October 18, 2013

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [Our File #: SNL-012-2013]

On August 21, 2013, Service NL received your request for access to the following records:

"Input which was provided as a result of consultations into unlocking of Pension Funds in September 2009".

I am pleased to inform you that your request for access to these records has been granted in part.

Access to the records, and/or information contained within the records, has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act (the Act):

30. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party’s personal privacy.

As required by subsection 7(2) of the Act, we have severed information that is excepted from disclosure and have provided you with as much information as possible.

7. (2) The right of access to a record does not extend to information exempted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record.

In accordance with your request for a copy of the records, the appropriate copies have been enclosed.
Section 43 of the Act provides that you may ask the Information and Privacy Commissioner to review this partial refusal of access or you may appeal the refusal to the Supreme Court Trial Division. A request to the Information and Privacy Commissioner shall be made in writing within 60 days of the date of this letter or within a longer period that may be allowed by the Commissioner.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
34 Pippy Place
P. O. Box 13004, Stn. A
St. John’s, NL A1B 3V8

Telephone: (709) 729-6309
Facsimile: (709) 729-6500

In the event that you choose to appeal to the Trial Division, you must do so within 30 days of the date of this letter. Section 60 of the Act sets out the process to be followed when filing such an appeal.

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Office of Public Engagement’s website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please feel free to contact the ATIPP Coordinator at 709-729-1002.

Sincerely,

DAVID NORMAN
Deputy Minister
September 29, 2009

Mr. Julian McCarthy  
Deputy Superintendent of Pensions  
Department of Government Services  
Government of Newfoundland and Labrador  
P.O. Box 8700  
St. John's, NL A1B 4J6

Dear Mr. McCarthy:

We write in response to the request from the provincial government for input regarding the requirement that funds transferred from a registered pension plan be placed in a locked-in retirement account and the proposal to amend the Pensions Benefits Act (1997) so that these funds can be used for other non-pension fund purposes.

The first point that we would like to make is that we have not received any representations or request to lobby for such changes. We are also not aware of any employees who are requesting that such changes be made. In fact, many of our members see the great benefits that their retired employees receive when they are able to retire with a level of income that is possible because of the locking in provision. Many of these retirees would not be able to enjoy a comfortable retirement if they had been permitted to control their own pension finances during their younger years.

Our members work hard to establish and offer their employees credible pension plans and due to the nature of the construction sector, their employees work within an umbrella of many pension plans. These plans are used as a recruitment and retention tool to encourage employees to stay with our members but to also remain in the sector so that we have a pool of trained workers. Therefore, we would oppose any proposal that weakens the ability of our members to provide their employees with a livable pension upon retirement. We believe that the proposals contained in the Consultation Document are contrary to our best interest and the best interest of our employees.

We would also like to point out that the pension plans that our members offer are typically negotiated as part of a wage package within the framework of a provincial wide collective agreement for various trades. We believe that our ability to negotiate and offer our employees a pension that will be realized upon retirement is a critical component in maintaining peaceful and harmonious labor relations. Our pension benefits must mean something if they are to be an
integral part of a package that our members offer to the workforce. It is also something that enables our members to distinguish themselves from competitors who do not offer pension plans that will provide a meaningful income upon retirement.

Our members also understand the difficulty and challenge to maintain a healthy and funded pension plan. Any changes, which diminish the ability of the fund to remain strong and financially secure, must be avoided. We do not believe that the Consultation Document provides the level of assurances that are required before we start to allow individual employees to access their pension monies whenever they wish.

Finally, we believe that these changes will create many more hardships for many more people than the hardship experienced by the few individuals who have expressed to the provincial government an interest in changing the current locking in provisions.

In light of the above comments, we provide the following answers to the questions posed in the Consultation Document.

Yours truly,
CONSTRUCTION LABOUR RELATIONS ASSOCIATION OF NL, INC.

Enclosure

Submitted by the Construction Labour Relations Association of Newfoundland and Labrador Inc., s. 30 (1)

1. Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?

Yes, the amendments proposed lessen the benefits accrued to an employee upon retirement. We must work to ensure that monies set aside for retirement are actually used for retirement. Our members work hard to establish and offer their employees credible pension plans and their employees work within an umbrella of many pension plans. These plans are used as recruitment and retention tool to encourage employees to stay with our members and remain in the sector so that we have a pool of trained workers. Therefore, we would oppose any proposal that weakens the ability of our members to provide their employees with a livable pension upon retirement. We believe that the proposals contained in the Consultation Document to unlock pension funds are contrary to our best interest and the best interest of our employees.

2. Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?

No, such a policy can only serve to undermine the future pensions for many of our employees and the pension plans that many of our members participate in. The pension plans that our members offer are typically negotiated as part of a wage package within the framework of a provincial wide collective agreement for various trades. We believe that our ability to negotiate and offer our employees with a pension that will be realized upon retirement is a critical component in maintaining peaceful and harmonious labor relations. Our pension benefits must mean something if they are to be an integral part of a package that our members offer to the workforce.

3. Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be un-locked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?

No – any such measure will only weaken our pension plans and the retirement plan of our employees proportionally.

4. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship
determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

We would like to see greater details on such an exception before providing further comment.

5. Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

No – any such measure will only weaken our pension plans and the retirement plan of our employees proportionally.

6. Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?

No – any such conditions or criteria will only weaken our pension plans and the retirement plan of our employees proportionally.

7. Are there any other comments or suggestions you wish to provide on this issue?

Please see cover letter.
From: [Redacted]  
Sent: Tuesday, September 29, 2009 1:25 PM  
To: McCarthy, Julian  
Subject: CLRA Consultation Document - Pensions  
Attachments: CLRA Letter to Superintendent of Pensions NL Sep-09.pdf

Attached is the Construction Labour Relations Association of NL Inc.'s Letter and Consultation Document regarding amendments to locked in pensions in NL.

Regards,

[Redacted]  
Construction Labour Relations Association of NL Inc.  
www.clranl.com

CONFIDENTIALITY NOTICE

This e-mail contains confidential information which is the property of the Construction Labour Relations Association of NL Inc. (CLRA), intended only for the use of the intended recipient(s). Unauthorized use or disclosure of this information is prohibited. If you are not an intended recipient, please immediately notify CLRA and destroy any copies of this email. Receipt of this e-mail shall not be deemed a waiver by CLRA of any of its legal rights or the confidential nature of the information.
Mr. McCarthy,

Glen asked me to forward the attached document re: Consultation Process on Unlocking Pension Funds. Please let me know if you need anything else.

Linda

Linda Cuff
Benefits and Pensions
Department of Human Resources, Room A-4025
Arts & Administration Building
Memorial University of Newfoundland
St. John's, NL
A1C 5S7

TEL: 709-737-7406
FAX: 709-737-2700
September 30, 2009

Mr. Julian McCarthy
Deputy Superintendent of Pensions
Department of Government of Services
2nd Floor West Block
Confederation Building
P.O. Box 8700
St. John’s, NL
A1B 4J6

Dear Mr. McCarthy:

Re: Consultation Process on Unlocking Pension Funds

Please accept this letter as Memorial University’s response to your request for commentary on proposed amendments to the locking-in requirements of the Pension Benefits Act, 1997. In preparing our response, we consulted with representatives of our various employee groups and retirees and have incorporated their views into our submission.

The attached responses to the various questions posed in your consultation document take into consideration the following arguments for eliminating locking-in restrictions and those for maintaining them:

**Arguments for eliminating locking-in restrictions**

- In many cases, money transferred out of pension plans is for shorter service employees who may not have any particular allegiance to an employer and vice versa. The employer should not have a sense of “obligation” for the protection of their retirement incomes;

- Money transferred out of pension plans, whether on a locked-in basis or not, could theoretically be invested unwisely, severely impairing the retirement security of an individual, so one could argue that locking-in doesn’t necessarily mean automatic retirement income protection;

- Most people would invest wisely and ensure that non-locked money or a portion thereof remains available for a retirement income;
• Terminating employees would be free to manage their own retirement income planning;

• Simplified administration process;

• Group RRSP savings arrangements are not subject to locking-in;

• Other provinces and the federal government have eased locking-in restrictions.

Arguments for maintaining locking-in restrictions

• Pension plans are established for the sole purpose of providing a retirement income to employees. To unlock pension money for terminating employees would be contrary to a pension plan's purpose;

• Generally speaking, most transfers out of pension plans are for younger employees. There is a greater likelihood that unlocked money will be used for purposes other than retirement savings;

• Locking-in serves to protect those individuals who need it most, those who left on their own, will not save for their retirement. For those who will save for retirement, maintaining locking-in restrictions should not matter;

• It is good public policy to require that funds accumulated for retirement remain in place for that purpose, otherwise government will have to support those who are not responsible in planning for retirement.

While there are compelling arguments for both viewpoints on the issue of locking-in, Memorial and its stakeholder groups would find some measure of partial unlocking of registered pension plan money to be acceptable. For further information, please refer to our attached responses.

Yours truly,

Glen Roberts
Manager of Benefits and Pensions

Attachment

c. L. Hollett
K. Decker
Responses to Questions Posed in Consultation Document

Question 1:

Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?

Answer:

No, former plan members should be afforded greater flexibility in the management of their own personal retirement savings.

Question 2:

Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement?

Answer:

No, but partial unlocking of pension funds would be acceptable.

Question 3:

Should the Provincial Government provide for only a portion of funds, such as 25% or 50%, that is accumulated in a registered pension plan to be unlocked where an individual leaves the plan before retirement? If so, why and how much?

Answer:

Yes, unlocking to a maximum of 50% of the value of the pension entitlement would be acceptable upon leaving the plan before retirement. This would afford greater flexibility to former plan members to manage their retirement savings as they wish while at the same time ensuring that a portion remains protected for retirement income purposes.
Question 4:

Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

Answer:

Yes, unlocking of pension funds in the event of financial hardship, determined through a needs assessment, would be acceptable. The needs assessment should be performed by an independent body established by the Provincial Government, the cost of which should also be funded by Government.

Question 5:

Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

Answer:

No, as partial automatic unlocking of up to 50% is supported in question 3 and financial hardship is supported in question 4.

Question 6:

Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?

Answer:

No, however the ability to unlock the total amount of funds available, in the event of shortened life expectancy, should remain.
Question 7:

Are there any other comments or suggestions you wish to provide on this issue?

Answer:

The responses given to the questions posed above have been developed with input from Memorial University’s employee and retiree representatives and therefore incorporate the views of a wide ranging constituency. While pension plan stakeholders are generally supportive of greater flexibility for former plan members in terms of accessing registered pension money, we are also cognizant of the importance of saving for retirement. It is in this light that we have attempted to balance the competing interests of retirement security and individual circumstance.
September 29, 2009

Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
P.O. 8700
Confederation Building
St. John’s, NL A1B 4J6

Dear Mr. McCarthy

Please find enclosed the submission of the Newfoundland and Labrador Regional Council of Carpenters, Millwrights and Allied Workers to the consultation document proposing amendments to the Pensions Benefit Act (1997).

We thank you for the opportunity to make this submission and would like to note that we have not received any complaints concerning the locking in provision of the registered pension plans. In fact, as a result of this consultation paper we have encountered many circumstances where individuals have prematurely diminished the value of their pension entitlement only to suffer disastrous consequences upon retirement.

We believe that the proposals contained in the Consultation Document – Unlocking Pension Funds may serve a few to the detriment of many.

Yours truly,

Newfoundland and Labrador Regional Council of Carpenters, Millwrights and Allied Workers
Submission

Serving the greater long term good.

A submission in response to the provincial government's unsubstantiated proposal to amend the *Pensions Benefit Act (1997)* in contravention with the stated objective and primary purpose of a registered pension fund.

Newfoundland and Labrador Regional Council of Carpenter, Millwrights and Allied Workers

September 25, 2009
Part One  Defeating the Greater Good

This proposal will change the transferability of monies that were initially collected for specific pension purposes. The following will flow from any decision that will allow the redirection of previously earmarked pension funds into other non-pension uses:

- The proposal will decrease the ability to safeguard and protect pension money upon and during retirement.
- The proposal is not consistent with the primary purpose of a registered pension plan.
- The proposal will not facilitate self-sufficiency and self-reliance during retirement.
- The proposal will not maximize the money available to the individual during retirement.

This proposal will diminish the future retirement plans and the ability of members in the building and construction sector to enjoy a quality of life that should be available to them. The provincial government must recognize the true long-term value of locking in provisions and resist unlocking pension funds.

The Regional Council is adamantly opposed to these proposed amends that appear to have originated from an unidentified and small group of individuals who have consistently and repetitively complained to the provincial government. The Regional Council also rejects the argument that there are more benefits to be gained by the granting of individual ‘control’ over pension funds. The intrinsic value of any registered pension fund is based on the collective pooling of monies for the greater good of the individual members upon and during their retirement. Attempts to diminish the fund status and viability in the name of ‘self-control’ do not outweigh the maximum good that can be achieved if employees are permitted to work and save together.
Part Two Consultation Document
The Newfoundland and Labrador Regional Council is disappointed with the relative lack of analysis provided in the Consultation Document in light of the significant impact that this proposal will have on the lives of retirees and their families. Many of the assumptions and statements contained in the document are not supported by evidence, nor has any information been provided to indicate the full long term impact of such a proposed change.

We respectfully provide the following commentary concerning the brief Consultation Document:

Consultation Document The provincial government would like to obtain the views of the general public, pension plan sponsors and those involved in the pension industry.

Comment The Consultation Document can be found on the Government Services web site dated April 2009. Since April 2009, what efforts, in addition to a press release (June 2009) and stakeholder letters, has the provincial government undertaken to invite commentary from the general public? Has the Department of Government Service and the Department of Finance made any effort to speak to individuals who may have been able to partial access pension funds prior to retirement and discuss with these individuals the full impact that such a decision has made on their retirement?

In preparation for this submission we heard numerous stories of the disastrous consequences of such actions and the regret that many subsequently experience. It is incumbent on the provincial government to fully investigate and consider the full consequence of their proposed actions.

Consultation Document Over the past few years, the Provincial Government has received complaints on a regular basis from individuals who have left an employer with a
pension plan and have money in the plan that cannot be accessed because provincial legislation only permits the money to be transferred to a locked-in retirement account. They say that government regulation is preventing them from having access to their money, which is usually required for some urgent reason.

Comment The change proposed appears to be based on the fact that provincial officials have received complaints on a regular basis. It is our view that this unsubstantiated justification for change is superficial and is not an acceptable basis for the suggested change.

We sincerely hope that this has not now become the accepted standard for amending government policies and regulations. The Consultation Document fails to quantify the level of complaints. It would be of value to know the average income of the so-called complainers and how many of these complainers are persistent and repetitive. The Consultation Document states that these complainers are being prevented from accessing funds, which is ‘usually’ required for some urgent reasons. We suggest that this statement is not entirely accurate and that majority of these complainers are not seeking to access retirement fund for urgent reasons.

We respectfully ask for an analysis of the complaints received since 2005 that will support a claim that these complainers usually are seeking pension funds for urgent reasons. Also could the provincial government confirm if it has maintained a record of these complaints and if they can identify the specific urgent reasons that the majority of these complainers require funding.

At the very least the provincial government should be able to provide support for any claim it makes in a Consultation Document.

Consultation Document Most provinces have addressed this issue to some extent through a variety of means... A number of provinces have addressed this issue in
recent years in a number of ways, including providing for a partial unlocking of funds and unlocking funds on proof of financial hardship.

Comment A review of an analysis conducted in 2007 indicated that only three provinces provide for the unlocking of pension funds for financial hardship. This represents only 30% of the provinces. The above statement is misleading, as it appears that the majority of provinces permit unlocking for financial hardship.

It would seem reasonable that if the provincial government is basing its decision on the fact that either ‘most’ or ‘a number’ of provinces have addressed this issue – then the Consultation Document should have contained a pan Canadian analysis of each province and how they have addressed this issue. Is the provincial government aware of provinces that have considered this issue and have decided to not change its regulations concerning unlocking pension funds?

In an effort to engage in a fully informed consultation process, we respectfully suggest that prior to making any decision, the provincial government undertake such an analysis and provide the public with such information. At the very least, the provincial government should be willing to provide the analysis upon which it bases its claims and assumptions. We would also appreciate information on which provinces provide for unlocking upon receipt of proof of financial hardship and the degree of proof required.

Consultation Document This supports the view that individuals should have control over their own finances and that the majority of individuals will do what is best for their own individual circumstance.

Comment Does the provincial govern have empirical data to support this assumption with respect to pension fund management at an individual level? We respectfully submit that this is a very superficial and somewhat condescending generalization made to support a position and a Consultation Document that is void of supporting facts and analysis.
Consultation Document  The main objective of requiring funds to be locked in is to protect pension money for retirement.

Comment  The starting point of any discussion concerning legislative amendments is to determine the purpose of the Act and to ensure that changes proposed continue to support the purpose of the legislation. The purpose of the Act is very simple - to maximize income during retirement.

As determined by law, this income is for the retirees, spouses and dependant children. It is critical that this income be maximized and be made available for the entire period of retirement. The action proposed in the Consultation Document is contrary to the purpose and objective of the Act. The provincial government should at the very least acknowledge that its proposed action is counterproductive to any notion of protecting pension monies for retirement. We submit that the greater good of protecting monies for retirement should outweigh any need to redirect these designed funds for non-pension needs.

Consultation Document  This is consistent with the primary purpose of a pension plan, which is to facilitate self-sufficient by ensuring enough money is available to the individual to live on when they retire.

Comment  The provincial government should acknowledge that its proposed actions are not consistent with the primary purpose of a registered pension plan. Any efforts to decrease and redirect the amount of funds available upon retirement will decrease the degree of self-sufficiency. The measure proposed in the Consultation Document would result in a significant amount of funds being redirected from pension funds for other the non-retirement purposes. The provincial government has not been able to articulate the degree, the amount and the impact of the redirection of pension funds for non-retirement purposes.
Consultation Document  

A basic assumption in this proposal is that the vast majority will keep their money for retirement purposes, either leaving it in an RRSP even if an unlocking option is available, or investing it in some way to support their retirement. Providing individuals with control over these funds allows them to choose how much they want to leave for retirement and how much to use for other purposes.

Comment  

An assumption is a hypothesis that is taken for granted or supposed. We believe that such a critical decision should not be based on an unsupported assumption. We also believe that the assumption is flawed and cannot be supported by research. We ask the provincial government to provide any analysis to support its claim that a vast majority will act in such a manner.

We submit that self control over unlocked pension funds will not automatically cause the individual to choose to redirect these monies into a fund that will ensure enough money is available for the individual, spouse and dependent children to be self sufficient during retirement. The provincial government has not proven the assumption that control means self-sufficiency during retirement.

Consultation Document  

A report by Statistics Canada in November 2007 on “Pensions and Retirement Savings of Families” concludes that since the late 1970s the proportion of employees covered by registered pension plans has declined. However, the report also concludes that, on average, Canadian families are better prepared for retirement today than their counterparts were in the past. The report also states that the average retirement savings of couples grew during the 1986-2004 period. Most of the increase in total contributions came from an increase to RRSP contributions. This would suggest that individuals, on average, manage their RRSPs to better provide for their retirement.

Comment  

Once again, this Consultation Document is built on assumptions and suggestions that are not support by facts, analysis or research. The
Provincial Government should have provided the supporting evidence for its claims and positions. We note that the unsupported ‘suggestion’ is based on 2007 statistical report of research collected prior to 2007. It is a report prepared prior to the recent market meltdown. Secondly a detailed and full reading of the report and its conclusions does not support the grossly over generalized suggestion that individuals who have their pension funds unlocked will redirect these monies into a retirement vehicle to facilitate self-sufficiency during retirement.

Consultation Document  In addition to the benefits in allowing individuals to manage their own funds, should Government decide to proceed with this initiative...

Comment  We reiterate that the Provincial Government has not presented a valid case to support a claim that the benefits associated with ‘self-control’ are greater than the benefits associated with protecting pension monies so that they can be used to maximize self-sufficiency during retirement.

The Consultation Document has also failed to provide an actuarial analysis of such a proposal on the long-term viability of the pension plan. It is the responsibility of the proponent of this proposal to provide an analysis of the various possible sceneries and the impact on the overall fund should individuals be permitted to unlock and redirect pension funds.

Discussion Paper  Currently locking-in rules and the process of transferring funds from one locked-in vehicle to another is complicated and cumbersome.

Comment  The simplification or elimination of ‘complicated’ and ‘cumbersome” procedures will not serve the individual employees in the long term and should not be used as justifications for the proposed changes. The removal of any difficult procedures will be benefits for fund managers, not employees. The benefits
gained by ensuring self-sufficiency upon and during retirement is a greater good than overcoming difficult accounting procedures. These reasons are not sufficient nor should they be part of any calculation to determine if pension funds should be unlocked.

**Part Three  Answers**

Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?

