accumulation of retirement benefits for employees through registered pension plans.

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, Newfoundland and Labrador, and federally registered pension plans, for locked-in accounts only. 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 Regulations 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 through financial hardship unlocking.

We also acknowledge that Saskatchewan LIRA holders over the age of 55 (or an earlier retirement age prescribed in the pension plan) are permitted, with spousal consent, to transfer locked-in retirement funds to a prescribed Registered Retirement Income Fund (RRIF). As the Regulations impose no limit on the amount that can be withdrawn from a RRIF, full unlocking is effectively permitted post-retirement. No other jurisdiction provides full unlocking in this manner. Accordingly, there may be less uptake of financial hardship unlocking in Saskatchewan, relative to other jurisdictions, as many LIRA holders who are past early retirement age and suffering financial hardship have an alternative means of accessing locked-in 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 detailed comparative table.

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

- (i) the individual has low expected income (in British Columbia, Alberta, Ontario, Nova Scotia, and Newfoundland and Labrador, 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, Nova Scotia, and Newfoundland and Labrador but not for federally regulated plans); or
- (iv) it is necessary to pay the first month's rent and security deposit to secure a principal residence (available in British Columbia, Alberta, Ontario and Newfoundland and Labrador 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, Nova Scotia, and Newfoundland and Labrador, 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 jurisdictions (Ontario, British Columbia, Newfoundland and Labrador, and federal), the application for withdrawal is processed by the financial institution holding the locked-in funds. 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.

In light of the above, the CBA Section answers the consultation questions as follows:

*Question 1: Do you agree the Government should amend the Regulations to allow for Financial Hardship Unlocking from a LIRA?*

The CBA Section recognizes the importance of reforms to alleviate financial distress for pension beneficiaries who have not reached retirement age, particularly considering the economic impact of the COVID-19 pandemic. Although we generally support the continued locking-in of pension benefits, we accept the policy imperative to permit limited unlocking in cases of financial hardship. As such, we agree that Saskatchewan should amend the Regulations to allow for limited unlocking of locked-in retirement savings in cases of financial hardship.

*Question 2: Do you agree with the four criteria under which money could be withdrawn? Do you feel there should be any additional criteria?*

We support a regime for financial hardship unlocking from locked-in accounts that is consistent with and not more expansive than existing rules in other jurisdictions across Canada. 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 therefore support the four proposed criteria for permitting withdrawal, as they are aligned with existing regulations for financial hardship unlocking in other jurisdictions.

*Question 3: Do you agree that there should be a limit on how frequently a LIRA holder can withdraw money under Financial Hardship Unlocking? If so, what do you feel the limit should be?*

The CBA Section supports a limitation on the number of times a LIRA owner may withdraw money under financial hardship unlocking rules. One application per year, per ground, per account is consistent with other jurisdictions and strikes a reasonable balance between the policy objectives of saving for retirement and ameliorating exceptional instances of financial hardship.

*Question 4: Do you agree with the formula for determining the maximum withdrawal for low income which is used in the example? If not, what do you think the formula should be?*

*Question 5: Do you agree that the LIRA owner should be able to withdraw an amount equal to the amount of mortgage arrears, plus legal fees, for either their principal residence or that of their spouse?*

*Question 6: Do you agree that the LIRA owner should be able to withdraw an amount equal to the amount of rent arrears, if either they or their spouse are facing eviction?*

*Question 7: Do you agree that the LIRA owner should be able to withdraw an amount equal to medical costs incurred or to be incurred? Do you agree that the medical cost must be with respect to prescriptions, medical or dental treatments, or home renovations, where no payment has been made by a third party?*

*Question 8: Do you agree that the LIRA owner should be able to withdraw an amount equal to the first months' rent, security deposit and pet damage deposit?*

For questions 4 to 8, the comparative review in Appendix A is instructive. The CBA Section supports the four proposed criteria under which money could be withdrawn: low expected income; threat of eviction or foreclosure; high incurred or expected medical costs; and securing a new principal rental residence. These criteria are consistent with those adopted in other jurisdictions where financial hardship unlocking is permitted. We further support the proposed limitations on each criterion, as specified in the consultation, as these are generally consistent with the limitations in other jurisdictions.