The private sector workplace is dominated by the practice of employees frequently changing employers and thus they must work within a pension framework that has multi-employer pension plans. Under such plans, pension contributions are often negotiated under the terms of contracts as part of the total wage packages. The negotiated pension contribution is a deferred compensation in order to provide some security upon and during retirement. The pension received from these private pension plans, along with government pensions and private savings, provides income during retirement. Changing legislation to allow transfers of pension entitlements to non-locked-in vehicles, where individuals may access the funds before retirement, would defeat this very legitimate and beneficial legislation. Therefore it is the position of the Newfoundland and Labrador Regional Council that the Provincial Government should maintain its existing locking-in legislation for funds accumulated in a registered pension plan.

Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?

Registered pension plans and the legislation regulating such plans were designed to maximize income during the entire period of the retirement. The proposal suggested in the consultation document is contrary to and defeats the very purpose of the legislation and registered pension plans.

Eliminating the locking-in requirements altogether would put the whole concept in jeopardy. Today's work force is a transient work force. No longer is a worker guaranteed a job with the same employer for the duration of his or her adult life. Pension benefits earned while employed with one employer may seem insignificant upon termination of employment and unlocking such entitlements, when employment terminates, to pay for a current expense may appear to have little impact on income in the far distant future of retirement. However, a number
of small pension accumulations when added together may provide a reasonable income upon retirement.

The locking-in provision has provided many pensioners with a reasonable retirement income that would not have existed without the provision. The proposal in the consultation document is a short-term solution to a relatively small, undefined but persistent group of complaints. The long-term impacts and difficulties that such a proposal will trigger are disproportional larger than the silencing of these complaints.

Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be un-locked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?

There should be no need to allow any portion of the pension entitlement to be unlocked, with the exception of the current exceptions provided in the legislation. The principles announced in the previous answers remain the same and thus should not be diminished by a certain percentage.

Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

The current exceptions to the unlocking requirements should remain unchanged and be subject to a needs assessment. Any assessments should be done by the provincial government agency regulating the pension plan, based on an application filed by the plan member including supporting documentation, with the cost of such assessment included in the overall cost of regulating pension plans, such as fees charged for registration of pension plans and annual fees. The impact of such an unlocking on spouses and dependant children should also be a factor in any such assessments.
Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

As stated above there should be no need to allow any portion of the pension entitlement to be unlocked, with the exceptions noted in the previous answer. It is critically important that the integrity of the pension system is not eroded and weakened.

Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?

This question predisposes that current registered pension plans allow for the unlocking of funds for financial hardship or that the previously answer agrees with the notion of unlocking pensions funds for financial hardship. This is not the case. Newfoundland and Labrador only allows exceptions for shortened life expectancy, unlock small amounts, unlock excess contributions and pre-retirement death benefit. There are no exceptions for financial hardship.

Pension legislation was designed to provide and preserve retirement income. Introducing other conditions or criteria, under which pension entitlements could be unlocked would be contrary to the entire concept under which the system was created and is currently regulated.

**Part Four Other Comments**

The Newfoundland and Labrador Regional Council is affiliated with Regional Councils across Canada. We have worked hard in recent year to streamline our pension plan to ensure greater portability and transferability. We have entered into agreements with other jurisdictions to ensure that all monies earned for pension purposes are tracked and accredited to the individual no matter how small the work period. The amendments proposed by the Provincial government will destabilize the work we have undertaken to secure a respectful income for our members upon retirement. In fact, the amends are
totally contrary to the work we have undertaken, as they will remove the ability of our members to set aside funds to be only used upon retirement.

Historically, one of the chief differences between Canada and the United States has been our tighter social safety net. Provincial health care is one example of a paternalistic measure that Americans have, until recently, resisted. Recently, that stance is being re-examined by many if not most Americans. With this as an example, we should be doubly wary of loosening our own social safety net.

There will always be a segment of the population, which would be more than able to handle the stewardship of their own financial destiny. This may be due to good planning skills, but in many cases it is due to higher income, the availability of insurance, family help etc. There will also always be other individuals for whom money management is more difficult. Sometimes this is due to an event or series of events beyond their control. These people are the very ones who can benefit most from locking-in provisions governing pension savings. While a young worker may be tempted to use his pension savings for another purpose, in many cases he or she will regret this decision when approaching retirement age.

If pension entitlements are no longer subject to locking-in provisions upon termination, it is likely that the number of future seniors qualifying for Guaranteed Income Supplements and Welfare will increase. As stated previously, our workforce is now much more transient than in the past. Most of us will not retire with one pension entitlement from one employer. Most workers today will have several small pension entitlements from different employers. If they cash them all out, the only pension income they have will be from government sources.

We submit that the long term benefits that accrue to the individual are far greater that the short term benefits that have been suggested by this Consultation Document and we urge the provincial government to act for the greater good.
September 29, 2009

Winston Morris
Superintendent of Pensions
Department of Government Services
2nd Floor, West Block,
Confederation Building
P.O. Box 8700
St. John’s, NL A1B 4J6

Dear Sir:

RE: Unlocking Pension Fund Submission

Please find enclosed the submission of the Canadian Union of Public Employees Newfoundland and Labrador Division regarding the consultation document on unlocking pension funds.

I trust the enclosed to be in order but would be happy to answer any questions you may have.

Yours truly,

cc. Honorable Danny Williams, Premier

Julian McCarthy, Deputy Superintendent of Pensions

enclosure
Submissions of Newfoundland and Labrador Division of Canadian Union of Public Employees

In Response to the Consultation Document Regarding Unlocking Pension Funds

CUPE NEWFOUNDLAND & LABRADOR

St. John's Area Office - 36 Austin Street, Box 8745, Station A, St. John's, NL, A1B 3T2
1. The Canadian Union of Public Employees is Canada's largest union, including almost 600,000 public sector members working in virtually every community across the country. In Newfoundland & Labrador, we proudly represent over 6,000 working women and men with approximately 60 different employer groups.

2. Our members work on the front lines of our communities. We are tax-paying citizens and users of the public services in the Province. More importantly, we are proud of the role that we play in delivering public services to the people of Newfoundland and Labrador in health care, education, public housing, provincial libraries, municipalities, post-secondary education, child care, recycling, social services and much more.

**CUPE’s Position on the Proposed Amendments**

3. The Government of Newfoundland and Labrador is proposing to amend the Pensions Benefit Act (1997) so that when a pension plan member leaves employment and membership in a pension plan they would be eligible to “access” the cash value of their pension plan accrued benefits immediately rather than transferring such money to either another pension plan, an alternative “locked in” form of retirement benefit or an annuity.

4. CUPE is opposed to these proposed amendments, in any form. The existing provisions of the Pension Benefits Act are entirely reasonable and flexible enough to assist persons truly in medical need of their pension funds.

5. CUPE instead insists that the Pension Benefits Act needs to be amended to provide for mandatory portability requirements so that defined benefits can continue to grow, rather than being used to purchase retirement “savings” products in the “market”.

6. Apparently, “Over the past few years, the Provincial Government has received complaints on a regular basis from individuals who have left an employer with a pension plan and have money in the plan that cannot be accessed because provincial legislation only permits the money to be transferred to a locked-in retirement account. They say that government regulation is preventing them from having access to their money, which is usually required for some urgent reason”.

7. CUPE is surprised that such a fundamental shift in pension plan policy could be prompted by citizen complaints. CUPE could suggest quite a few other policy shifts for this Government based on the complaints it hears from its members about inadequate recycling programs or early childhood education or injured workers for example.

8. CUPE does not believe that the vast majority of pension plan members want to be able to access their potential for retirement with dignity without consequence to the long term financial effects. Further, if a few individuals need financial assistance
in order to "get by" or to make a significant purchase like a home, this Government has a much broader range of resources that would be more immediately directed to these goals.

**The Current Legislation**

9. Section 32 of the *Pension Benefits Act* (1997) makes it clear that pension plan funds must be "kept separate and apart from the employer's own money" and are held "in trust for members, former members, and other persons with an entitlement under the plan". The *Pension Benefits Act* also protects pension plan funds from "execution, seizure or attachment" or use as "security".

10. Section 40 of the *Pension Benefits Act* entitled "portability" requires that where a pension plan member stops being a pension plan member through loss of employment, and that person has a deferred pension benefit, the commuted value of the pension benefit may only be transferred to a retirement savings arrangement or to purchase a deferred life annuity. The person may only transfer the pension benefit to another pension plan if the first pension plan allows it, and the second pension plan and its administrator agrees to accept the payment.

11. Section 34 of the *Pension Benefits Act* states that a pension plan member is only entitled to withdraw funds from a pension plan if the member has not become entitled to a pension benefit (through vesting rules under the section 43 of the Act or the pension plan terms), and even then is only permitted to withdraw an amount equal to the aggregate of the member's own contributions, together with interest.

12. The legislation has narrow exceptions to the "locking in" requirement where a person has accumulated a small balance in the pension plan or if someone’s life expectancy is likely to be shortened considerably.

13. It is these provisions of the legislation that the Government is seeking to amend. CUPE does not support amending the provisions of Section 34 or 40 of the *Pension Benefits Act* to provide for the "unlocking" of accrued pension benefits. CUPE believes that the narrow exceptions to "locking in" should remain.

14. CUPE is pleased to provide our answers to questions that the Provincial Government has asked:

**Q1. Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?**

CUPE believes that the Provincial Government should maintain its existing locking in legislation. However, CUPE believes that the "portability" provisions should be amended to require all pension plans to allow transfers out, and to accept transfers in, where an employee (or groups of employees) transfer employment.
Q2. Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?

CUPE believes that the Provincial Government should NOT eliminate locking-in requirements where an individual leaves the pension plan before retirement.

CUPE is concerned that allowing individuals to have free access to funds which were supposed to be for retirement benefits may disentitle an employee to post retirement group insurance benefits. The employee may also lose the opportunity for indexed pension benefits in the original plan.

Further, shared assumptions about spousal benefits, survivor benefit entitlement and pension income splitting rules that are used in separation and divorce negotiations in family breakdown situations will be negatively impaired. Pension plan members who spend deferred pension benefits now, may negatively affect their spouses, who, in the event of marriage breakdown would otherwise be entitled to spousal benefits and shared pension benefits. CUPE is also concerned about the possible future negative effect on dependent children.

Pension benefits, acquired during the marital period, are considered as matrimonial property and, consequently, may be subject to division upon marriage breakdown. A division of pension benefits is not automatic and will occur only upon application in accordance with Part VI - Marriage Breakdown of the Pension Benefits Act, 1997 and regulations thereunder. The application process consists of filing a notice of Intention and copy of the court order or separation agreement which directs the division of the pension benefits in compliance with the Pension Benefits Act, 1997.

Q3. Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be un-locked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?

CUPE does not support even a “partial” unlocking and believes the legislation should not be amended in this regard.

Q4. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

CUPE does not support even a “partial” unlocking and believes the legislation should not be amended in this regard. The current exceptions are easily demonstrated by medical evidence as to mortality. Providing for a “financial hardship” exception will require assessment or “means testing”. As we have indicated, Government has
more effective and direct levers to assist low income citizens than requiring them to access money that should be saved for retirement security.

Q5. Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

CUPE does not support a “partial” unlocking based on age and believes the legislation should not be amended in this regard.

Q6. Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?

CUPE does not support a “partial” unlocking based on any criteria and believes the legislation should not be amended in this regard.

Mandatory Portability

15. CUPE would support amendments to the Pension Benefits Act which would provide for much simpler rules for portability of benefits to allow employees who leave one pension plan to transfer their funds to another pension plan, rather than requiring the consent of both the “old” and the “new” pension plans.

16. The lack of meaningful portability of defined benefit pension entitlements is a serious weakness of the existing system. If workers cannot transfer their defined benefit pension plans, they are forced to choose between deferring an entitlement (which often means sacrificing the wage-indexation that would otherwise have applied to it), and transferring the value out to a locked-in RRSP.

17. Anyone who actually has invested money in an RRSP has seen the “market” value of their “investment” plummet and with it, hopes for a retirement with dignity. CUPE is sure that the Provincial Government receives many complaints from citizens about the loss of their retirement investment in this latest global crisis of capitalism.

18. The June 2009 edition of CUPE’s Economic Climate for Bargaining contained an article “Public Pensions Provide Security – and Payoff” which discussed the effect of the global economic crisis on private pension arrangements and personal savings:

Stock market around the world lost an average of 50% from the crash and financial crisis. Rapid action by governments around the world to stimulate their economies and prop up their banking sector has had a positive impact.
By late May, the value of stock markets around the world had increased by an average of about 33% since the lows they reached earlier in the year. However, this increase only amounts to a third of the losses suffered by these investments as a result of the crash. **On average, stocks are still down by about 33% compared to their previous highs.**

19. "Loosening" the "locked in" requirements will significantly erode pension entitlements through cash-outs. In turn, this will leave more future retirees dependent on public pensions (including the Guaranteed Income Supplement system), and in some cases in the same poverty that locked-in defined benefit pension entitlements are designed to avoid.

20. Earned pension entitlements should be more secure than this, and the ideal of portability should be facilitated. Employers and administrators sometimes consider such transfers as an administrative irritant and cost that they increasingly choose to avoid. However, such transfers are key tools for preserving and building secure defined benefit pension entitlements.

21. If the Government believes that "locking-in rules and the process of transferring funds from one locked-in vehicle to another is complicated and cumbersome" as stated in the discussion document, then Government should legislate a simpler process.

22. Alternatively, the Provincial Government could set up its own defined benefits pension plan for those employees who do not have a workplace pension plan, or who are prohibited from transferring their earned pension entitlements to another pension plan because of an absence of reciprocal agreements, or other reasons.

Q7. **Are there any other comments or suggestions you wish to provide on this issue?**

23. CUPE would like to suggest some further changes to the minimum standards of the *Pension Benefits Act* that would increase retirement security for a greater number of workers in Newfoundland and Labrador such as:

- immediate vesting of pension plan entitlement
- Defined benefit pension plans as a mandatory condition of employment
- protection of plans when employers go out of business

24. CUPE represents many precariously employed workers - part-time, temporary, and contract workers who struggle from job to job, either excluded from participation in workplace pension plans or unable to vest, defer or transfer entitlements when they do earn them.
25. The province of Québec has shown that immediate vesting is viable. Workplace pension benefit coverage could also be extended if pension legislation required workers who are less than full-time to join pension plans anywhere that full-time workers' participation is mandatory.

26. If the Province wishes to ensure retirement security for its citizens it should require saving for retirement through workplace defined benefit pension plans. This, combined with a strong public pension plan, can really ensure that Canada, and Newfoundland and Labrador, keeps its promises to its citizens.

27. Finally, the Province could create a self-funded but government-backed and administered occupational pension insurance plan fund for Defined Benefit plans to ensure workers' pensions are not "collateral damage" when employers go under, speculative bubbles burst, or when the finance industry sells defective investment products such as asset backed commercial paper.

28. Ontario has a pension insurance fund which covers $1,000 per month. Such a fund could be financed through a small tax on all financial transactions. Eventually it would be fully funded, but in the meantime it would provide a level of insurance for existing retirees and plan members.

**Collective Pension Security – Improving C/QPP, OAS and GIS**

29. **CUPE submits that the Provincial Government should work with the other provinces and the Federal Government to ensure the following:**

   ✓ the Canada/Quebec Pension Plan replacement rate should be doubled from 25% of the average industrial wage to 50% of the average industrial wage
   ✓ the yearly maximum pensionable earnings should be increased from the current $46,300
   ✓ the Old Age Security and Guaranteed Income Supplement (GIS) benefit should be increased by 15% to allow all seniors to live above the “low income cut off” established by Statistics Canada

30. Almost 60% of Canadian workers have NO workplace pension plan and NO Registered Retirement Savings Plans. Workers without personal savings or workplace pensions plans rely almost exclusively on the benefits provided by the Canadian Pension Plan which pays earnings-related benefits to workers based on contributions made during their working years.

31. The Canada/Quebec Pension Plan program is an example of a successful social policy. Since 1966, the CPP has ensured a minimum retirement income for some 93% of working Canadians through the use of mandatory enrolment, indexation, portability and disability provisions.
32. The CPP/QPP has been instrumental in eliminating disparities in income among seniors and in keeping seniors above a minimum income level: A C/QPP overview (Perspectives on Labour and Income) 2004-01-23; Raj K. Chawla and Ted Wannel: http://www.statcan.gc.ca/pub/75-001-x/10104/6758-eng.pdf

33. However, the CPP/QPP only provides for an earnings-replacement rate of 25% of earnings up to the average industrial wage. As of 2009, this provided a maximum monthly payment of $908.75 to a 65 year old who had maximum work force participation and maximum earnings.

34. In reality, the average Canadian benefit payable is only $501.82 per month which reflects the number of part time workers, and workers who have taken leaves of absence from the paid employment market due to pregnancy and parental leave and compassionate care leave for example. This disproportionally affects women workers.

35. As of May 2009, a total of 85,319 people in Newfoundland and Labrador received monthly CPP retirement benefits. The average monthly amount payable was only $405.90. This is much lower than the average Canadian amount indicated previously.

36. The CPP/QPP is a social program success story. Anything that supports improvements to its universal, portable, and indexed benefits is worth implementing. CPP/QPP has the added advantage of being very cost effective as a method of providing retirement income to Canadians and would be a most effective method of quickly addressing the current issue of inadequate pension coverage.

37. CUPE proposes that CPP/QPP workplace contributions would be increased through a phased in process. CUPE recognizes that an increase in CPP/QPP workplace contributions will be seen as a “payroll tax”. All social programs have some cost to them.

38. An increase in CPP/QPP benefits would have the added bonus of reducing the pressure on workplace defined benefit pension plans which are “integrated” rather than “stacked” with CPP benefits. This would have the effect of reducing the unfunded liability of some of these plans, including the Government’s own workplace pension plans.

39. Many retired Canadians in receipt of CPP benefits are also entitled to OAS benefits which pay a flat rate amount to all eligible Canadians aged 65 or more. Old Age Security provides a maximum of $516.96 a month or $6,203 a year, with the average benefit at $490.

40. There has been remarkable progress against poverty among Canada’s growing population of seniors, whose risk of poverty fell from 29.0 percent in 1976 to 5.4 percent in 2006: Poverty Policy, Sherri Torfman, October 2008, The Caledon Institute of Social Policy.
41. Despite these positive developments, research also shows a major gender gap in pension income. Between 1991 and 2001, for example, retired women still earned 60% in pension income compared to retired men. Retired women living alone, whether they are single, divorced or widowed, face a much worse financial reality. A 2004 study found an astounding 45.6% of women in these circumstances lived in poverty.

42. We need to continue to improve the Old Age Security system in Canada. We have reduced the percentage of seniors living below the LICO. A 15% increase in the OAS would place almost all Canadian seniors above the “low income cut off” established by Statistics Canada. If we do not improve the CPP/QPP, our country faces a return to significant inequalities between the elderly: *Tuesday, September 26, 2006; “The Daily”, Statistics Canada: http://www.statcan.gc.ca/daily-quotidien/060926/dq060926a-eng.htm*

43. Many Canadians also receive the Guaranteed Income Supplement which provides an income-tested supplement to retirees with few or no private sources of income.

44. In May of 2009, 75,268 persons in our Province received OAS benefits and 46,054 persons received GIS benefits. The percentage of Old Age Security pensioners who are also in receipt of a Guaranteed Income Supplement was 61.19%. This is the highest ratio in the County: *STATISTICAL BULLETIN: Canada Pension Plan: Old Age Security: May 2009 http://www.sdc.gc.ca/en/isp/statistics/statmain.shtml*

45. We recognize that changes to the OAS, GIS, CPP/QPP rate of contribution, type and level of benefits, investment policy, or administration require Parliamentary approval and require the agreement of at least two-thirds of the provinces representing at least two-thirds of the population.

46. Accordingly, this **Government should continue to push for a Cross Canada summit on pensions** – which will make the necessary federal and provincial legislative changes to amend the CPP/QPP and to increase the OAS and GIS as suggested.

47. CUPE supports the efforts of the Canadian First Ministers to require a pan-Canadian summit to discuss how “private and public retirement plans can better meet the needs of Canadians as they retire” which would involve the provinces and territories, the federal government and interested stakeholders”: *REGINA, August 6, 2009 http://www.councilofthefederation.ca/pdfs/news_release_EI_pensions.pdf*

48. CUPE knows that the Finance Ministers have established an internal Research Working Group on Pension Coverage and Retirement Incomes headed up by Jack Mintz, which should have a deadline of this calendar year. However, this is **not a substitute** for the active, involved and informed opinions of working women and men, and current retirees at a pan-Canadian summit.
Conclusions

49. We thank you for the opportunity to make submissions on the suggestion to "unlock" deferred pension benefits. CUPE believes that retirement with dignity is an important goal for this Province to continue to fight for.
Julian McCarth Deputy Superintendent of Pensions

Please find below the answers to the questions you have posted on your website.

Maybe Mr. Williams can take the time to send me his thoughts on the issue not that I am expecting him to but he would be nice to know where he stands with this.

I copied [REDACTED] with this e-mail to see if you could bring this matter out to the public. Here is the link to the Government website:

Many Thanks

Questions we would like your views on are as follows:

9/28/2009
1. Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?

2. **No the Government should not have the right to tell me or anyone else how to manage personal finances it's as far as I'm concerned communist approach to have control over a persons personal business after all it's not the Governments money it's MINE.**

3. Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?

4. Yes it is the right thing to do the Government has no right to control my personal finances. I worked for a company from

5. Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be un-locked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?

6. **NO not at all the Government should have NO say in what people do with there OWN money**

7. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

8. **NO now you tell me if you came into some financial hardship would you want to explain your problems to the Government in the hopes the will grant you access to your own money.**

9. Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

10. **NO The Government should get on with Government issues not the personal lives of the people of the province again no Government in a democratic society should have the power to keep people from accessing there own money**

11. Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?
12. **Again the Government should not hold the power over people to make their own decisions about their own money it's time to change this ridiculous law.**

13. Are there any other comments or suggestions you wish to provide on this issue?

14. [Intentionally blank]

15. I don't have to explain to you the difficulties and hardships of the past and present trying to make a living and support a family here in NL. I think it's an absolute outrage that I have a few bucks in a pension plan that is my hard earned money and My Government says to me no you can't have it until we say so. I think the Government should change this law as soon as possible and apologize to the people of this province for being so arrogant as to make laws that they have no right to do so in a free society.

16. This is still a free country and we the people have the right to make our own decisions about our lives. I willing to bet if someone was to take the Government to task on this issue in a court of law they would be in violation of my rights as a Canadian and a Newfoundlander. How dare you be so bold as to think you know what's best for me in my personal finances and use your power as a government to make and uphold laws such as this one. I'm not blaming the current government for this but if they don't change it they are just as bad.
McCarthy, Julian

Sent: Wednesday, September 23, 2009 10:20 PM
To: McCarthy, Julian
Subject: [Potential Junk/Spam] Comments re: Unlocking Pension Funds etc

Thanks for making it easy to send along comments and also for extending the deadline.

Just as a bit of background, I am one of those people who left an existing pension plan and am affected by the existing locking-in rules.

I will briefly comment on each of the 7 Questions attached to the Consultation Document and I will address each of your Questions by Number without restating the whole question.

Question #1.....Should Govt maintain existing etc etc

My quick answer is no because I think (a) people today are much more aware of the need to look after themselves down the road pension-wise and hence would be reluctant to just spend foolishly if they had more access to their funds; (b) I find it just a little bit insulting personally that Govt feels that it has to put in place these types of rules to protect me from myself and I would think that many others feel the same way. Not wanting to sound too negative about it all, I feel that these rules are a bit outdated in today's world, they are a hold over from the thinking of a former era when people were not knowledgeable on these matters enough to look after themselves (c) I think most people, once they have an opportunity to think about it, would simply transfer the funds to regular RRSPs which are more flexible.

Question #2.....Should Govt eliminate altogether etc etc

Following on from my comments above, the quick answer here would be yes but there may be some rationale for having the locking in rules apply only up until the time the person would be eligible for a pension under the rules of the pension from which he/she is withdrawing. This would ensure that the person gets the same benefit (i.e. has a pension) as a person who continues with the firm and has something of a financial foundation at his/her regular retiring date. The funds could then be "unlocked" at the regular retirement date and the person could carry on with their funds in a regular RRSP in the same manner as a person who had no registered pension access to begin with but who had been religiously saving for retirement through the regular RRSP approach.

Question #3...........Should Govt provide for only a portion etc etc

Personally, I think if you are looking at any kind of unlocking, you should go all the way because it just adds to the confusion that already exists out there. I don't understand the logic of this idea, even though it does apply in other places. We really need to be simplifying things rather than adding more rules and regulations to the mix.

Question #4...........Should the Govt.......... financial hardship etc etc etc

Ditto my response to #3 but if Govt is not going to give me access to my funds except thru' some rules Govt would set up, then I believe Govt should also have to identify the standard of measurement and carry out the measurement at Govt's expense. Having said that, I would still prefer that the rules be made simpler rather than adding more. To provide some measure of flexibility (before the regular retirement age occurring and in the case of someone being in a situation of "dying with no chance of recovery", for example ) maybe a simple form from a Doctor's office would suffice to release the funds early or something of this nature.

Question #5...........Should Govt.......... ......only after a certain age etc etc etc

As per my response of Question #2, there may be some merit in keeping the locking in rules in place until the
person has reached a "regular retirement" age under the rules of the original pension plan or some other such "retirement age". I liken it to the RRSP (although RRSP funds can be accessed at any time) in a way because most people would be saving money through the RRSP process up until their retirement and if so, then the funds from the locked in process could be made available to them at the same time. I think it would be great if people had that much control over their total financial planning at retirement age, it would be more complete to my way of thinking.

Question #6.........Should Govt allow.....beyond financial hardship?etc etc

Again I believe it comes down to making it simple.................think how simple it would be if there was no locking in process at all..............if the funds were moved into an RRSP at the outset, then access to the funds would be in the hands of whomever was making the financial decisions for the individual/family/estate without the over-seeing by some other person/agency etc.

Question #7...........Are there any other comments etc etc

As part of this whole process, I would like to suggest that the requirement to convert LIFS etc into Annuities at or around age 80 be dropped. Again, as stated above in other words, we are all living longer and there are many people who are quite capable of looking after their own affairs at later ages. Many people with substantial funds would, for example, no doubt have professional advisors at that point in the same manner as they would have used their services all along. Being forced to convert to an Annuity at a certain point may be disastrous because as we have just witnessed during this past year, interest rates can be low for a very long time.........for a matter of years and if this were the case as a person is nearing 80 years of age, that person could be forced into a very very unfair situation.

Again, thanks very much for seeking input. It shows the level of seriousness that Govt is taking with this issue and I thank you for approaching it in such a manner. It is a very critical issue for us who are directly affected by the existing rules and I hope as a result of the process, we will be able to make some positive steps to simplify the environment in which we are attempting to do long term family related financial planning.

9/28/2009
McCarthy, Julian

Sent: Tuesday, September 22, 2009 9:21 PM
To: McCarthy, Julian

Subject: Unlocking Pension Funds
Attachments: Unlocking Pension Funds.doc

Mr. McCarthy,

I would like to thank you for allowing us extra time to respond to the questions concerning pension reform.

We talked to all our members (firefighters) including those retired and they have all agreed with the responses being presented to you in the attachment.

Again, thank you for your time and consideration.

Corner Brook Firefighters Local 1222

9/28/2009
Unlocking Pension Funds

Comments and Views

Of

Firefighters Local 1222
September 15, 2009

1. Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?

No. We believe that the current legislation is too restrictive. In most cases, the current legislation (i.e. CanSim rate restriction of 6%/– will not allow a retiring employee to access an amount of money anywhere near to what he/she was accustomed to earning while working. Retirees have expressed the view that they want better access to pension monies while they are still young enough to enjoy it.

2. Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?

No. The funds should be kept in place until retirement. The purpose of the plan is that pension monies are funded for retirement so that employees have the benefit of enjoying their retirement years.

3. Should the Provincial Government provide for only a portion of funds, such as 25 percent or 50 percent, that is accumulated in a registered pension plan to be unlocked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?

No. Today’s employees are much more mobile than they were 20 years ago and will likely work with a number of different employers throughout their careers. Pension monies contributed to a registered plan with one employer should, under normal circumstances, remain “locked-in” until retirement at age 55 or later.
4. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If no, why not?

The Firefighters believe that hardship cases do warrant special consideration. Each case should be viewed differently and handled by the Superintendent of Pensions. Being a hardship case, we do not support any costs to the individual or the pension plan.

5. Should the Provincial Government permit unlocking of pension funds only after a member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

The Firefighters like the idea of having the unlocking of pension funds tied to a minimum age of no less than age 50 and no more than age 60.

6. Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied.

Yes. Retiring employees should have 100 percent of their pension monies unlocked upon retirement. The unlocking of these funds would provide retirees the flexibility to enjoy their retirement years.

7. Are they any other comments or suggestions you wish to provide on this issue?

A retiring Firefighter today with a Defined Contribution plan not having a significant amount of money in that plan (i.e. $500,000 or more: which most Firefighters do not!) cannot access a sufficient amount of money to provide a desired retirement lifestyle. These funds were negotiated in contracts over the years and the Firefighters believe that the employer contributions were deferred funds that would be utilized upon retirement and the employee contributions would be monies set aside for retirement.
Hi Julian:

Below find the brief answers to your questions on Unlocking of the pension fund. My bottom line is that government should let people manage their own retirement fund. The clause that forces the LIF owner to convert to a life annuity at age 80 is archaic and would generate a serious problem at today interest rates.

Thanks

Unlocking Pension Funds

1. No: I would like to manage the funds in my LIF as a part of my total retirement portfolio.
2. The funds should be unlocked after retirement age.
3. The total LIF should be unlocked at retirement age as indicated in question 2.
4. In the case of financial hardship before retirement a portion of the LIF could be unlocked. An adjudicator determined by the owner of the LIF and the provincial government would make the determination. The LIF should bear the cost of the assessment.
5. The plan should be unlocked at retirement age. 55
6. A critical situation as determined by an adjudicator could result in unlocking of some funds in the LIF.
7. The mandatory requirement that a LIF be converted to a life annuity at age 80 should be abolished as in most of the other provinces. I would not want to be forced to buy a life annuity at current interest rates.

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The Professional version does not have this message
McCarthy, Julian

Sent: Thursday, September 17, 2009 10:03 AM
To: McCarthy, Julian
Subject: [Potential Junk/Spam] Consulation Document Unlocking Pension Funds

Julian

I've since misplaced the electronic copy of your document but had a printed copy. I'd like to offer my two cents, despite it being past the deadline of Sept 8.

To answer the questions in order of the document:

1) Yes- maintain existing locking-in legislation but entertain access under certain circumstances (addressed in 2-4)

2) No- Despite the comments on individuals keeping funds for retirement, my FP experience has taught me that immediate needs outweigh the future (as they don't know what they will be). Allowing for carte blanche access to pension funds would not force the individual to consider retirement funding. This could place a greater burden on government assistance (GIS) as individuals who previously had pensions may not at 60 or 65.

3) Yes- Unlocking a portion is a happy medium. 50% would be my preference and this maintains some financial responsibility for the future but also allows for other perhaps more immediate needs.

4) No- Financial hardship should be considered on a stand alone basis. The above unlocking a portion could satisfy the hardship. If not, however, this option could be availed of. Assessment should be set by a government bench marked income criteria.

5) I think the unlocking aspect should be at pension accessible age (ie. 55), however under financial hardship, I think access should be considered at any age.

6) Shortened life expectancy already exists for NL plans although I cannot recall if it allows for earlier than 55. Shortened life and financial hardship, I think, should be the only two conditions that a pension fund could be accessed before 55. Again, income criteria should be set by the government, in keeping with other provinces/federal levels.

7) I do agree with clients comments saying it's their money and they should be able to access it when they want, however not every individual is rational nor forward thinking. And not everyone sits down with a financial professional to find out the ramifications of their depleting in full or in part, their pension money today. Allowing for reasonable access (ie. 50%) would provide greater flexibility to the individual as well as keep the original intent of the pension plan intact.

I hope these comments are useful, even if they are too late to be considered.

Thank you.

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11 September 2009

Private & Confidential

Mr. Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
2nd Floor, West Block
Confederation Building
PO Box 8700
ST. JOHN’S NL  A1B 4J6

Dear Mr. McCarthy:

Subject: Consultation Document Unlocking Pension Funds

Mercer (Canada) Limited is pleased to provide its comments in response to the recent consultation document on unlocking pension funds.

Should you have any questions or require further information as you go through this process, please do not hesitate to contact us.

Sincerely,

Enclosure
Government of Newfoundland and Labrador Consultation -- Unlocking Pension Funds

We appreciate this opportunity to provide our comments to the Government of Newfoundland and Labrador ("Government") on the issue of unlocking pension funds.

Mercer is the Canadian and global leader in providing advice and solutions for the full range of issues that affect employment-based retirement plans. We consult on plan design and help our clients manage the financial and other risks associated with pension plans. This work is performed in the context of our clients' overall workforce planning and business strategies.

Mercer offers its comments to Government based on its long and extensive experience working with employers and other plan sponsors who are making decisions about providing pension plans, determining appropriate benefit levels, and funding them. We support Government's initiative to review elements of its pension legislation in an open and transparent way, and believe that active consultation typically leads to better regulation for all stakeholders. We acknowledge that there are different views on locking-in of pension monies and that others, including some Mercer clients, may not share the views expressed here.

Since Government's consultation document was focused specifically on the topic of unlocking, the remainder of this document addresses that issue. However, we would be happy to provide comments or information on any other pension regulation issues that may also be under consideration by Government, now or in the future.

General Comments on Unlocking

We support greater flexibility in the area of unlocking of pension funds and simplification of unlocking processes. However, we recommend that any changes to unlocking rules reflect the following considerations:

1. Unlocking processes or requirements that impose additional burdens and risks on plan sponsors and administrators should be avoided. The operation of a pension plan is already an onerous responsibility. A plan member's right or decision to unlock pension funds does not directly relate to any workforce goals or needs of the plan sponsor. If additional unlocking opportunities are permitted, these should be made available only after an initial locked-in transfer from a pension plan has already taken place; and

2. Government's consultation document does not discuss unlocking benefits for active employees, but it may be raised through this consultation process. If unlocking options are made possible for members who are still actively employed by the pension plan...
A Principled Approach

We support a principled approach to the issue of whether pension assets should be locked-in, as opposed to an exception-based approach based on circumstances such as financial hardship.

While one can readily sympathize with individuals in situations where exceptions might apply, we do not believe these are rational bases for determining the application of locking-in rules, as they do not correlate to an individual's capacity to manage pension assets. For example, surely an individual who is not in a situation of financial hardship is as well-placed to control unlocked pension assets as is a person experiencing a financial hardship.

In addition, the administration of exception-based unlocking systems can consume significant resources. Whether at the level of the plan administrator, financial institution, or the pension regulator, the collection, review and adjudication of unlocking requests requires a substantial resource commitment. For plan administrators and the pension regulator in particular, these are resources no longer available to dedicate to the core responsibilities of prudent pension stewardship.

Finally, many Canadians are not members of registered pension plans and have accumulated retirement savings through registered retirement savings plans (RRSPs). These RRSPs are not subject to the locking-in rules imposed by pension standards legislation. Experience with RRSPs has shown that their holders are prudent and careful with their retirement savings, despite the ability to access assets without locking-in restrictions.

For these reasons, we encourage Government to permit full unlocking of pension assets following termination of employment with the applicable pension plan sponsor where the plan member is age 55 (the typical age when a member is eligible for an immediate pension). Individuals who terminate employment before age 55 would have the same options as currently exist (deferred pension, portability), but would be permitted to unlock assets transferred out of the plan on attaining age 55. This would simplify legislation and administration, ensure equitable treatment among plan members and between registered pension plan members and RRSP holders, and avoid a disproportionate commitment of regulatory and other resources to the adjudication of unlocking applications.
In the alternative that Government does not support full unlocking, we recommend full locking-in (with exceptions only for small benefit commutation and shortened life expectancy*), for the same basic reasons set out above: equality of treatment, simplification of rules, and preservation of resources for critical tasks.

(*In an otherwise fully locked-in scenario, we do support the continuation of existing locking-in exceptions for small benefits and shortened life expectancy. These exceptions have been in place for many years and are parts of normal plan administration at this point in time, so do not create any new administrative burdens.)

Responses to Specific Questions

The consultation document poses several specific questions. Those are reproduced here, with our comments.

1. **Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?**

   We support additional flexibility for plan members through full unlocking following termination of plan membership on or after age 55. This reflects greater consistency with the treatment of other retirement savings vehicles, and the general trend towards greater individual control and diminished governmental/employer paternalism.

2. **Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves before retirement? Why or why not?**

   The goals of greater flexibility and individual autonomy should be balanced against the social importance of retirement income protection and creditor-proofing of retirement assets. We support full unlocking at age 55. Subject to existing small benefit and shortened life expectancy exceptions, the assets of individuals under age 55 would remain locked-in to ensure preservation of capital until retirement age.

3. **Should the Provincial Government provide for only a portion of funds that is accumulated in a registered pension plan to be unlocked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?**

   Please see comments on question #2, above.
4. **Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?**

We do not support exception-based unlocking options in circumstances of financial hardship.

5. **Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be that age and why?**

We support unlocking at age 55. This provides a reasonable measure of security for preservation of pension assets to retirement age, and 55 is typically the earliest age for pension commencement under most pension plans.

6. **Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?**

Please see comments on question #4, above. We do not support exception-based unlocking, but do support maintenance of current small benefit and shortened life expectancy commutation rules.
Questions we would like your views on are as follows:

1. Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not? **No I should be able to manage my own money.**

2. Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not? **Yes I should be able to manage the money as they wish.**

3. Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be unlocked where an individual leaves the plan before retirement? If so, why and how much should be unlocked? **No the total amount should be unlocked invest spend or whatever.**

4. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not? **Yes should be unlocked who can tell when financial hardship can arise.**

5. Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why? **No this should be any age.**

6. Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied? **All accumulated should be unlocked. No red tape.**

7. Are there any other comments or suggestions you wish to provide on this issue? **Yes the amount I will receive in 2010 will not cover my s. 30 (1)**

Please provide your comments by September 8, 2009 to:

Julian McCarthy  
Deputy Superintendent of Pensions  
Department of Government Services  
2nd Floor, West Block  
Confederation Building  
P.O. Box 8700  
St. John’s, NL A1B 4J6  
709-729-6014 (Tel)  
709-729-3205 (Fax)  
jmccarthy@gov.nl.ca
September 8, 2009

Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
2nd Floor, West Block
Confederation Building
PO Box 8700
St. John’s, NL A1B 4J6

Dear Mr. McCarthy:

Re: Consultation on Unlocking Pension Funds

Advocis welcomes the opportunity to provide its views on proposed amendments to the Pension Benefits Act (1997) regarding whether the funds that are transferred from a registered pension plan should be required to be in a locked-in retirement account or whether such funds can be unlocked.

Advocis is Canada’s oldest and largest voluntary professional membership association of financial advisors and planners. Our association was founded in 1906 as the Life Underwriters Association of Canada. We represent life and health insurance licensees and mutual fund and securities registrants across the country. Our members are primarily owners and operators of their own small businesses who create thousands of jobs across Canada.

Advocis members are professional financial advisors who provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans, disability coverage, long-term care and critical illness insurance to millions of Canadian households and businesses. In addition, our members provide retirement planning and investment advice to employees with pension plans and many of our members establish and administer pension plans for businesses.

Retirement planning is a priority for millions of Canadians and our members work with individuals, families and businesses in achieving their financial objectives. Advocis financial advisors maintain lasting relationships with their clients based on trust. They take a long-term planning perspective and are helping to guide clients, young and old, individuals, families and businesses during these tough times of economic downturn and financial market turmoil.

Professional financial advisors and financial planners are a vital component of the financial services sector. They help Canadians save, invest and plan intelligently.
It is vitally important that individual Canadians and businesses have access to and be served by professional financial advisors and financial planners, to help them understand their financial needs and prospects, to save, to invest prudently, to address a variety of risks, and to meet future financial needs and their retirement planning goals.

**General Comments**

Advocis has established a Pension Task Force whose mandate is to provide public policy advice to interested stakeholders, in particular governments and pension regulators. The main objectives of the Pension Task Force are to promote a sound pension system in Canada and develop solutions to help ensure that pension plans remain sustainable from both an employer and consumer perspective, and to stimulate higher levels of plan sponsorship.

It is generally recognized that many Canadians do not have adequate retirement savings accumulated for their retirement and that increasing participation in pension plans should be a key priority of governments.

The Government’s Consultation Paper refers to the Statistics Canada Report of November 2007 on “Pensions and retirement savings of families” (the “Report”) and references one of the report’s conclusions that, on average, Canadian families are better prepared for retirement today then they were in the past (the 1970’s).

However, the Report also states that this conclusion does not apply universally and that two parent families in the bottom 20% of the earnings distribution are not better prepared for retirement while those in the top 20% are better prepared. It notes, therefore, that there is a growth in the inequality in families’ retirement savings.

In addition, the Report points out that the study examined the evolution of retirement preparedness but not the extent to which current retirement savings are adequate to maintain living standards once retirement age is reached. The move from defined benefit to defined contribution plans and the increasing longevity of seniors were also not taken into account, both of which, the report states, will clearly influence families’ living standards after retirement.

In general, Advocis is of the view that funds in a pension plan should be preserved for use during a person’s retirement and not used for other purposes. Our specific comments on the questions asked in the Consultation Paper follow below.

**Question 1: Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?**

Advocis believes that the legislation should be modified to allow for withdrawals in the case of financial hardship and if a non-resident of Canada in addition to the existing exceptions for small balances and considerably reduced life expectancy. Advocis would also recommend allowing 25% unlocking at age 55.