*Question 9: Should there be a sunset clause in the Financial Hardship Unlocking provisions in the Regulations? If so, what do you feel is the correct number of years for the sunset to take effect?*

*Question 10: Do you have any concerns with financial institutions providing a statistical report to the FCAA? If you do not have any concerns, should the report be semi-annual or annual?*

The CBA Section does not support the inclusion of an automatic sunset clause in Saskatchewan's financial hardship unlocking rules. While we recognize that a sunset clause would necessarily trigger reassessment of the proposed amendments and thereby help to ensure they satisfy their intended purpose, we feel a sunset clause is unnecessary given the scope of financial hardship unlocking rules contemplated.

Although the COVID-19 pandemic led Saskatchewan to consider the proposed amendments to the Regulation, they will help fulfill the policy objective of ameliorating financial hardship arising from circumstances that will exist after, and independently of, the pandemic. In our view it would be inappropriate to implement a sunset clause for the purposes of reassessment. As indicated in the Consultation, a sunset clause would be unique amongst jurisdictions that permit financial hardship unlocking. The inclusion of a sunset clause detracts from interjurisdictional harmonization and increases administrative complexity.

Notwithstanding, the CBA Section supports review and reassessment of the proposed financial hardship unlocking rules on an ongoing basis or after a specified time. The collection of data would facilitate this process. To this end, we support the collection of data on a semi-annual basis. This aligns with the requirements of Newfoundland and Labrador and will allow close monitoring of the new unlocking provision so that required changes can be made.

*Question 11: Do you agree with Financial Hardship Unlocking being a mandatory provision in LIRA contracts?*

If permitted, financial hardship unlocking should be deemed to apply to all LIRA contracts. It would defeat the intent of permitting financial hardship unlocking if it were not available to all LIRA owners.

*Question 12: Do you agree that the financial institution who issued the LIRA should be responsible for reviewing the applications for Financial Hardship Unlocking?*

In our view, the financial institution that issued the LIRA is best placed to review applications for financial hardship unlocking. Review by the institution that issued the LIRA will help ensure that individuals in need of financial support will receive their funds faster than if other parties were also involved. Concerns about the administration of the financial hardship provisions can be addressed through reporting by the financial institution to the Financial and Consumer Affairs Authority.

*Question 13: Is two months enough time for financial institutions to prepare for the new rules?*

We take no position on a reasonable amount of time for financial institutions to prepare for the new unlocking rules.

### **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 Jeff Sommers)*

Jeff Sommers  
Chair, CBA Pensions and Benefits Law Section

## APPENDIX A

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

	<b>Grounds</b>	<b>Max. withdrawal amount</b>	<b>Min. withdrawal amount</b>	<b>Frequency of application or withdrawal</b>	<b>To whom is the application made?</b>	<b>Relevant legislation and additional info</b>
<b>Federal</b>	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				
<b>Alberta</b>	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				
<b>BC</b>	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>

	Grounds	Max. withdrawal amount	Min. withdrawal amount	Frequency of application or withdrawal	To whom is the application made?	Relevant legislation and additional info
	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				

	<b>Grounds</b>	<b>Max. withdrawal amount</b>	<b>Min. withdrawal amount</b>	<b>Frequency of application or withdrawal</b>	<b>To whom is the application made?</b>	<b>Relevant legislation and additional info</b>
	Mortgage default	Amount required to rectify default				
<b>Nfid</b>	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 Act, 1997, SNL 1996 c P-4.01</a> , s. 44.1  See also: <a href="#">program summary and FAQ</a>
	High medical expenses	Amount required to cover expenses for the 12 months following submission of application				
	Mortgage default	Amount required to rectify the default				
	Rent arrears	Amount required to pay arrears				
	First and last months' rent to secure principal residence	Amount required to pay first month's rent and security deposit				