**Question 2: Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?**
Advocis believes that the locking-in requirements should not be removed altogether as these funds should remain locked so as to contribute to a person’s income during their retirement years.

**Question 3: Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be un-locked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?**

Advocis believes that such funds should remain locked, subject to its answer to question 5 below.

**Question 4: Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?**

Advocis believes that there should be unlocking of funds from a locked-in retirement account in situations of financial hardship. We refer the Government to the Ontario rules regarding unlocking of pension funds which allows unlocking of funds in the following situations: if have low income; risk of eviction from a principal residence or rental premises; to access the funds for medical treatment for the person, their spouse or dependents; and if needed for residential renovations, alterations or construction to accommodate the use of a wheelchair, or other needs related to a disability or illness.

An application would be provided to the Financial Services Regulation division of Government Services. Payment of an application fee should not be a barrier to the process of accessing funds in situations of financial hardship.

**Question 5: Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?**

Unlocking of locked-in accounts such as LIRAs, LIFS and LRIFs should be allowed after reaching the age of 55 and should be limited to 25% to provide for greater security that sufficient funds will remain to service the person over their remaining retirement years.

The unlocking of the 25% should not be limited to a one-time opportunity to unlock but rather there should be a periodic opportunity to unlock (on an annual basis, for example). This would ensure that people do not unnecessarily unlock 25% when they do not have a pressing need to do so but nonetheless unlock the funds as a result of it being their only opportunity to do so.

**Question 6: Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?**
The Government of Newfoundland and Labrador currently has unlocking of small balances and reduced life expectancy. To promote harmonization with other jurisdictions, Newfoundland should also have unlocking if the person meets the test for non-resident of Canada.

Yours truly,
Dear Mr. McCarthy,

On behalf of Advocis please find attached our submission regarding Consultation on Unlocking Pension Funds. A hard copy will follow by courier.

Thank you.

Regards,

Advocis
I choose knowledge; I choose the RHU

390 Queens Quay West, Suite 209
Toronto, ON
M5V 3A2

This communication (and any attachments) is directed in confidence to the addressee(s) listed above, and may not otherwise be distributed, copied or used. If you have received this communication in error, please notify us by reply e-mail or by telephone and delete this communication (and any attachments) without making a copy.
1. I feel that the individuals who have a pension fund should have their own control over the fund so they can invest it as they see the best return. With present conditions Government has limited that option.

2. If individuals leaves the plan or has lost their job resulting in leaving the plan early is now penalized because they are not of age to benefit from that plan.

3. Those who leave the plan early should have 100% control over their fund. If Government controlled the amount released this will restrict the investment opportunity.

4. Yes, where there is financial hardship the amount required to resolve the hardship should be released. It is my understanding that Newfoundland is the only Province that does not recognize the hardship clause. If Government is controlling the fund they should cover the cost of the needs assessment.

5. Age should not be an consideration in the unlocking of a investment fund

6. Government should unlock the entire fund when an individual is beyond hardship and their credit is jeopardized.

7. Unlocking these funds will allow those who find themselves in hardship to borrow money at a reasonable rate to solve their problems. With the present situation someone may have allot of money in the fund that can not be used in any way to help solve their problems.
September 8, 2009

Julian McCarthy  
Deputy Minister of Pensions  
Department of Government Services  
2nd Floor, West Block  
Confederation Building  
P.O. Box 8700  
St. John's, NL  
A1B 4J6

Dear Mr. McCarthy:

I would like to add my comments, to others, on the proposed amendments to the Pensions Benefit Act (1997).

In answering the questions posed by your Department for these possible amendments, I will list my answers in the same numbered fashion.

1. No.

I believe the individuals who have left an employer should have the right to transfer their funds to an RRSP and manage these funds as they see fit.

Many will argue the individuals who have funds in an RRSP, do better with these funds, than individuals who have similar funds in a Pension Plan. They also argue that they have more flexibility in an RRSP.

2. Yes.

For the same reason given above.
3. No.
   100% should be unlocked.

4. No.
   I believe the Government should not be involved in determining if there is financial hardship. An individual should have the right to make that decision without the necessity of an assessment.

5. The Government should not prevent the unlocking of Pension money at any age.

6. The Provincial Government should allow complete flexibility with regard to the amount of funds that can be unlocked.

   Thank you for the opportunity to offer my comments.

Yours sincerely,
Young, Elaine B.

From: McCarthy, Julian
Sent: September 9, 2009 8:50 AM
To: Young, Elaine B.
Subject: FW: Pension Review

Sent: Tuesday, September 08, 2009 10:43 PM
To: McCarthy, Julian
Subject: Pension Review

Mr. Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
2nd Floor, West Block
Confederation Building
P.O. Box 8700
St. John’s, NL, A1B 4J6

Dear Mr. McCarthy,

I’m sorry for my tardiness in responding to your consultation document regarding the feasibility of unlocking pension funds. My initial comment is that I feel strongly there should be a review of the Plans lock-in retirement clause. I’ve always viewed the current plan as an agreement between myself, the co-contributor, my employer, the Plan, and the Plan’s sponsor.

Furthermore, the object of the Plan should be a return of funds or investments that I feel reflect my particular retirement needs or, more specifically, the ability to withdraw the funds accumulated in the program upon retirement. Notwithstanding certain guidelines, I should be able to manage my Plan to meet my financial situation when I begin to utilize the funds within the Plan. I do agree that the main objective of requiring funds to be locked in is to protect the accumulated funds, but along with this mandate there needs to be more consideration of the percentage of withdrawals plus other time-related issues.

The following are my responses to the information or questions cited in the government request for responses:

Question 1:
No, but there may be some revisions to the time limitations for the lock-in period.

Question 2:
This particular matter should be closely analyzed and possibly based on a set of contributions along with age-related formula.

Question 3:
Yes! This is one of the key issues to be addressed by Plan subscribers to decided on the
appropriate percentage. Persons entering the Plan should have options that they fully understand and plan towards.

Question 4:
This is a hard area to assess and may involve issues of human rights and living standards.

Question 5:
Yes! This is the same response as to Question 3.

Question 6:
There may be some terms and conditions that could apply to this area i.e. status of health or major family financial liabilities that could assist a person receiving a specific amount of contributions.

Finally, I would like to applaud Minister Kevin O’Brien who took the time to listen to our comments about the current plan and stated that this consultation process would be initiated. I also look forward to the upcoming public consultation sessions in order to reiterate my views and listen to other point of views. It’s good to move forward together!

Yours sincerely,

s. 30 (1)

C.c. Minister Kevin O’Brien

Click less, mail more: Hotmail on the new MSN homepage!
Dear Julian McCarthy:

Attached you will find Investors Group’s comments on the proposed amendments to the *Pension Benefits Act (1997)* outlined in the document entitled “Consultation Document Unlocking Pension Funds”. We have reviewed and responded to the seven questions posed to the industry regarding the possibility of allowing clients to unlock a portion of their locked-in assets.

Thank you,
September 8, 2009

Julian McCarthy  
Deputy Superintendent of Pensions  
Department of Government Services  
2nd Floor, West Block  
Confederation Building  
P.O Box 8700  
St. John’s, NL A1B 4J6

Dear Ms. McCarthy:

Re: Consultation Document: Unlocking Pension Funds

We are pleased to provide our views on the seven questions posed by the Government of Newfoundland and Labrador with respect to the proposed amendments to the Pension Benefits Act (1997) (the “Act”) as these relate to the unlocking of Pension Funds. The IGM group of companies, operating under Investors Group Inc. (“Investors Group”), carries on a diverse integrated financial services business including mutual funds, securities, deposit products, mortgages, insurance and, through its affiliation with National Bank, banking products. IGM currently has over $91.6 billion of mutual fund assets under management and over one (1) million clients across Canada.

Investors Group thanks you for giving us the opportunity to submit the following response to the above-noted seven questions for the Government of Newfoundland and Labrador’s consideration prior to amending the Act with respect to the unlocking of Pension Funds:

1. Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?

The main purpose of the locking-in of assets generated from an employee’s membership in an Employer-sponsored registered pension plan is to restrict access to those funds in order to provide a source of retirement income for life. We recommend that this main purpose of locking-in of assets be retained, although certain modifications should be made.

There are two conflicting issues with respect to the locking-in of pension assets, which need to be addressed:

- The need to ensure that the former plan member will have a source of retirement income based on his or her participation in the pension plan, and
- The immediate financial needs of the former plan member.
Investors Group has been administering locked-in accounts for clients in all provinces and territories in Canada for more than 20 years. In many cases, the locked-in account is the only significant financial asset owned by the client. Clients often request access to all or a portion of a locked-in account in order to meet an immediate financial need. It is often the case that we have to advise clients that the applicable provincial legislation will not permit such access to the locked-in account.

As will be noted in our responses below, Investors Group recommends that in order to resolve the conflicting issues noted above, individuals be allowed access to a portion of their locked-in assets to meet immediate financial needs, but that a significant portion of the pension funds remain locked-in to be able to provide the individual with retirement income and thus fulfill the primary purpose of the pension plan. This could be accomplished by permitting the terminated pension plan member or the owner of a locked-in account to make a one-time transfer of a fixed percentage of the locked-in assets to an unlocked Registered Retirement Savings Plan (RRSP) or an unlocked Registered Retirement Income Fund (RRIF).

2. **Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered plan where an individual leaves the plan before retirement? Why or why not?**

As is noted in our response to question 1, Investors Group recommends that the terminated plan member or the owner of a locked-in RRSP be given an opportunity to transfer a portion of the locked-in assets to an RRSP or RRIF. The remaining assets would continue to be locked-in and thus subject to the maximum annual payout restrictions that are applicable to Life Income Funds (LIFs) and Locked-in Retirement Income Funds (LIRIFs).

Investors Group does not support the total elimination of locking-in requirements, as the primary purpose of a registered pension plan is to provide a means for employees to accrue a source of lifetime retirement income. A pension plan is not a savings plan. Employees are able to accrue amounts that can be used for both short-term needs and to supplement retirement income through such personal savings vehicles as RRSPs and Tax-Free Savings Accounts (TFSAs).

3. **Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be unlocked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?**

Investors Group recommends that a person who leaves the plan before retirement and who is transferring the pension benefit to a locked-in account be allowed to transfer 50% of the benefit to an “unlocked” RRSP or RRIF at the time that the locked-in assets are about to be converted into a LIF, LIRIF, or a life annuity.

In addition, individuals who have already transferred their pension benefit to a LIRA, LIF, or LIRIF should be allowed to transfer 50% of the assets to an unlocked RRSP. We would recommend that LIRA owners be required to make the 50% transfer to the RRSP within 60 days of the date that the LIRA was being converted into a LIF or LIRIF. With respect to existing LIFs and LIRIFs, we would recommend that the owners of such accounts be given a deadline for the 50% transfer to occur. For example, if the Act and Regulations were to be amended as recommended effective January 1, 2011, the owners of existing LIFs and LIRIFs as of that date would be required to make the 50% transfer to the RRSP or RRIF prior to December 31, 2011. This would provide adequate time for financial institutions to notify LIF and LIRIF owners of the 50% transfer opportunity and for the required processing functions to occur.
By permitting terminated members of pension plans plus owners of locked-in accounts to transfer 50% of locked-in assets to an RRSP or RRIF, those individuals will retain a source of lifetime retirement income while gaining immediate access to assets in cases of immediate financial need.

The recommendation of the 50% unlocking percentage is consistent with the “unlocking” percentage provided for under the pension legislation of: Alberta, Manitoba, Ontario and the federal Pension Benefits Standards Act. Where practical, we would encourage uniformity of pension rules in the various jurisdictions.

4. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

Investors Group does not support the unlocking of pension assets based on a “financial hardship” situation, especially where the legislation would permit the one-time transfer of a percentage of the locked-in assets to an RRSP or RRIF. Our experience has been that the financial hardship administrative process is overly complex and time-consuming.

Where a terminated plan member or the owner of a locked-in account has the opportunity to transfer 50% of the assets to an RRSP or RRIF, the ability to gain immediate access to the RRSP or RRIF assets will, in most circumstances, take care of financial hardship situations.

5. Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

We would recommend that there be no minimum age restrictions on either:

- The transfer of 50% of the locked-in assets to an RRSP, or
- The conversion of a pension benefit or a LIRA into a LIF or an LRRIF.

However, no transfer should occur until the plan member has terminated his or her membership under the pension plan.

6. Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?

As noted in our response to question 4, we would recommend that financial hardship withdrawals not be permitted (given the introduction of the 50% RRSP/RRIF transfer opportunity). However, the following are other situations where commutation of locked-in benefits would be appropriate:

- Where the owner of the pension benefit or the locked-in account has a diminished life expectancy, as certified by a medical practitioner,
- Where the owner of the pension benefit or the locked-in account has been a non-resident of Canada for a prescribed period of time (for example, two consecutive years).
Where the value of the individual's pension assets and locked-in accounts is lower than a prescribed threshold amount (example: commutation allowed where the value of the locked-in assets is less than 20% of the Year's Maximum Pensionable Earnings under the Canada Pension Plan).

7. Are there any comments and suggestions you wish to provide on this issue?

LRIF

In addition to the above recommendations, we would suggest that the Provincial Government consider eliminating the LRIF, such that the only locked-in "payout" vehicles would be the LIF or a life annuity contract.

The major difference between the LRIF and the LIF is the calculation of the annual maximum payout. The LRIF maximum calculation could be easily incorporated into the LIF by changing the LIF annual maximum payout to being the greater of the following:

- The maximum under the current LIF formula, or
- The investment return of the LIF in the preceding year.

This method of calculating the LIF maximum has been adopted by Alberta, British Columbia, and Ontario. Alberta has already phased out its LRIF, Ontario is in the process of doing so, and Manitoba has also announced that it will likely phase out the LRIF.

As the LRIF maximum can be incorporated into the LIF maximum, we question the need to have both plan types.

Temporary Income

If the Provincial Government decided to amend the Act and Regulations to permit the transfer of 50% of the locked-in assets to an RRSP, the existing "temporary income" provision could be eliminated.

Thank you again for inviting comments on the proposed amendments to the Act. If you wish to discuss this matter, please do not hesitate to contact me.

Yours truly,

INVESTORS GROUP FINANCIAL SERVICES INC.
Mr. McCarthy,

I enclose Morneau Sobeco’s submission on the Newfoundland and Labrador Pension Unlocking Consultation. Please let us know if you have any questions arising from our submission.

Best Regards,

Morneau Sobeco
5151 George Street, Suite 1700
Halifax, NS B3J 1M5

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September 8, 2009

Julian McCarthy
Deputy Superintendent of Pension
Department of Government Services
2nd Floor, West Block
Confederation Building
P.O. Box 8700
St. John’s, NL A1B 4J6

Dear Mr. McCarthy:

RE: Consultation on Unlocking Pension Funds

We are pleased to take this opportunity to respond to the Government of Newfoundland and Labrador’s request for input on potential changes to the locking-in requirements of the Pension Benefits Act, 1997 (PBA).

As the largest Canadian-owned actuarial consulting firm, we are interested in promoting a thriving pension system that meets the needs of plan members while safeguarding the interests of the sponsoring employers. Morneau Sobeco has over 1,250 employees, including approximately 100 Fellows and Associates of the Society of Actuaries and 14 pension lawyers. Morneau Sobeco has offices across Canada, including an office in St. John’s.

We have reviewed the Government’s Consultation Document and its questions. Our responses to those questions are below.

Responses to Questions

1. Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?

Generally, we are in favour of continuing the current approach of having benefits locked-in. One of the fundamental purposes of pension plans is to provide retirement income to plan members and ensuring pension funds remain locked-in is integral to that purpose. However, we are also aware of the growing sentiment amongst many pension plan members that they should have some flexibility with respect to how they access and use their pension funds. We believe an appropriate middle-ground is to give members the ability to unlock a portion of their pension funds on termination or retirement. A number of other jurisdictions in Canada currently allow members to withdraw a fixed percentage of their commuted value, ranging from 25% to 100%. In keeping with the public policy objectives of providing a retirement income, if it is felt necessary to provide some limited unlocking ability, then we lean towards the lower end of that scale and recommend the PBA allow members to commute up to a maximum of 25% of the value of their pension benefit at retirement.
2. Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?

No, the locking-in requirements should not be eliminated. We believe the ability to unlock 100% of pension funds prior to retirement would run contrary to the purpose of pension plans to provide retirement income. While some may view locking-in provisions as paternalistic, the importance of helping to ensure that individuals have sufficient savings at retirement is an overarching public policy reason for maintaining locking-in provisions.

3. Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be unlocked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?

Yes, as indicated above, we accept a middle-ground approach where no more than 25% of the commuted value of the member’s benefit could be unlocked.

4. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

There are currently only four jurisdictions in Canada that allow unlocking in cases of financial hardship. In our view, the application process and evidentiary requirements for financial hardship unlocking are often time-consuming and burdensome for both the applicant and the regulatory body processing the applications. If the PBA is amended to allow all members to unlock a portion of their commuted value at termination, we see no need to allow unlocking in cases of financial hardship because individuals who would otherwise make an application under the financial hardship provisions could access funds through the regular unlocking provision. While this would limit the amount that plan members could access, we view that as being a reasonable restriction. We also point out that the Nova Scotia Pension Review Panel, following an extensive consultation process in 2008 and 2009, recommended in its final report that the financial hardship unlocking provisions of the Nova Scotia Pension Benefits Act be eliminated.

5. Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

If the PBA is amended to allow a one-time ability to unlock a certain amounts (i.e. 25%), we see no need to impose a minimum age restriction. The purpose of allowing unlocking in such cases is to give members the flexibility to access a portion of their funds and, presumably, use the funds for whatever purpose they deem appropriate. One could argue that adding an age restriction might make it more likely that such funds would be used for retirement-like purposes, but there is really no practical way to ensure this. Moreover, we expect that one of the more prevalent reasons why members may want access to their pension funds is when they are buying their first home (similar to the first time home buyers plan with an RRSP). To add an age restriction would unnecessarily limit the usefulness of the unlocking change.
6. Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?

We endorse the existing conditions for unlocking under the PBA, which are in cases of shortened life expectancy and for small pension amounts. With respect to the small pensions rule, the current PBA provisions allow unlocking where the member’s commuted value is less than 10% of the YMPE or the annual pension is less than 4% of the YMPE. Given the administrative costs of keeping small benefit amounts in the pension plan and the relatively minor impact such amounts have on a member’s overall retirement income needs, we believe those limits could be increased to allow commutation for higher amounts. We believe a reasonable approach is to maintain the 4% limit on annual pensions but to allow commutation where the commuted value of the benefit is less than 20% of the YMPE, as opposed to the current limit of 10%.

We also recommend that an unlocking exception be allowed in situations where a former plan member becomes a non-resident of Canada. Several other Canadian jurisdictions allow this and the Report on CAPSA’s Work on Regulatory Principles for a Model Pension Law recommended non-residency status as one of the acceptable unlocking criteria. The ability to unlock in such cases would make it easier for former members who move away from Canada to consolidate their retirement savings in one place and could ease the administrative burden on plan administrators from having to deal with cross-border jurisdictional issues. The jurisdictions that allow unlocking for non-residents typically make it a requirement that the former plan member becomes a non-resident under the Income Tax Act (Canada) and impose a minimum time limit (usually two years) before a non-resident can apply to unlock. Also, the spouse of the former member must complete a spousal waiver consenting to the benefit being unlocked before such an application can be considered.

7. Are there any other comments or suggestions you wish to provide on this issue?

All of our comments are incorporated in our answers above. We commend the Government of Newfoundland and Labrador undertaking this process to improve the PBA for the benefit of both plan members and plan sponsors alike.

We would be happy to provide clarification on any of the above. We can be reached by calling [blank].

Yours truly,

[blank]
McCarthy, Julian

From: Colbourne, Steve [scolbourne@cornerbrook.com]
Sent: Tuesday, September 08, 2009 3:42 PM
To: McCarthy, Julian
Cc: Park, Dale; Dolter, Michael
Subject: Pension legislation review questions
Attachments: Pension Consultation_Document_Unlocking_Pension_Funds_April_2009[1].docx

Hello Julian,
Attached please find the City of Corner Brook response to the questions relating to the Pension Legislation review. If you require additional information or clarification, please contact me at your convenience.

Steve Colbourne
Human Resources Officer
City of Corner Brook, NL
Scolbourne@cornerbrook.com
Ph. 637-1590 Fax 637-1625

The information contained in this transaction and any attachments may contain privileged and confidential information and may be legally privileged. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication is strictly prohibited. Views or opinions expressed in this e-mail message are those of the author only.
Consultation Document

Unlocking Pension Funds

Questions we would like your views on are as follows:

1. Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?

   RESPONSE TO #1
   No. We believe that the current legislation is too restrictive. In most cases the current legislation (i.e. Cansim rate restriction of 6%/) will not allow a retiring employee to access an amount of money anywhere near to what he/she was accustomed to earning while working. Retirees have expressed the view that they want better access to pension monies while they are still young enough to enjoy it.

2. Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?

   RESPONSE TO #2
   No. While we feel quite strongly about the position offered to the first question, we are keenly aware of what the purpose of a pension plan is, and that unfettered access to pension monies upon retirement may be too great of a temptation to some people. As an employer that contributes to the employee’s pension, we do recognize a moral responsibility in ensuring that some of the pension plan money is conserved for the later years.

3. Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be unlocked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?

   RESPONSE TO #3
   No. Today's employees are much more mobile than they were 20 years ago and will likely work with a number of different employers
throughout their careers. Pension monies contributed to a registered plan with one employer should, under normal circumstances, remain "locked in" until retirement at age 55 or later.

4. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

**RESPONSE TO #4**
No. We don't agree with only a portion being unlocked "only where there is financial hardship". While we do agree that hardship cases do warrant special consideration, we do not see the solution to the problem being found by limiting the "unlocking" to those situations. As stated in #1 and #2, we believe that when an employee is leaving the plan (ie at 55 or above and/or retiring) at least a portion of the pension funds should be unlocked.

With respect to hardship claims, it is our understanding that the current process would see an individual pleading a hardship case to the Superintendent of Pensions and it would be that office that decides on the request. Not being aware of any problem with this system, we are satisfied to leave it as is. If there is a concern with this current system, the City is not opposed to an independent means of assessment provided that it is consistent in its rulings. In any event, we do not support the individual or the pension plan having to bear any additional cost for this assessment.

5. Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

**RESPONSE TO #5**
We like the idea of having the unlocking of pension funds tied to a minimum age (other than in hardship situations). What that minimum age should be is difficult to say but it should not be less than 50 and not more than 60.
6. Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?

**RESPONSE TO #6**
Yes. Retiring employees should be able to access a higher level of their pension monies upon retirement than currently permitted. The unlocking of a higher portion of that money at a certain age and upon leave the plan would provide that retiring employee the flexibility to explore more options that he/she has under the current legislation. However, we do have reservations about unlocking all of the funds in the plan.

7. Are there any other comments or suggestions you wish to provide on this issue?

**RESPONSE TO #7**
The City of Corner Brook Group Benefits committee has considered these questions in consultation with its employee representatives. The overwhelming concern brought forward by the employee representatives is that the current legislation is too restrictive. A retiring employee today with a Defined Contribution plan that does not have a significant amount of money in that plan (i.e. $500,000 or more...which most employees don’t have) cannot access a sufficient amount of money to provide the desired retirement lifestyle. While we see the current legislative pendulum too far towards the restrictive side, we would not want to see it swing to the extreme side of no restrictions. Additionally, consideration could be given raising the YMPE significantly above the 40% level or raising the CanSim of 6%+.

Comment:
The City believes that the primary reason an employer participates in an employee pension plan is to provide the employee with a reliable source of income after retirement. With that in mind, we would suggest that the portion of "employee" contributions (plus interest) to a defined contribution plan be deemed **unlocked** upon leaving the plan and/or retirement while the "employer" contribution portion could remain subject to the "locked in" provisions. (For the (vested) City of Corner Brook employee, this would amount to an unlocking of about 50% of the total amount in the plan as both the employer and employee contribute equal amounts.)

For clarification or discussion on this reply, please contact:

Dale Park
Director of Corporate Services
City of Corner Brook
637-1563

Or
Steve Colbourne
Human Resources Manager
City of Corner Brook
637-1590

Please provide your comments by September 8, 2009 to:

Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
2nd Floor, West Block
Confederation Building
P.O. Box 8700
St. John’s, NL A1B 4J6
709-729-6014 (Tel)
709-729-3205 (Fax)
jmccarth@gov.nl.ca
August 18, 2009

Mr. Julian McCarthy,
Deputy Superintendent of Pensions,
Department of Government Services,
2nd Floor, West Block,
Confederation Building,
P.O. Box 8700,
St. John's, NL A1B 4J6

Dear Mr. McCarthy,

Re: Unlocking Pension Funds Consultation

On behalf of the Trio Board of Directors, I am pleased to enclose our submission on the above-noted consultation.

The paper sets out the Board’s reasoning as to why it cannot support any proposal to amend the Pension Benefits Act to allow for the premature unlocking of pension funds.

We would be happy to meet with you or your officials if you require any further elaboration on or clarification of any of the points contained in our submission.

Thank you for the opportunity to comment on this important issue.

An electronic version of our submission has been sent to you via email.

Yours truly
"Unlocking Pension Funds" Consultation

 Submission by

Trio
Newfoundland & Labrador Municipal Employee Benefits, Inc. (NLMED) is pleased to submit its
comments for your consideration on the question of whether or not funds withdrawn prematurely from
a registered pension plan should be required to be locked-in.

NLMED has been a pension plan sponsor since 1978. We offer pension plan participation to all municipal
employees, elected officials, and municipally-related organizations throughout the province. Currently,
some 500 individuals are invested in the NLMED plan.

In 2008, we re-branded ourselves as “Trio.” The new marketing brand refers in part to the three benefits
that we offer – group life insurance, group health insurance, and group pension investments.

The Trio Board of Directors does not support the proposal to “unlock” funds withdrawn prematurely
from a registered pension fund. As stated in the consultation document, “the primary purpose of a
pension plan is to facilitate self-sufficiency by ensuring enough money is available to the individual to
live on when they retire.” Allowing individuals access to their “unlocked” pension funds undermines this
rationale. While such access may provide relief to a pressing financial problem in the short term, it only
diminishes the effectiveness of the pension plan investment in the long-term.

Given that an individual’s personal contribution to his/her pension plan is usually less than 10% of
annual salary, it is the poor money manager indeed who cannot establish and survive on an ongoing
monthly budget that is funded by 90% of annual salary. Such a budget should necessarily contain a
“savings” component for the inevitable “rainy day.”

“Unlocking Pension Funds” Consultation  Page 1
Submission by Trio  August 2009
As also stated in the consultation document, the current exemptions to the locking-in requirement (small balance, dramatic reduction in life expectancy, etc.) will continue, and this proposal is supported by the Trio Board.

The Trio Board also notes that there is no provision to consult with the employers who fund at least 50% of an employee’s pension investment. The employer’s primary rationale for contributing pension funding is to provide for a pension when the employee retires and any unlocking of pension funds violates this rationale without any consultation or consent of the employers in question.

Given that the purpose of a pension plan is to help provide economic stability in a person’s retirement years, the Trio Board can find no compelling reason to support any proposal to alter, change or vary the current locking-in requirement.

The consultation document also asks for our opinions on certain questions. We are pleased to respond.

1. *Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan?*

   Yes, as stated above.

2. *Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement?*

   No, as stated above.
3. *Should the Provincial Government provide for only a portion of funds, such as 25% or 50%, that is accumulated in a registered pension plan to be unlocked where an individual leaves before retirement?*

   No, as stated above.

4. *Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only when there is financial hardship determined through a needs assessment?*

   No, on the understanding that the current exemptions will remain unchanged.

5. *Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55?*

   No. A person who has reached his/her fifties would normally expect to start receiving a pension within fifteen years. Too short a time remains to rebuild the value of the plan if a portion of the current value is removed for other purposes.

6. *Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship?*

   No. The pension plan assets should not be considered emergency funds. Their primary purpose is to provide economic security in retirement.
Mr. McCarthy

Please find attached our submission. A hard copy has also been sent to your office. Please contact me if you require any further clarification.

Regards

trio

Visit us at www.triobenefits.ca
Trio is operated by NL Municipal
Employee Benefits, Inc.
Dear Julian McCarthy:

I am answering these questions by E Mail. If you need them in letter form please advise.

Questions we would like your views on are as follows:

1. Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?
   No. The Act should be amended to provide greater control to the plan member when they reach normal retirement age as specified by the Plan.

2. Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?
   No. The funds should be locked in until the normal retirement age specified by the Plan. The pension plan is set up to provide funds to employees for retirement and they should be locked in until that time.

3. Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be un-locked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?
   The funds should be locked in until retirement but the funds should be portable to another plan. If a percentage can be unlocked before retirement it would be an incentive for an employee to leave the employer early in order to access the funds. The pension funds are set up for retirement and should be locked in until the employee is ready to withdraw the funds.

4. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?
   This question is not applicable if the funds are allowed to be unlocked upon retirement. If Government decides not to change the lock in provisions than the present rules for hardship case seems adequate.

5. Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?
   Should be unlocked at the normal retirement age specified in the plan. If it is not specified than 55 seems to be a reasonable time to unlock the funds.

6. Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and...
which conditions or criteria should be applied?
As stated, the Provincial Government should allow for unlocking of 100% of funds when the person retires.

7. Are there any other comments or suggestions you wish to provide on this issue?
Hi Julian,

Here is my response to the questions asked:

1. The Provincial Government should change its existing locking-in legislation for funds in a registered pension plan. Individuals need more flexibility and access to their accumulated retirement funds, since for many it becomes their only source of income in retirement and therefore lifestyle is restricted if these funds are locked-in.

2. Eliminating locking-in requirements is the best idea - once the funds are vested by the pension plan itself, the funds should be transferable to the individuals RRSP plan when the individual leaves the plan. This allows an individual access to retirement funds, if desired, regardless of retirement date. If the individual is subject to job loss, such as in the Abitibi shutdown, these funds could then be used under the Life Long Learning program for re-training or withdrawn for income.

3. At least 50% of the funds should be unlocked where an individual leaves the plan before retirement, this would at least put our province in line with other provinces and the Federal legislation. Regardless of an individuals age, funds should be available using the withdrawal of a small balance or temporary income when an individual leaves the plan.

4. A needs assessment or any related costs should not be a requirement for funds to be unlocked. These funds are accumulated for the benefit of employees and should be able to be accessed at the discretion of the individual. Individuals feel frustrated with the restrictions placed on the locked-in funds and should not have to meet certain criteria to access their funds that have been set aside for their benefit. These funds should be treated the same as an RRSP and should be at the individuals discretion when they are no longer employed with the employer. I have clients that are currently drawing from the plan now because they understand that they will never access all the funds in the plan in their lifetime because of the restrictions. If these funds were in an RRSP plan instead, the urgency to draw on these funds would be eliminated because people understand they can access without restriction whenever they choose.

5. People are retiring and semi-retiring at younger ages and un-locking would provide more flexibility in financial planning, therefore the age restrictions should be loosened or eliminated. The employer and employee have paid in the funds for the benefit of the employee. Use of the funds should therefore be at the individuals discretion once they leave the plan. This would allow people the choice to retire sooner, if desired, with access to these funds.

6. 50% unlocking should be permitted under any condition or age once an individual leaves the plan. The employer and employee have paid in the funds for the benefit of the employer. This would allow individuals access to at least half of the funds that can be used for Life Long Learning or Home Buyers Plan if they need to relocate for work, as an example.

7. People are desiring more flexibility as it relates to their retirement options and our Province has the opportunity to lead the country in change as it relates to pension legislation.

If you wish any further clarification on any of my thoughts, please let me know. Thanks so much for the opportunity to be a part of this process.

Regards,
This e-mail and any attachments may contain confidential and privileged information. If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal. Unless otherwise stated, opinions expressed in this e-mail are those of the author and are not endorsed by the author's employer.
Dear Mr. Julian McCarthy:

Please find attached MEBCO’s comments on behalf of Multi-Employer Pension Plans. We would be pleased to meet with you at anytime to discuss in more detail.

Sincerely,
MEBCO SUBMISSION RE NEWFOUNDLAND UNLOCKING PROPOSAL

July 9, 2009

Mr. Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
2nd Floor, West Block
Confederation Building
P.O. Box 8700
St. John’s NL A1B 4J6

Dear Mr. McCarthy:

This submission is in response to the Consultation Document, “Unlocking Pension Funds.” MEBCO opposes any relaxation of the requirement that funds set aside for retirement income must be used for that purpose.

We trust the Government will find MEBCO’s submission of assistance with your review of proposed pension legislation.

MEBCO would be pleased to meet with you or other representatives of the Government to discuss any issues raised in this submission.

MEBCO

MEBCO was established in 1992 to represent the interests of all types of Canadian multi-employer benefit plans, including multi-employer pension plans (“MEPPs”) and multi-employer health and welfare benefit plans (“MEBPs”). MEBCO is representative of all persons and disciplines involved in these plans, including union and employer trustees, professional third party administrators, non-profit or “in-house” plan administrators, attorneys, actuaries, consultants, investment management professionals and chartered accountants. MEBCO is administered by a Board of Directors consisting of representatives from each of these groups. MEBCO is representative of MEPPs that have, on average, 400 participating employers.

MEBCO members have responsibility for administering benefit plans with accumulative membership of workers and families of over one million persons in Canada.
MULTI-EMPLOYER PENSION PLANS ("MEPPs")

Over the past decades, labour and management joined together to respond to the problems of delivering retirement benefits to workers and their families in industries typified by small companies and a mobile work force. Members of MEPPs work in industries as diverse as building and construction, food, service, retail, hotel and restaurant, graphic arts, garment manufacturing, security, textiles, transportation, and entertainment. A single MEPP may be national, regional, provincial, or local in coverage. Anywhere from two to over 1,000 employers may contribute to one of these plans under collective agreements.

MEPPs provide continuous benefits coverage to workers as they change employment from one contributing employer to another. This portability provides seamless pension coverage, and is essential for workers in mobile or seasonal industries such as construction and entertainment.

A MEPP is typically structured as a pension trust fund for purposes of s. 149(1)(0) of the Income Tax Act (the "ITA"). The trustees, appointed pursuant to a trust agreement, are usually responsible for the administration of the plan and the fund. A fund will either handle its own administration or hire a third party administrator.

Multi-employer defined benefit pension plans based on labour-management negotiations in the private sector are a cornerstone to the provision of retirement income in Canada. Unlike single employer plans (SEPPs), these plans are not being wound up, converted to (or replaced by) defined contribution plans, or subject to wind-up because of the insolvency of a single employer. They are not the subject of disputes about contribution holidays or surplus ownership. Further, the "defined benefit" is in reality a target benefit, because contribution rates typically are fixed in collective agreements.

MEPPs are administered by a Board of Trustees comprised of at least 50% member representatives. All aspects of plan administration, investment of funds, etc. are the responsibility of the Trustees, not the participating employers.

"Traditional" MEPPs have fixed contribution rates that cannot be changed by the Trustees who administer these plans. Minimum funding requirements do not cause MEPPs' contribution income to increase. The only way to remedy an apparent minimum funding violation is to reduce benefits. In most jurisdictions, the Trustees have the authority to make such benefit reductions, typically subject to approval by the regulator. Thus, these plans are more accurately described as having "target" benefits, with the members effectively bearing the risk.

All assets in a MEPP belong solely to the participants – there are no issues of surplus ownership or funding of deficits.

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1 According to the report commissioned by the Ontario Equal Commission on Pensions entitled Current Issues Concerning Multi-Employer Pension Plans in Ontario by Elizabeth Shilton, there are over 400 MEPPs in Canada covering over 1.5 million participants.

2 There are a number of MEPPs, including some very large ones, where the Trustees are entirely drawn from member representatives, and there is no employer representation.
MEPPs are fundamentally different from SEPPs and therefore require a different legislative and regulatory framework.

**ISSUES FOR DISCUSSION (DEFINED BENEFIT PLANS)**

1. *Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?*

2. *Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?*

Contributions to MEPPs are typically the result of an explicit determination at the bargaining table to allocate a portion of the current compensation package for retirement income. This allocation is essentially done on a group basis – a specified amount (usually based on hours worked or some other similar measurement) is contributed by employers (and occasionally employees) so that all who remain until retirement will have a lifetime defined benefit pension available. There are no individual accounts, and any individual may receive benefits worth a substantially different amount from the contributions generated by his or her employment.

The requirement to provide a transfer value at termination of employment effectively converts the defined benefit entitlement to a defined contribution entitlement. MEBCO opposes the transfer value concept altogether, although we recognize that there is no realistic possibility of its repeal. In addition to opposing the conversion of a defined benefit obligation to a defined contribution amount, MEBCO notes that MEPPs already provide portability among all participating employers (a change in employers is not a change in pension coverage), so the principal reason for having transfer values is of limited applicability to MEPPs.

Allowing unrestricted access to transferred amounts would undercut the basic decision made at the bargaining table – to allocate a portion of current compensation to retirement income. MEBCO believes that it would be bad labour policy and bad retirement income policy to do so. The Government should not overturn the collective decision that current compensation is sufficient to permit an allocation to retirement income. Even in the non-bargained defined benefit plan environment, MEBCO believes that it is inappropriate for the Government to affirmatively override the decision to provide a defined benefit pension plan as part of compensation.

In addition, increasing the incentive to elect transfer values as opposed to taking deferred pensions at termination of employment effectively reduces the pensions available for everyone covered by a MEPP. Transfer values are determined assuming fixed income rates of investment return, white-collar mortality, and maximum utilization of early retirement subsidies. Because contribution income is fixed in multi-year collective agreements, any added cost related to

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3 MEPPs typically cover so-called blue-collar employment. Actuarial studies have clearly established that blue-collar workers have shorter life expectancies than white-collar workers. The tables promulgated by the Canadian Institute of Actuaries for determining transfer values are based on white-collar mortality experience, which projects pension payments for a longer period and therefore has a higher cost.
transfer value elections comes from funds that would otherwise be available to provide retirement benefits.

MEBCO is also concerned that removal of the locking-in requirement will provide an incentive to terminate employment with a participating employer, because that will provide access to immediate cash that would not be available with continued employment. MEBCO believes that the Government should remain neutral with respect to individual employment decisions, and should not provide affirmative incentives to change employers.

Finally, MEBCO notes that many MEPPs are regional or national in their coverage. The lack of uniformity from jurisdiction to jurisdiction is already an administrative cost and complication, and prevents plans that are intended to be uniform across Canada from being so. Because contribution income typically is fixed in multi-year collective agreements, any added administrative expenses come from funds that would otherwise be available to provide retirement benefits.

3. Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be un-locked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?

4. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

5. Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

6. Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?

7. Are there any other comments or suggestions you wish to provide on this issue?

As indicated above, and for the reasons stated above, MEBCO is opposed to any exceptions to the locking-in requirement.
In response to Government’s proposal to amend the Pensions Benefit Act (1997) to allow for the unlocking of pension funds transferred to locked-in accounts when leaving an employer, I offer the following points to the questions:

1. No.
   I believe having the flexibility to access these funds now would give me the opportunity to reduce current debt, buy a home and better plan for retirement.

2. Yes.
   Most employees now are not covered by a registered pension plan. Employees who have the option to contribute to an RRSP which is matched in some form by their employer have no locking-in provisions, even though these funds are for retirement. They have full flexibility in how these funds are managed and invested, and can access these funds at any time. They can use them to purchase a home, pay down existing debt, etc. Also, the trend across the country is to eliminate these locking-in provisions so we should be treated the same.

3. 100%.
   Full access to these funds should be granted.

4. No.
   I believe needs assessments are very subjective and rely on someone’s personal judgement, which may see cases of individuals treated differently. Paying down current debt now could alleviate future financial hardship and allow the individual to prepare for retirement better.

5. No.
   I believe there should be no set age as this provides an unfair benefit to certain individuals. By paying off debt now, those funds become available to plan for future retirement at an earlier age.

6. Yes.
   100% of funds should be available for unlocking under any circumstances.

As the report for Statistic Canada suggests, less people are covered by registered pension plans, yet are better prepared for retirement than previous generations. I don’t believe there would be any additional stress on the Canada Pension Plan as people are better prepared for retirement. Also, I believe the number of people covered under registered pensions is decreasing each year. The trend in the work force is seeing people moving from company to company and they will be directing their own retirement plans in future.

9/9/2009
McCarthy, Julian

Sent: Sunday, July 19, 2009 1:00 PM
To: McCarthy, Julian
Subject: Consultation on Unlocking Pension Funds

Mr McCarthy:

Let me thank you for giving me the opportunity to comment on the issue of unlocking Pension Funds. Throughout my career, I have been relatively mobile with respect to employment opportunities, and as a result, I currently hold locked-in pension funds from [redacted]. It could be argued that I have a vested interest in removing the restrictions that are placed on these funds by the lock-in provisions.

However, I firmly believe that the interests of Government will be best served by allowing individuals to manage their own money, as this money can only be taxed when it is de-registered. The current locked-in restrictions will not permit me to use all my money (and pay the taxes until I am approximately 108 years old - we should all be so lucky!)

My responses to your questions are as follows:

1. Should the Provincial Government maintain its existing locking legislation for funds accumulated in a registered pension plan?

Answer: No. In this day and age, it is difficult to understand the rationale of the past legislators who enacted the locking provisions. Generally, locked in funds are produced when an individual leaves one employer. The employee has three choices:
   • Accept the employer’s provisions for a deferred pension (usually totally unattractive),
   • Withdraw the funds and pay income tax at the highest marginal rate for the year or
   • Roll the funds into a locked-in RRSP.

With the existing locking provisions, none of the options are fair to the employee. From the employer’s point of view, the locking provisions may have once been beneficial as a means of discouraging employees from advancing their careers elsewhere. But the Canadian Bill of Rights eliminated slavery some time ago.

2. Should the Provincial Government eliminate locking-in provisions altogether?

Answer: Absolutely. Without locking-in provisions, the funds accumulated in registered pension plans will still be registered. The requirement to pay income tax if when the funds are de-registered is sufficient incentive for fund holders to use the funds wisely.

3. Should the Provincial Government provide for only a portion of the funds to be unlocked?

Answer: No. This would not serve the plan holders well and would only add to the present confusion due to inconsistent fund administration from Province to Province. Employees are much more mobile.
now than in the past. As I understand the policy, the locking provisions are subject to the legislation of the Province in which the fund was locked in. When a fund holder moves to a different Province, then it is very common for the financial institutions to be at a loss to determine which locking provisions apply to which funds. The most robust solution is to encourage all Provinces to eliminate the locking provisions.

4. Should the Provincial Government allow for funds to be unlocked only for financial hardship reasons?

Answer: Of course not. The locking-in provisions should be eliminated altogether. As stated earlier, removing locking-in provisions does not de-register the funds, income tax is still owing, and will be paid, unless the reason for the financial hardship is tax deductible (such as medical expenses). In any case, the Provincial Government should permit an individual to try to resolve financial hardship issues using their own resources first, which means that the funds should not be locked in to begin with.

5. Should the Provincial Government permit unlocking of funds when a plan member has reached a certain age?

Answer: Not really. If an individual still has an income, then they will obviously consider the tax implications of using any registered funds – whether locked in or not. The tax burden is sufficient inhibit frivolous spending of the funds. If the individual has no income (regardless of age), then there is no reason to prevent him/her from using his/her own money to live on.

6. Should the Provincial Government allow funds to be unlocked for reasons other than financial hardship?

Answer: As described above, the locking-in of registered pension funds was a well-intentioned mistake of a previous generation of lawmakers (probably with a significant lobby influence from big business). It is time for Government to realise that individuals can, and want to manage their own resources, will earning income and into retirement. The “big hammer” for persuading individuals to save for retirement is still (as always) the income tax system, and Government has full control there.

7. Are there any other suggestions?

Answer: I want to encourage the Provincial Government to end all lock-in provisions as soon as possible, and to encourage the other Provinces to do the same. Thank you for this opportunity to provide my input.
Mr. McCarthy........

I appreciate the opportunity to provide my views on the subject matter. My comments essentially respond to the questions posed in your consultation document.

1) The existing locking-in legislation should be changed. Virtually every other jurisdiction in Canada has made changes to its legislation to face the realities of the twenty-first century.

2) The locking-in requirements should not be changed until retirement is possible. It must be recognized that retirement is the guiding principal for the legislation and the tax deferral benefits that accompany pension funds.

3) Although my preference would be that all funds be unlocked, to provide a level of comfort to Government that the funds be utilized for their intended purpose, I suggest that a cap be set at 50% of accumulated funds.

4) I do not feel that financial hardship should be the only consideration. My response in question 3 provides my thoughts on this.

5) In keeping with my response in question 3, I feel that age 50 with a number of years of contributions should be a benchmark. As well, the plan member should be retiring.

6) I think my other responses cover this question.

7) As general observation I want to relate my personal situation: ....I have been a member of a defined contribution pension plan for many years and am now nearing retirement. As someone who has raised and educated a family, paid my bills on time and generally been financially responsible, I find it paternalistic that Government would direct how I spend my pension dollars. Essentially, aside from the tax deferral feature which will be repaid once I start receiving benefits, Government has had no involvement in the accumulation of the funds in question. I would suggest that my situation is no different from the vast majority of pension plan members.

Thank you for the opportunity to provide my comments.

Yours truly,

Keith P. Kent

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McCarthy, Julian

From: [Redacted]  s. 30 (1)
Sent: Wednesday, June 10, 2009 3:43 PM
To: McCarthy, Julian
Subject: Locked in Plan

I think the Provincial government should eliminate locking-in requirement altogether on money that is accumulated in a Registered Pension Plan.

In today’s world a lot of companies are giving full control to their employees to save for retirement.

When we have locked in plans and clients are ready to withdraw they get very little income because it is transferred to a life annuity. Client should be allowed to transfer to a RIF (Registered income fund) and that way they can decide how much to withdraw.

Let the clients have control of their funds and manage they way they want it.

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9/9/2009
McCarthy, Julian

Sent: Tuesday, June 09, 2009 3:16 PM
To: McCarthy, Julian
Subject: Unlocking Pension Funds

Dear Ms. McCarthy:

I am one of many who has been negatively affected by the locking-in legislation of pension funds. I started out with [censored] in locked in pension funds and over the past few years the value has dropped to [censored]. This was largely due to the state of the economy and I suspect a certain amount of mis-management of my financial advisor. Thus far the only benefit I have seen was [censored] that I received from my LIF. I would have been far better off if I had been able to put my pension money into a savings account, I would at least still have the original [censored] but because I had no control over my own money I now have [censored]. Even if I had not lost so much $2,200 a year is not going to make any kind of improvement to my financial situation.

If I had full access to my pension funds I could at the very least pay off bills and put the remainder in the bank or toward a mortgage which would be a lot more beneficial to me.

Thank you for the opportunity to have some input

9/9/2009
August 28, 2009

Julian McCarthy
Deputy Superintendent Pensions
Financial Services Regulation Division
Government of Newfoundland & Labrador
P.O. Box 8700
St. John’s, NL A1B 4J6

Dear Mr. McCarthy:

RE: Unlocking Pensions Funds Consultation


I also express my appreciation for the invitation to submit my comments which I have attached as a separate document responding to each of the questions as per your request.

I wish you every success in your deliberations and look forward to the improvements which should be forthcoming after the finalization of your consultation process.

Yours truly,
1. The Provincial Government should not maintain its existing locking-in legislation for funds accumulated in a registered plan. The current system is too restrictive.

2. I would not recommend the elimination of locking-in requirements when an individual leaves the plan before retirement. The funds are accumulated for retirement purposes and should remain locked in until retirement time.

3. As per my comment in No. 2 above, I do not recommend the unlocking of funds prior to retirement time except in circumstances of unusual financial hardship or if someone’s life expectancy is likely to be shortened considerably.

4. Consideration could be given to unlocking a portion of the pension fund in situations of “financial hardship”. Strict criteria would have to be established to define “financial hardship.” The income generating capability of the spouse or family unit would have to be considered as well as the long-term needs of a surviving spouse.

5. Yes, I would recommend unlocking only after a certain age—minimum age of 55 would be reasonable. As already mentioned, the accumulation of a pension fund is for retirement and to establish retirement earlier than age 55 is probably somewhat optimistic, particularly if the pension fund is the only source of income that an individual would have to sustain his/her lifestyle. At retirement age, I would recommend unlocking 50 percent of the fund with 50 percent remaining locked in.

6. Notwithstanding the comment in Item 5 above, unlocking a portion of the registered plan for “financial hardship” could be considered. The criteria, however, would need to be well established and would apply only in extreme circumstances. For example, where an individual is surviving without a spouse or any other dependent and has a limited remaining life span due to medical conditions. In such a case, the individual should be able to access all the registered account rather than leaving an accumulation of funds to his/her estate.

7. No other comment or suggestions at this time, except that the current system requires improvement. Other Provinces and the Federal Government have moved forward with changes in their programs; and, as a minimum, their systems could provide models for the Government of Newfoundland & Labrador.

/Pensions, Locked RSPs
September 2, 2009

Mr. Winston Morris  
Superintendent of Pensions  
Pensions Administration Division  
Department of Finance  
2nd Floor, East Block, Confederation Building  
PO Box 8700  
St. John’s, NL A1B 4J6

Dear Mr. Winston:

RE: Unlocking Pension Funds Consultation

Please find enclosed, for your information, two (2) copies of the Newfoundland & Labrador Teachers’ Association response to Winston Morris, Superintendent of Pensions on Unlocking Pension Funds Consultation.

Sincerely,

Enclosure
NLTA Response to
Winston Morris, Superintendent of Pensions
Unlocking Pension Funds Consultation

September 2, 2009
Winston Morris, Superintendent of Pensions

NLTA Submission with respect to:
Unlocking Pension Funds Consultation

Introduction
The NLTA is opposed to the total unlocking of pension funds when such funds are transferred from a registered pension plan.

Our belief is that the unlocking of pension funds as proposed would be to the detriment of the plan members, the plan itself, government social programs, and future generations who would shoulder the burden of poor retirement planning.

As stated in the consultation document, the primary purpose of a pension plan is to facilitate self-sufficiency by ensuring enough money is available to an individual to live on when they retire. Otherwise, individuals become dependent on government social programs which are dependent on taxpayers to fund.

Typically, members of defined benefit plans do not draw on social assistance, guaranteed income supplement, government drug cards or other related social support programs in retirement. The elimination of the locking in provisions will no doubt lead to a dependency on such public funded sources of income by a greater number of individuals, as less income will be reserved for retirement.

Any policy which has the potential to cause a decrease in self-sufficiency of retired workers and increase the burden on the current workforce to support retired workers is unwise. This is particularly true given the province’s changing demographic with a lower percentage of workers and a higher percentage of retirees.

This proposal to unlock pension funds, as stated in the consultation document, is based on the assumption “that the vast majority will keep their money for retirement purposes, either leaving it in a RRSP even if an unlocking option is available, or investing it in some way to support their retirement”. The NLTA believes that this is a false and incorrect assumption. The evidence is contrary to this assumption. Our experience is that teachers who have withdrawn contributions (allowed in the first 5 years prior to vesting and locking in), do not keep this money for retirement purposes and later regret having made this decision.

Government, employers, and workers would be better served by efforts to increase portability of pensions from one employer to another. Maintaining defined benefit plans is the best way to ensure self-sufficiency in retirement, and less dependency on social support.

This proposal is totally contradictory with past pension commissions which recommend national pension plans as a means to avoid the potential for a greater drain on the social network. The unlocking of pension funds will result in Government paying a greater price, and those without access to pension plans suffering as they find themselves competing for scarce tax dollars as more people rely on social supports.
Our position in this regard is totally consistent with that of the Canadian Teachers’ Federation Policy 2.5.1.5 on Pension - Vesting and Portability which reads:

2.5.1.5 Vesting and Portability
a) Benefits relating to past service should be preserved, for individuals leaving occupational pension plans, through day one vesting, lock-in and indexing of the deferred benefit, supplemented by reciprocal transfer agreements. (1982, Reaffirmed 2007)

We offer the following responses to the specific questions posed in the consultation document:

Q1: Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?

A: Yes, the Provincial Government should maintain its existing locking-in legislation for funds accumulated in a registered pension plan. The unlocking of pension funds has the potential to decrease the self-sufficiency of individuals in retirement as a result of short term or poor financial decision making. Such unlocking defeats the purpose of mandatory participation in employer sponsored defined benefit plans which have been extremely effective in creating self-sufficiency and independence from government social support networks in retirement. Removal of locking-in provisions has great potential to increase the number of individuals who will require utilization of the social support network, thereby creating a greater demand on government with less support being available for those who have not had access to defined benefit or sufficient defined contribution plans.

Q2: Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?

A: No, Provincial Government should not eliminate locking-in requirements altogether (see number 1 above). Our experience and firm belief is that such would be to the detriment of plan members in the event of short term planning, and to the detriment of government in general as described earlier. Our experience and evidence supports the fact that individuals generally underestimate their retirement needs and that long term planning in early to mid-career workers is not a priority when left to the individual. Eliminating locking-in provisions is contrary to recommendations made by commissions engaged in retirement planning which have consistently recommended a national pension plan which includes pension portability. The basic assumption being utilized in the rationale for the proposal to eliminate locking provisions is false.

Q3: Should the Provincial Government provide for only a portion of funds, such as 25 percent or 50 percent, that is accumulated in a registered pension plan to be unlocked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?

A: No, the purpose of the pension plan and retirement funds is to ensure self-sufficiency in retirement. These plans and benefits have been structured and funded to provide adequate
benefits. Unlocking portions of the fund is suggestive that such money is not required in retirement.

Q4: Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

A: There should not be an allocation of funds for unlocking specifically for reasons of economic hardship. Unlocking of pension funds to be used for short term financial need defeats the long term purpose of the pension fund. The administration and determination of what constitutes “financial hardship” is expensive and impractical. As an example, the experience of the Ontario Teachers’ Pension Plan, which has enabled unlocking for financial hardship, is not positive and has created significant practical and administrative concerns. From the personal perspective of a teacher experiencing financial hardship, wouldn’t the unlocking of retirement funds leave such funds open to creditor attack?

Q5: Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

A: In our experience, the majority of complaints concerning locking in of pension funds arise as individuals prepare for retirement, and view their financial needs as greatest in the first 10-15 years of retirement age 55-70. Again, this is evidence of a contradiction in the basic assumption of this proposal i.e. “that the vast majority will keep their money for retirement purposes...”. If a 50-55 year old needs to access their pension funds to be able to retire, is this not an indication that inadequate retirement planning has been done? There is some argument for access to pension funds during this time period, but we contend that good retirement planning would negate such requirements.

Q6: Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?

A: The condition under which the NLTA would support Provincial Government in unlocking a portion of pension funds would be in the event of terminal illness using criteria established for EI Compassionate Care benefits, with a maximum of 50% of unlocking, subject to approval of the principal survivor beneficiary.

Q7: Are there any other comments or suggestions you wish to provide on this issue?

A: In addition to the following, please see the introduction for other comments.

No other province has initiated full unlocking of pension funds as proposed in this document and we believe this is for good reason.
Most public sector pension plans in Newfoundland and Labrador are underfunded. Great effort and significantly high contribution rates by both employers and employees are in place to achieve higher funding levels. Allowing plan members to unlock pension contributions will encourage deferred pensioners to transfer funds. Removing the full commuted value from an underfunded plan will negatively impact the funding of the plan for all members.

The stated impetus for this proposal is complaints received from individuals on a regular basis. The NLTA questions the prevalence of such complaints and believes that the vast majority of pension plan members value and recognize the importance of mandatory enrolment and contribution in pension plans. The vast majority of plan members value and support the concept that retirement funds as determined by actuaries responsible for plan funding should be used for retirement provisions and can be best protected by locking-in provisions.

The NLTA disagrees with and disputes some of the principal statements in the consultation document including the basic assumption as previously mentioned.

The consultation draws comparison to registered pension plans and RRSPs and questions why money accumulated in an RPP should be treated differently than money in a RRSP, such funds not being locked in. However, money contributed to a RRSP is generally voluntary, and therefore is not locked in. The majority of Newfoundlanders who rely on RRSPs for retirement income have insufficient RRSPs for self-sufficiency. Participation in registered pension plans is required, usually employer sponsored, and such funds should be locked in to be utilized for the purpose intended.

The statements attributed to the Statistics Canada Report quoted in this consultation paper are misleading. While the paper points out that the proportion of employees covered by registered pension plans has declined, the consultation document fails to point out that the employees best prepared for retirement are members of registered pension plans.

While average retirement savings grew from 1986-2004, savings have declined since this period. While there is agreement that the increase from 1986-2004 came from RRSP contributions, what the consultation paper fails to report is that those Canadians relying solely on RRSPs have saved insufficiently for self-sufficiency in retirement, despite the increase in savings up to 2004. In fact, the current economic downturn has delayed the retirement plans of those individuals relying solely on RRSPs for retirement income.

The paper points out that the administration of current locking-in rules and transferring funds are complicated or cumbersome, but this is not a reason to eliminate the concept of locking-in pension funds. A better approach would be to address the problem and attempt to un-complicate the rules.

There are also a number of implications of unlocking pensions which the NLTA believes would have potential negative consequences for individuals. Access to group insurance, implications for spousal entitlement in division of pension, survivor benefit entitlement, and pension income splitting rules are issues which will arise with encouragement and incentive to remove funds from defined benefit plans.
In conclusion, the NLTA believes that the proposal to unlock pension funds is short-sighted and potentially detrimental to defined benefit plans and plan members. The concept is based on a false assumption and would lead to less self-sufficiency and a greater dependence on government for income support and a greater dependence on social support networks.

The NLTA appreciates the opportunity to have input and welcomes the opportunity for further discussion on this very important matter.
2009/08/21

Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
2nd Floor, West Block
Confederation Building
P.O. Box 8700
St. John's, NL A1B 4J6

Dear Julian McCarthy:

Thank you for the opportunity to express views relating to the status of certain pension funds transferred from the Public Service Pension Plan (PSPP) in accordance with the Pension Benefit Act (1997) and subsequent regulation(s).

This matter is of specific personal interest as I strive to combine a number of pension plans in which personal participation was a part of occupational benefits during my various and sundry employment relationships.

From a global/ideological perspective, it is the responsibility of the Government of Newfoundland and Labrador to protect the fiscal integrity of the PSPP but such responsibility should be enforced as regulatory authority is applied to provisions allowing funds to be transferred out of the PSPP. Subject to Canada Revenue Agency (CRA) regulation(s) ; once a former participant in the PSPP is allowed to withdraw personal and/or Employer contributions from the PSPP or is permitted to transfer said funds to another retirement plan or program then the state (government) should trust and allow the individual or the administrators of the receiving retirement plan or program, as the case may be, to manage these funds without state interference as the citizen prepares for and anticipates his/her retirement goals. This view becomes part and parcel of a citizen's rights and responsibilities from and to a free-market, liberal-democratic state.
Presently it is possible to access, on an annual basis, some portion of funds transferred from the PSPP and subsequently locked-in another pension program or financial structure available at chartered banks/credit unions etc. Such access is rigorously regulated and controlled and, further, prevents the citizen from taking full advantage of investment opportunities and tax sheltering provisions. There is no oblivious advantage for the PSPP in this regime of regulatory rules that can become extremely prejudicial to the former participant in the PSPP.

I would like to describe my own historic circumstances to aid in your deliberations and to press the point that it is unfair and fiscally prejudicial to former PSPP participants, who have not been able to contribute to the PSPP during their complete work lives because of occupational realities, when Government maintains control of the former participant’s pension funds after said funds have been transferred to another pension carrier or custodian who, themselves, are fully regulated by federal law and consequent regulations thus protecting the fiscal stability and property rights of pension funds.

Upon approaching retirement age I initiated a process of combining my assets in these pension/severance programs with the assistance of and upon the advice of professional pension managers.

It was/is impossible to transfer my pension assets from other pension/severance funds into the PSPP. That would have been my choice.

Dealing with pension assets transferred from the PSPP to my pension manager was a much more difficult matter. There were severe restrictions on my ability to access these pension assets requiring a complicated process of controlled, annual withdrawal and reinvestment that were accompanied by income tax liabilities which in turn seriously reduced my RRSP contribution room. Provincial regulation(s) surrounding and
Involving my gaining access to my pension funds cost me significantly and prevented me from achieving the best possible retirement preparation for myself and my family.

Nevertheless, it was possible to annually withdraw, with tax liabilities, small portions of my pension assets locked-in by PSPP regulation(s) and transfer the net of these funds to my central pension fund. Unfortunately, I am now faced with another PSPP obstacle as I prepare for retirement. Because I will enter my pension assets, locked-in by PSPP regulation(s). For all means and purposes the I will no longer be able to have annual access to my PSPP locked-in assets; which is rightly my money because the state has given it to me, is of insignificant use to me as I prepare for retirement because the same state has decided that I cannot have complete control of these pension assets. The state has decided that I cannot be trusted to prepare for my retirement.

If it were possible for me to strategically control and transfer this which you have locked-in through PSPP regulation(s) then these pension assets could become a productive part of my professionally managed retirement plan. Otherwise, it finances pet food on a monthly basis.

Not only is this regulatory regime unfair to previous participants in the PSPP:- it is ridiculous when one considers that as pay appropriate taxes, and spend the net proceeds in any manner she chooses.

Present regulatory control of locked-in pension assets transferred from the PSPP into another pension program is a losing proposition for those who do not remain in the public service for a full career and is of no oblivious advantage to Government or the PSPP.

I propose the following based on my efforts to prepare for my retirement in the best interests of myself and my family which, I respectfully suggest, is a situation that I am in a much better position to evaluate and strategize then is the state.

1. that present regulations creating criteria for pension asset access and/or transfer shall remain as at present. Should such access and/or transfer threaten the fiscal stability of the PSPP, then such regulation(s) should be reviewed.
2. *that when a former participant in the PSPP transfers pension assets, in accordance with PSPP access regulation(s), to another registered pension program; then such transferred funds shall be subject only to CRA regulation(s).*

3. *that any former PSPP participant, who has reached the age of sixty-four years and has locked-in funds transferred from the PSPP, shall be permitted to transfer such locked-in pension assets to the pension plan/program of his/her choice and shall be permitted to access and administer said pension funds without any interference whatsoever from the PSPP.*

In closing, this writer stresses that the foregoing would become mute for present and future PSPP participants if governments in Canada would legislatively agree that there is to be complete mobility between all registered pension plans/programs; thus, giving pension plans/programs a flexibility that could deal fairly with a highly mobilized workforce.

I trust the foregoing will be of some assistance in your deliberations.

Sincerely

s. 30 (1)

Note:- signed original forwarded via Canada Post.
To Julian McCarthy,

In response to the questions concerning "Unlocking Pension Funds":

1. No, government should not maintain its existing locking in legislation because in my case it has caused me to endure financial hardship which could have been avoided by accessing my funds.

2. Yes, government should eliminate locking in requirements altogether in order for people like myself to avail of their pension funds when and how they see fit.

3. Should the government allow portions of a fund to be unlocked or not? I think they should provide 100% unlocking capabilities to the owner & let the person control their own financial future with regards to their pension funds.

4. Should unlocking be based on a needs assessment? I think no, for reasons previously stated.

5. Should unlocking permission be available at certain ages, i.e., 50, 55? I think not because in today's society most people would still elect to have full...
control over any or all monies that is theirs now or at a future time.

6. Should unlocking be based on other conditions or criteria beyond financial hardship is once again of no or little benefit to the general populace in today's global society.

7. Personal Comments:

Thank-vous sincerely
for your interest
Dear Mr. McCarthy,

This letter is in reference to the ‘pension situation’ I find myself in with regards to the Locked-In legislation controlling my registered pension plan. The following is simply my opinion on the matter and an attempt to gain access to a greater, more livable amount of funds from the plan.

It goes without saying that I don’t think the government should have such control over the money that I and my employer contributed. The existing locking-in legislation is having a detrimental effect on my quality of life. It is impossible to live on what is allowed at this point.

I understand that legislation is put in place to protect people and prevent people from prematurely depleting their funds, however something must be changed to allow the pensioners full or greater access to their own money. Feel free to contact me if you require any further information. Thank you for your time.

Respectfully,
August 12, 2009

Julian McCarthy, Dep. Supt. of Pensions
Department of Government Services
2nd. Floor, West Block
P. O. Box 8700
St. John’s, NL A1B 4J6

RE: Possible Unlocking of Pension Funds

I wish to respond in general terms to the Consultation Document provided on this matter.

I am personally in the position of having left pensionable service prior to being eligible for a Pension and subsequently withdrew my funds to a locked in RRSP under the present regulations. The rules governing monthly payment of funds once this step has been taken are extremely restrictive; the amount you are permitted to withdraw has no relevance whatsoever to your needs or desires but seems to be arbitrarily set. Access to additional funds if needed is denied, and this after approximately [redacted] of public service. To what purpose are these regulations which deny a person access to their own money? Decisions to do so would have no effect on the Public Treasury but would be totally personal and should not be subject to a third party’s determination of need.

In times of extreme stress, whether it is physical, emotional or financial, the requirement to deal with a bank bureaucracy to access needed funds further exacerbates an already traumatic situation. Aside from an emergency need, it would be most beneficial to have the ability to improve your standard of living, whether it is a long desired vacation, paying down a mortgage balance or assisting your children with a major purchase or educational costs.

Thank you for considering my point of view as outlined.
#1. Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a Registered Pension Plan. Why or why not??

NO, I DO NOT THINK THE PROVINCIAL GOVERNMENT SHOULD MAINTAIN ITS EXISTING LOCKING IN LEGISLATION FOR FUNDS ACCUMULATED IN REGISTERED PENSION PLANS BECAUSE I FEEL EACH INDIVIDUAL HAS A RIGHT TO CHOOSE WHERE THEIR FUNDS ARE BEING HELD IN ADDITION TO BEING ABLE TO ACCESS THEM SHOULD THE NEED ARISE.

#2. SHOULD THE PROVINCIAL GOVERNMENT ELIMINATE LOCKING IN REQUIREMENTS ALTOGETHER ON MONEY THAT IS ACCUMULATED IN A REGISTERED PENSION PLAN TO BE UNLOCKED WHERE AN INDIVIDUAL LEAVES THE PLAN BEFORE RETIREMENT. IF SO WHY AND HOW MUCH SHOULD BE LOCKED IN.

YES, I FEEL THE PROVINCIAL GOVERNMENT SHOULD ELIMINATE LOCKING IN REQUIREMENTS ALTOGETHER ON MONEY THAT IS ACCUMULATING IN A REGISTERED PENSION PLAN TO BE UNLOCKED WHERE AN INDIVIDUAL LEAVES THE PLAN BEFORE RETIREMENT. ALL MONIES COULD BE USED AT THE DISCRETION OF THE INDIVIDUAL TO BE INVESTED AS THEY SEE FIT. MANY PEOPLE WOULD POSSIBLY TRANSFER THE FUNDS INTO THEIR REGISTERED RETIRED SAVINGS PLAN FOR THEIR RETIREMENT YEARS.

#3. SHOULD THE PROVINCIAL GOVERNMENT PROVIDE FOR ONLY A PORTION OF FUNDS SUCH AS 25% OR 50% THAT IS ACCUMULATED IN A REGISTERED PENSION PLAN TO BE UNLOCKED WHERE AN INDIVIDUAL LEAVES THE PLAN BEFORE RETIREMENT?? IF SO WHY AND HOW MUCH COULD BE UNLOCKED?

NO, I DO NOT THINK THE PROVINCIAL GOVERNMENT SHOULD PROVIDE FOR ONLY A PORTION OF THE FUNDS TO BE UNLOCKED WHERE AN INDIVIDUAL LEAVES A PLAN BEFORE RETIREMENT. I FEEL ALL FUNDS SHOULD BE UNLOCKED AND THE INDIVIDUALS THEMSELVES OUGHT TO BE RESPONSIBLE TO INVEST AS PER THEIR INDIVIDUAL CHOICES.

#4. SHOULD THE PROVINCIAL GOVERNMENT ALLOW FOR ALL OR A PORTION OF FUNDS THAT ARE ACCUMULATED IN A REGISTERED PLAN TO BE UNLOCKED ONLY WHERE THEIR IS FINANCIAL HARDSHIP DETERMINED THROUGH A NEEDS ASSESSMENT? IF SO WHY AND WHO SHOULD DO THE NEEDS ASSESSMENT AND WHO SHOULD PAY TO HAVE THE ASSESSMENT DONE? IF NOT WHY NOT??

I DO NOT THINK THE PROVINCIAL GOVERNMENT SHOULD ONLY ALLOW FOR THE RELEASE OF FUNDS WHERE THERE IS FINANCIAL HARDSHIPS AS THERE WOULD BE DIFFICULTY IN ASSESSING SUCH HARDSHIPS AND IT WOULD BE COSTLY TO CARRY OUT SUCH AN ASSESSMENT. IT WOULD MAKE MORE SENSE FOR THE PROVINCIAL GOVERNMENT TO UNLOCK THE PENSION AND ALLOW INDIVIDUALS TO AT LEAST BE ABLE TO TRANSFER IT OVER TO THEIR REGISTERED RETIREMENT PLAN. MOST INDIVIDUALS ARE RESPONSIBLE TO HOLD ON TO THESE FUNDS FOR THEIR ACTUAL RETIREMENT YEARS.

#5. SHOULD THE PROVINCIAL GOVERNMENT PERMIT UNLOCKING OF PENSION FUNDS ONLY AFTER A PLAN MEMBER HAS REACHED A CERTAIN AGE SUCH AS 50 OR 55?? IF SO WHAT SHOULD BE THE AGE???
WHY??/

NO, I THINK THE PROVINCIAL GOVERNMENT SHOULD PERMIT THE UNLOCKING OF PENSION FUNDS REGARDLESS OF AGE. IN THIS WAY PEOPLE COULD INVEST AS THEY CHOOSE, WHEN THEY CHOOSE TO DO SO.

#6. SHOULD THE PROVINCIAL GOVERNMENT ALLOW FOR ALL OR A PROPORTION OF FUNDS THAT ARE ACCUMULATED IN A REGISTERED PLAN TO BE UNLOCKED UNDER CONDITIONS OR CRITERIA BEYOND FINANCIAL HARDSHIP? IF SO WHY AND WHICH CONDITIONS OR CRITERIA SHOULD BE APPLIED??

YES, THE PROVINCIAL GOVERNMENT SHULD PERMIT THE UNLOCKING OF PENSION FUNDS IRREGARDLESS OF CONDITIONS OR CIRCUMSTANCES.

#7. ARE THERE ANY OTHER COMMENTS OR SUGGESTIONS YOU WISH TO PROVIDE ON THIS ISSUE??/

Thank you.

P.S. Please excuse the typing errors 😁... my "h" is not cooperating and I am rushing to submit this before I go on holidays. Will not be in the province when this is due September 8th.

Take care 😊
August 4, 2009

Mr. Julian McCarthy  
Deputy Superintendent of Pensions  
Department of Government Services  
2nd Floor, West Block  
Confederation Building  
P.O. Box 8700  
St. John's, NL  
A1B 4J6

Dear Mr. McCarthy:

RE: Unlocking Pension Funds

Manion, Wilkins & Associates Ltd. is providing the attached commentary in response to your request for views on the subject of unlocking pension funds.

Yours very truly,

21 Four Seasons Place  
Suite 500  
Etobicoke, Ontario  
M9B 0A5

web: www.manionwilkins.com

Q/CPS DEPT./NL: Unlocking Pension Funds. August, 2009
UNLOCKING PENSION FUNDS

1. Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or why not?

Many of our clients are responsible for multi-employer pension plans. Under such plans, pension contributions are negotiated under the terms of collective agreements as part of the total wage package. The union negotiates pension contributions on behalf of its members as deferred compensation in order to provide some security upon retirement from the trade when a member is no longer employed. The pension received from the private pension plan, along with government pensions and private savings, provides income during retirement. Changing legislation to allow transfers of pension entitlements to non-locked-in vehicles, where individuals may access the funds before retirement, would defeat this purpose.

2. Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or why not?

Registered pension plans and the legislation regulating such plans were designed to provide retirement income. Eliminating the locking-in requirements altogether would put the whole concept in jeopardy. Today’s work force is a transient work force. No longer is a worker guaranteed a job with the same employer for the duration of his adult life. Pension benefits earned while employed with one employer may seem insignificant upon termination of employment and unlocking such entitlements, when employment terminates, to pay for a current expense may appear to have little impact on income in the far distant future of retirement. However, a number of small pension accumulations when added together may provide a reasonable income upon retirement.

3. Should the Provincial Government provide for only a portion of funds, such as 25 per cent or 50 per cent, that is accumulated in a registered pension plan to be un-locked where an individual leaves the plan before retirement? If so, why and how much should be unlocked?

There should be no need to allow any portion of the pension entitlement to be unlocked, except if the member is in financial hardship. Legislation allows benefits to be transferred to prescribed vehicles under the portability regulations if a member is not eligible to retire. Plans may allow portability after a member is eligible to retire. Portability allows the member to take control over his pension funds. Upon termination, the member can make a decision whether he wants to take control of his pension funds, including making his own investment decisions, or if he wants
to leave his benefit under the control of the plan and its administrator. Changes could be made to pension regulations to require that portability be available to all members who terminate membership before retirement, even if they are eligible to retire. Also, under current regulations, a member is only permitted to elect a transfer at the time of his termination of membership. The regulations could be changed to allow former members to elect to transfer their entitlements out of the plan at any time after termination until their normal retirement dates.

4. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

Unlocking of pension funds should only be allowed where there is financial hardship determined through a needs assessment. The assessment should be done by the provincial government agency regulating the pension plan, based on an application filed by the plan member including supporting documentation of his financial situation, with the cost of such assessment included in the overall cost of regulating pension plans, such as fees charged for registration of pension plans and annual fees.

5. Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so, what should be the age and why?

If unlocking of pension funds is permitted, it should only be allowed when a member is eligible to retire under the plan unless there is financial hardship. As an individual ages and approaches the age when retirement could become a reality, any decision on whether to tap into his pension funds will likely involve some deliberation as to whether such action would seriously affect his retirement income and quality of life after retirement. Having such a restriction may protect the integrity of the system.

6. Should the Provincial Government allow for all, or a portion of funds that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied?

Pension legislation was designed to provide and preserve retirement income. Introducing conditions, other than financial hardship, under which pension entitlements could be unlocked would be contrary to the whole concept under which the system was created and is currently regulated. If a plan sponsor had wished to allow employees to access the funds before retirement when he established the pension plan, he could have provided a Group RRSP instead of a pension plan.

7. Are there any other comments or suggestions you wish to provide on this issue?

1. Historically, one of the chief differences between Canada and the United States has been our tighter social safety net. Provincial health care is one example of a paternalistic measure that Americans have, until recently, resisted. Recently, that stance is being re-examined by many if not most Americans. With this as an example, we should be doubly wary of loosening our own social safety net.
There will always be a segment of the population which would be more than able to handle the stewardship of their own financial destiny. This may be due to good planning skills, but in many cases it is due to higher income, the availability of insurance, family help etc. There will also always be other individuals for whom money management is more difficult. Sometimes this is due to an event or series of events beyond their control. These people are the very ones who can benefit most from locking-in provisions governing pension savings. While a young worker may be tempted to use his pension savings for another purpose, in many cases he will regret this decision when he approaches retirement age. This does not refer to withdrawals made in the face of true hardship, as there are already provisions in place to allow for these situations.

2. One specific problem which could be caused by the unlocking of transferred pension money is employees who terminate service to receive their pension entitlements and then being re-hired by the same employer. Fortunately, under current legislation, the problem’s scope would be limited because it could only occur in plans with immediate vesting and the employee would have to terminate prior to his funds becoming locked-in. For an employee who enquired about his entitlement after locking-in had occurred, terminating service would no longer entitle him to a cash settlement. If pension funds could be taken in cash after the legislated vesting period (2 years’ plan membership), this situation could arise again and again and the member could end his career with no pension savings at all.

3. If pension entitlements are no longer subject to locking-in provisions upon termination, it is likely that the number of future seniors qualifying for Guaranteed Income Supplements and Welfare will increase. As stated previously, our workforce is now much more transient than in the past. Most of us will not retire with one pension entitlement from one employer. Most workers today will have several small pension entitlements from different employers. If they cash them all out, the only pension income they have will be from government sources.
July 10, 2009

Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
2nd Floor, West Block
Confederation Building
P.O. Box 8700
St. John’s, NL A1B 4J6

Dear Mr. McCarthy:

The Canadian Institute of Actuaries is pleased to provide comments on the June 15, 2009 memo concerning the unlocking of pension funds. A significant number of our members practise in the pensions area, and for the past number of years, we have taken a more proactive approach in discussing pension issues and putting forth public positions.

Like many others, we share the concern that Canadians are not saving adequately for retirement. As well, we acknowledge that the Canadian pension system has been weakened over the past 20 years, a situation that has been exacerbated by the recent economic crisis. We believe it is in the best interest of Canadians to build greater security surrounding their retirement income, and we support appropriate changes in pension legislation or regulation that help achieve that goal.

Specifically with regards to the proposals in your June 15 memo, we do have concerns about the treatment of funds transferred out of a pension plan. We understand and support the intent of locking-in provisions, as they ensure that the funds are used for their original purpose; namely, to provide a retirement income. Although there is value in providing more flexibility for plan members, our concern stems from the fact that funds transferred to a non-locked-in vehicle could be used for other purposes. This increases the risk that an adequate retirement income will not be available, at which point the retiree is left with no recourse. As well, employers provide a pension with the intent that it will be used for that purpose only, and alternative uses may diminish their perception of the value of defined benefit pension plans and become a deterrent to some sponsors to maintain existing plans or others to launch new plans.

We thank you for the opportunity to offer our comments on this issue.

Yours truly,
June 29, 2009

Mr. Julian McCarthy
Deputy Superintendent of Pensions
Dept. of Gov’t Services
2nd Floor, West Block
Confederation Building
P.O. Box 8700
St. John’s, NL A1B 4J6

Dear Mr. McCarthy:

Re: Unlocking Pension Funds

My name is [redacted] and I am [redacted] years old. I worked for [redacted] with [redacted] mainly as a [redacted].

If I had been able to use my pension money, I would have been in a better situation earlier on. Because my pension plan money was not a huge amount, the maximum amount I could draw wasn’t enough to help my family financially.

[redacted] plan, which is hardly enough to live on. Although I was one of the few who sought advice from a financial advisor, there wasn’t much that could be done to supplement my other income because of the restrictive government legislation. I think I should be able to manage my own money the way I want. I was the one who paid in the money in the first place along with my employer, not the government, and now they won’t let me get it back when I need it the most. I didn’t pay the money in so someone could have it when I die, I need to spend it myself earlier in my lifetime for a comfortable retirement. I’m not asking for a
handout like a lot of other people (mills, fisheries, private businesses), I just want to be able to access my own money.

To answer your questions:

1. No, the Provincial Government should not maintain its existing locking in legislation.

2. Yes, the Provincial Government should eliminate locking-in requirements altogether.

3. No, the Provincial Government should not provide for only a portion of funds accumulated to be unlocked.

4. No, financial hardship should not enter into it. The plans should be allowed to be unlocked without restriction.

5. No, age should not be taken into account at all.

6. Yes, plans should be unlocked for whatever reason.

7. Other comments have been made above.

s. 30 (1) All of the people I’ve been talking to who have these types of pension plans feel the same way I do – that the unlocking should be removed without conditions as soon as possible. I believe in being responsible, not wasteful, with my money and I think the majority of early retirees, laid off workers, etc., would be the same way and if not, they would be responsible for their own actions.

I am telling everyone I know that has been affected as I have that they should contact their MHA’s to try to get some action on unlocking these plans. I sincerely hope that our voices will be heard and heeded so that changes will be made for the better.

Yours truly,
My name is [redacted] and I have [redacted].

I have a pension fund with [redacted], which I was laid off from there. The money that was in that pension plan would help me pay for bills and manage the [redacted] I have. So the money in the pension is supposed to be mine and I should have a say on how it can help me best.
1. No, it should not maintain its existing locking in legislation because the person who has the money in these pens in may need it for to pay certain bill that they have after they got laid-off from that company.

2. Yes, they should because there may be a need for that money to be used in other areas, such as paying of bills that this person may owe.

3. No, because the person that has the money in these pens in is own by that person, and should be controlled by that person, not the government.

4. All of the funds should be unlocked for any reason because the money belongs to that person and should be controlled by him or her.

5. Age should have not thing to do with this; it should have to do with if that person need them fund for certain financial difficulty.

6. All of the funds that is accumulated should be unlocked under the conditions of financial hardship because if that person is laid-off or terminated from the company he was with, then he may need that money to paid certain bills or manage on so have so he won't loose it.

7. The only concern that I have is that the money put in these pens in, are suppose to help that person at anytime. The the money should be control by him, not the government.
June 10, 2009

Julian McCarthy  
Deputy Superintendent of Pensions  
Department of Government Services  
2nd Floor, West Block  
Confederation Building  
P.O. Box 8700  
St. John’s, NL A1B 4J6

Dear Mr. McCarthy:

As a person who is affected by the current status of the locked-in legislation for funds accumulated in a registered pension plan, I would like to give you my views on this subject.

I worked at the [redacted] for [redacted] years. When I retired in [redacted] years of age, the total amount I was allowed to take from my locked-in pension plan was [redacted]. Without RRSP's or some other kind of savings, we are required to live on the Government's allowable amount of money from my pension. If I'm not mistaken, that amount is below the poverty line!!

Furthermore, when I reach the age of 65, I am only allowed to access 6% of what remains in my locked-in pension plan.

In my opinion, I don't think Government should have the right to tell me how much money I can take from a pension plan to which only my employer and I contributed. I don't think the Provincial Government should maintain its existing locking-in legislation for these funds because it is impossible to live on what Government allows each year. That's not to say they should eliminate locking-in requirements altogether where an individual leaves the plan before retirement. I think a person should be 55 yrs. old and retired before it is eliminated. However, a person should be allowed access to a portion of it, possibly 25%, before retirement.

Personally, I believe that when a person retires at the age of 55, he or she should have the right to access ALL their pension money and manage it in the way they deem best for their situation. To me, this should be the only criteria necessary for total access to locked-in pension plan money.
Mr. McCarthy:

Please disregard my earlier email and see attached letter from [Blank]. Thank you.

Regards,
September 8, 2009

Mr. Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
P.O. Box 8700
St. John’s, NL A1B 4J6

Dear Mr. McCarthy:

RE: Unlocking Pension Funds

Thank you for the opportunity for Newfoundland and Labrador Credit Union Limited (NLCU) to provide input on possible changes to the Newfoundland and Labrador Pensions Benefit Act (1997). As a credit union, each year we manage and comply with the challenges that current legislation creates for our member-owners. We often hear complaints from these member-owners on the restrictions they encounter under current legislation. The most common feedback is in regard to the fact that they do not understand why they can manage their pension dollars invested in a locked-in Registered Retirement Savings Plan (RRSP) yet they are forced to purchase an annuity with these funds at retirement.

There is an abundance of educational information, expertise and resources available for consumers to avail of when analyzing options that can enable them to make wise choices to meet their personal financial goals. These member-owners will only withdraw from their RRSPs as a last resort. Additionally, in today’s labour market, employees tend to be more mobile and no longer remain with the same employer for extended periods. Statistics indicate that an individual entering the workforce today may change employers up to five times during their career. These workers desire the option of managing their retirement investments should they change employers, and they need to have the flexibility to consolidate various locked-in RRSP plans, allowing them to maximize their retirement dollars. Current legislation is restrictive and does not allow for this. The number of businesses offering defined pension benefit plans has declined in recent years while investments in RRSPs have increased (Shifting Pensions, Philippe Gougeon). Our member-owners, who plan for their retirement by investing in RRSPs, have the flexibility to manage their portfolios without encountering restrictions applicable to locked-in RRSP plans. This is the case even when an employer has made contributions to these plans. Member-owners who have participated in defined benefit plans, however, are governed by the locking-in provision. This alone causes concerns and raises the question as to whether these workers are being treated fairly and equitably from a constitutional perspective.
Life is unpredictable and people rely on their savings when they face financial difficulties. Financial stress can be alleviated more easily for those who have invested in RRSPs. If savings have accumulated in the form of pension contributions, however, it is not easy to access funds in the case of emergencies. The individual has to apply to a third party based on set criteria as to why they need to access their savings. This is a time consuming process for the consumer, the financial institution and our provincial government. For member-owners who are already stressed, this can be demoralizing and frustrating.

Additionally, the removal of legislative restrictions on locked-in RRSPs should assist the provincial government with its red tape reduction strategy.

Regardless of the individual’s age, we believe that the existing locking-in legislation should be eliminated entirely for pensioned employees that leave an employer prior to retirement. Based on the recommendation for the elimination of the locking-in provision, there would be no need for a clause to allow for unlocking due to hardship.

Once again, thank you for the opportunity to provide input.

Yours truly,

s. 30 (1)

1.  
2.  
3.  
4.  
5.  
6.  
7.  
(1.) "NO" In my opinion I don't think that the Prov Govt should maintain it's existing locking in legislation for funds accumulated in a registered pension plan. I think that people who are affected by this - including myself have a right to manage our own money and invest it on the individual's need/choice or circumstances. I think it should be unlocked and let people have control over their own finances' money. The economy has changed so much over the last 2 years - people have to make a lot of changes - financial changes. Many people have to cut back on a variety of things(houses/cars/entertainment/children/clothing/food/gas-etc and the list goes on.

(2) "YES" - In my opinion I think that the Prov Gov't should eliminate LOCKING IN REQUIREMENTS ALTOGETHER on money that is accumulated in a registered pension plan where an individual(including myself) leaves the plan before retirement. I think that 100% should be unlocked with this. I think that an individual has the right to look after and have access to their own money - which they contribute through these RRSPs, including myself for 11 years. My understanding with NORMAL RRSP'S is not locked in and can be accessed-cashed at any time and you have to pay the normal taxes-etc-
(2) Pension RRSP’s should be no different-you should be able to have access through your own money-fines and have control over it. I don’t think that this should be treated differently or separately. If you withdraw-you have to pay the taxes-it shouldn’t be treated any different from an RRSP.

(3) I think that 100% should be unlocked if Gov’t DOES GO AHEAD AND DECIDE TO UNLOCK. I don’t think 25% - in my case for example will change anything for myself- I think if Govt are going to do this unlock 100%. Not every individual is going to go out and withdraw all there money-it makes sense for some people to leave it there- but for others including myself it makes absolutely perfect since to try and have this legislation changed. As I stated I’d pay off my bank loan - and live normal again-and be able to be a FAMILY AGAIN. Again individual should have control over there own finance’s and again it should be treated no differently then a RRSP-which as stated can be accessed at any time.

(4) I think that the “FINANCIAL HARDSHIP QUALIFICATION -OR DEFINITION needs to be changed and looked upon very seriously- I believe right now in some provience’s it’s defined as being terminally ill- this needs to be looked at very seriously- qualifications are prejudice in my opinion. I think as I stated in my case I should qualify in my opinion- buy I’m not terminally ill. In order to do a proper assessment I think that your Financial instution- your own bank or credit union should be included in this. I think that the individual should pay the money(just like an appraisal on a house) I would suggest a fee of $100-$300 somewhere around that area) What this really is - is an appraisal on an individual’s finances. The needs assessment should be done though the individual and his/her bank/credit union, etc

s. 30(1)

(5) I don’t think that the age should be the big issue here. I think that assessments should be done through the individual and his/her financial instution/credit union- regardless of age. For example I’m. My financial situation is now for myself- not when I become 50 or 55. I’d like to live for sure 50-55 and longer. I find this also somewhat prejudice- race/age/gender/nationality shouldn’t be a factor here. Individuals should have full control (100%) over there finance’s- it’s THERE MONEY that THEY contributed over the years(11 years for me)

(6) Provincial Gov’t “DEFINITELY” SHOULD look beyond financial hardship conditions or criteria if it does allow for all or a portion of the funds to be unlocked. An assessment between the individual and his/her financial instution/credit union should be looked upon here. I think that the “FINANCIAL HARDSHIP QUALIFICATION -OR DEFINITION needs to be changed and looked upon very seriously- I believe right now in some provience’s it’s defined as being terminally ill- this needs to be looked at very seriously- qualifications are prejudice in my opinion. I think as I stated in my case I should qualify in my opinion- buy I’m not terminally ill. In order to do a proper assessment I think that your Financial instution- your own bank or credit union should be included in this. I think that the individual should pay the money(just like an appraisal on a house) I would suggest a fee of $100-$300 somewhere around that area) What this really is - is an appraisal on an individual’s finances. The needs assessment should be done though the individual and his/her bank/credit union, etc. Another thing or note that
(6) can also be considered here for example is when a person or individual leaves (gets fired) or

(7) Some suggestions that I would welcome or like getting looked into - Financial hardship - it’s definition and its qualifications - and for people like myself who are affected but nothing can be done at present (I’m and legislation doesn’t permit it). I’d like Gov’t to look at IMMEDIATE DIFFICULTIES - that affect individuals - like § 30 (1) myself with my situation I’m in right now. Also if Gov’t could look at another possible option is Employers contributions and Employee’s contributions/ MAYBE look into being able to get Employees portion available to individuals for withdrawal.

Thank you Mr. McCarthy for enabling me to express my opinion on this very important issue. I certainly would like to hear of any new information or updates-etc regarding locked in RRSP changes.

Thank you
McCarthy, Julian

From: Pensions,
Sent: Wednesday, June 24, 2009 10:17 AM
To: [REDACTED]  s. 30 (1)
Cc: McCarthy, Julian
Subject: FW: PENSIONS

We have forwarded your email to Mr. Julian McCarthy, Deputy Superintendent of Pensions.

The Pensions Administration Division
Department of Finance

From: [REDACTED]  s. 30(1)
Sent: Tuesday, June 09, 2009 10:12 AM
To: Pensions,
Subject: PENSIONS  s. 30 (1)

My name is [REDACTED] I heard last night on the NTV news- that govt was looking for feedback on what they should do with pensions- just wondering if this is the right email address.

If this is the right address- what CAN I DO, ETC

Thanks

Internet Explorer 8 makes surfing easier. Get it now!

9/9/2009
Hello Mr McCarthy,

I am sending a submission of the Canadian Bar Association’s National Pension and Benefits Law Section in response to the Consultation Document on Unlocking Pension Funds. Please let me know if there are any problems in transmission, or questions concerning the response. Thank you.

Yours truly,

Canadian Bar Association
Potential copyright material

If you wish to obtain a copy please contact the ATIPP Office at (709) 729-7072 or atippoffice@gov.nl.ca.
McCarthy, Julian

From: [Redacted]  s. 30 (1)
Sent: Friday, June 12, 2009 10:53 AM
To: McCarthy, Julian
Cc: [Redacted]  s. 30 (1)
Subject: Response to Unlocking Pension Funds
Attachments: Reply To Julian.rtf

Looking for the perfect gift? Give the gift of Flickr!
Julian McCarthy  
Deputy Superintendent of Pensions

My comments referring to the questions in the Consultation Document regarding Unlocking Pension Funds are as follows:

The Provincial Government should unlock funds accumulated in a registered Pension Plan 100% I feel people should have control over their own finances and do what is best for their own individual circumstances.

I think that it should be unlocked at retirement age of 55 and let the individuals control the funds unless an individual needs it at an earlier age due to hardship or other circumstances.

Please confirm you received my comments to:

---

Thank You.

---
McCarthy, Julian

From: [Redacted] [s. 30 (1)]
Sent: Tuesday, September 08, 2009 11:30 AM
To: McCarthy, Julian
Subject: Unlocking Pension funds Consultation

Dear Mr. McCarthy,

I have reviewed the memo from Winston Morris, Superintendent of Pensions dated June 11, 2009 and would like to offer my opinion on the unlocking of pension funds.

Over this time, I have been the unfortunate bearer of bad news to many clients (under age 55) that they cannot access their LIRA money because of provincial government legislation. Some of these clients have lost jobs, or have been off work due to sickness or illness (not life threatening) and many have found themselves filing for personal bankruptcy because they cannot access these funds.

1) It is my belief that the Provincial Government of Newfoundland follow the newly amended Federal Legislation and allow financial hardship unlocking based on any age for conditions such as medical or disability related expenditures and low income.

2) I also believe that any LIRA that has a balance of less that 50% of the YMPE ($23150.00) should be considered a small balance and regardless of any age should be allowed to be unlocked. Clients could then move the funds back into an RSP and use it as they require it. Some of these small plans cause an administrative nightmare for clients and financial institutions. They may have worked for 4 companies in their lifetime and have four individual plans that they will eventually receive four small amounts of income from.

3) The Federal Government has also implemented a One-Time 50 Per Cent Unlocking that will allow clients age 55 or older the option to purchase a new Restricted LIF, under which they will have a one-time opportunity to unlock 50% and transfer the monies to an RRSP or RRIF. This should be implemented by the Provincial Government as well.

Thank you for your time.
McCarthy, Julian

From: [redacted]  s. 30 (1)
Sent: Monday, July 27, 2009 11:44 AM
To: McCarthy, Julian

Subject: Unlocking Pension Monies

Julian,

I would like to comment on the Provincial Government permitting the unlocking of pension funds. I was employed and because of being in an isolated area was making excellent monies. Since I am leaving the company Newfoundland and my plan was to find a position equal to what I had in Newfoundland as well. Unfortunately the cost of relocating from an isolated is unbelievably expensive and Companies are not paying relocation any longer because of the times so it is up to an individual to pay. If an individual would like to relocate for the sake of employment the decision to incur outrageous relocation costs (which I understand you can claim on your income tax) must be made. Sometimes for mental health it is worth it.

If I could get my pension monies unlocked I would be able to pay these bills and then adjust our living according to our new incomes. It does not seem fair that the Government will bail the financial institutions out but will not permit an individual like myself access to my own monies so that I can clean up my outstanding debts.

I understand that we as individuals spend according to our incomes and some probably more, but in today's economical hardships people are having difficulties. I would like very much to be able to get a portion of my pension monies out to be able to well as I am sure that many people are having difficult times but it is very stressful to know that you have a certain amount of monies but because of our Government we cannot access it. Many people are probably in the same boat, so does this mean that the bankruptcy rate is going to increase? If people cannot access their monies some may have no other choice but to declare bankruptcy. I am aware that it affects your credit rating but so does not making payments. Some people may not have a choice.

Just Another Frustrated Voter,
McCarthy, Julian

From: [Redacted]
Sent: Friday, July 03, 2009 12:41 PM
To: McCarthy, Julian
Subject: Fw: Pension Unlocking

Attachments: PensionLegislation.doc, Consultation_Document_Unlocking_Pension_Funds_April_2009.pdf

(See attached file: PensionLegislation.doc)
Folks.....fyi....
The provincial Government is in the process of doing a consultation on amendments to
existing pension legislation. The attached document is for information purposes and, as
well, some of you might wish to do written submissions to express your own views.

(See attached file:
Consultation_Document_Unlocking_Pension_Funds_April_2009.pdf)

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retour de courriel et en détruire toutes les copies existantes.
Throughout those years I have dealt with many pension transfers for my clients, all of which had very unique situations. Upon reading the potential changes, that are being proposed, I found myself pondering why or why not this would be the correct decision. I will try to explain my thoughts on this process below in the numbered format. Although you will find that a lot of my reasoning will be overlapped.

1. I believe that the government should leave the pension guidelines as they are stated now. The main objective of a pension plan is to provide employees with an income during retirement. There are many restrictions put on these plans to ensure that A) the monies can only be used during retirement (excluding exceptions for financial hardship and life expectancy will be shortened) and B) the pensioner will not be able to outlive their money. If these guidelines are changed, it will defeat both foundations of the plan. Also, you must be considerate of income tested government benefits. For example: If 2 workers start at a company at the same age and both retire at the same age, one may be able to receive more money than the other, from government benefits, during retirement. If employee A, quits one year before his retirement he can take all of his money to do what ever he pleases, and then may be able to qualify for income tested benefits during retirement, because his income will be lower, because he was able to use his pension money before he retired. Employee B, did not have the benefit of a large sum of money, and is forced to take it out in stipulated payments (out of his control) which may prohibit him from qualifying for income tested benefits. Also, as you know, there isn’t much flexibility for a person receiving a pension from an employer whom they retired with. I feel that if a change is made, you must offer some changes to current pensioners as well.

2. Once again, basically the same reasons. I have completed many pension roll overs to locked in RRSP’s and the procedure is the same as an RRSP to RRSP transfer, except you need a locking in agreement. So the only difference in the transfer is 1 extra form needs to be completed.

3. I think the only exceptions that should be made to the current pension legislation, is for extremely low income earners prior to retirement, and people on permanent disability through CPP. But they should be able to access it on a fixed monthly payment as if they were retired. There should also be an exception made to people who are diagnosed with a life threatening condition, so they will have to option to spend all or some of their money while still being able to enjoy it.

4. Financial hardship should be defined on your household income only. The bills that some may have accumulated over the years, should not be a contributing factor in deciding if they should receive early pension income. For example someone who may now be on permanent disability, through CPP, and may have an annual income of below $10,000 per year. The process and forms should be simple, and should be little or no cost but can be paid from their locked in pension.
5. I do believe that their funds should be available to them at any age as long as they are not working. Some people may want to retire at age 50 or younger, which is their prerogative. But if they are truly retired they should be able to access their funds at any age. Keeping in mind the 2 main objectives of a pension plan which are A) the monies can only be used during retirement (excluding exceptions for financial hardship and life expectancy will be shortened) and B) the pensioner will not be able to outlive their money.

6. Please refer back to answers in 3, 4, and 5.

7. I think I have covered all of the answers that you were looking for. I think that if the legislation is changed, it will be opening up a large discussion for those that are receiving pensions, and those that will retire with a company and receive pensions. I will guarantee that these people will see this as unfair to them, and you will see a lot of long-term employees quitting their jobs, just short of their retirement date, in order to take advantage of the changes.
August 12th, 2009

Mr. Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
2nd Floor, West Block
Confederation Building
P.O. Box 8700
St. John’s, NL A1B 4J6
jmccarthy@gov.nl.ca

RE: Unlocking Pension Find Questionnaire

Dear Mr. McCarthy:

In regard to the above mentioned matter, I believe the Newfoundland Provincial Government should rethink its position and have the rules changed.

Referring to myself only, I worked for [Redacted] in St. John’s. For more than [Redacted] my employer had no pension plan with [Redacted] business. During this time, I raised a family with a stay at home wife and I worked hard to save a small amount for our retirement.

The company implemented a Registered Retirement Pension Plan which I was part of [Redacted]. As [Redacted], I have been trying to access the funds in my plan for retirement purposes. The plan is locked up and I have taken all the steps required by the plan to access the funds, which have been denied by [Redacted].

I have been told by [Redacted] that the plan is locked up and that the pension board or [Redacted] are the only ones who have the authority to unlock the plan.

I have prepared the necessary documentation to transfer the funds to an RSP plan or another registered pension plan. I have also included a letter from [Redacted] in which he states that he has attempted to unlock the plan and has not been successful.

I have attempted to obtain a copy of the plan documentation from [Redacted] but have been unsuccessful. I have also attempted to contact [Redacted] but have not been able to reach him.

I believe that the Newfoundland Provincial Government should review the pension plan and consider the implications for [Redacted] who have been locked out of their retirement funds.

Sincerely,

[Redacted]
To my dismay when I met with my financial advisor, I was informed about the provincial government rules regarding the amount of my savings I could draw on each month. Since that time I have had to re-evaluate my current financial situation. My income has been reduced significantly and... while waiting for government to act on unlocking my pension fund in order to live the comfortable lifestyle that we had planned and worked hard for.

I know of other retirees who have similar stories and this is why I believe it is essential for the provincial government to act on this matter without delay.

Sincerely,

Original copy to follow
Mr. McCarthy,

I attempted to obtain a delivery receipt, but a generated message indicated it was not possible.

Could you please confirm receipt of this documentation.

Thank you,

[Redacted]

From: [Redacted]  
Sent: Wednesday, August 12, 2009 4:18 PM  
To: 'jmccarthy@gov.nl.ca'  
Subject: Unlocking Pension Funds Questionnaire  
Importance: High

Dear Mr. McCarthy,

Please see the attached document with reference to the Consultation Document on Unlocking Pension Funds.

If you have any questions please do not hesitate to contact me.

Sincerely,

[Redacted]
McCarthy, Julian

From: [Redacted]  
Sent: Thursday, August 13, 2009 6:48 PM  
To: McCarthy, Julian  
Subject: [Potential Junk/Spam] comments to Consultation Document "Unlocking Pension Funds"  
Attachments: Consultation Document.docx

My comments and views are attached.
Consultation Document – Unlocking Pension Funds

Comments/views \ldots \text{ s. 30 (1) }

To

Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
2nd Floor, West Block
Confederation Building
P.O. Box 8700-
St. John’s, NL A1B 4J6
jmccarth@gov.nl.ca

I think it is appropriate and far over-due that the Government of Newfoundland and Labrador amend the *Pensions Benefit Act* (1997) which requires funds transferred from a registered pension plan before a person starts receiving a pension or is eligible to receive, to be in a “locked-in” retirement account.

I agree that with other individuals who have voiced complaints about this legislation. Taxpayers responsibility to government is to pay taxes – the government really should not be in control of the people’s personal retirement money – people need to take the responsibility to make decisions about their own retirement funding. The retirement money has been earned and the people themselves should be in charge of what to do with it, not the government. Most people ensure that their money is invested appropriately to provide supplementation for their retirement, however, it also gives some people a place to turn in the event of urgent emergencies helping them to not end up in dire financial straits.

With regard to the exceptions to the locking-in requirement, i.e. where a person has accumulated a small balance in the pension plan or if someone’s life expectancy is likely to be shortened considerably, my opinion is that the amount of money is totally irrelevant and if a person has to be dying in order for the government to give up control of the person’s money, we are in worse shape than I even ever thought. Life expectancy is also irrelevant in giving people control over their own money.

I concur with those who believe that they should be able to have access to their own money and manage it as they wish; I agree also with the argument that money accumulated in an RRSP is not locked-in and can be accessed at any time. Money accumulated in a registered pension plan should not be any different when the member leaves the pension plan due to termination of employment.

It is time to catch up with the other leading provinces and unlock these funds – and not just in the case of financial hardship. Acknowledge that the people should be responsible for their own choices – not the government. Why does not the Government of Newfoundland and Labrador lead the rest of Canada and give the people the respect they deserve. The total unlocking of pension funds when an individual terminates membership in a pension plan by leaving an employer and elects to transfer the funds out of the plan, is the only respectable choice, giving individuals control over their own finances and basing their choices on their own individual circumstances.
Specifically, in answer to question 4, the Provincial Government should not only allow these funds to be unlocked if there is financial hardship which would have to be determined through a needs assessment, but rather they should simply be unlocked, period. To carry out a needs assessment would mean the creation of yet another government agency, and more useless spending of taxpayers' money.

Specifically, in answer to question 5, the Provincial Government, should not require a person to be 50 or 55 or any other specific age in order to unlock the pension funds. These pensions are owned by adults; the government is not their parent; this boarders on absurdity and socialism if not communism.
Government of Newfoundland and Labrador
Department of Government Services
P.O. Box 8700
St. John's, NL
A1B 4J6

Attention: Julian McCarthy
Deputy Superintendent of Pensions
Financial Services Regulation Division

Dear Mr. McCarthy:

Re: Unlocking Pension Funds Consultation

I wish to express my opinion regarding the Government of Newfoundland and Labrador's proposal to amend the "Pensions Benefits Act, 1997". I feel that said "Act" is long overdue for changes.

A number of years ago, [redacted] never set well with me since that day. I cannot see the justification in a person not having control over his/her own finances. I firmly believe that having access to any type of savings is a must. It provides peace of mind because we all know that life is full of uncertainties. I am not saying this to be negative, but just as planning for retirement is important, so is planning for the unexpected. (cont'd)
The Consultation Document contains the following statement: "The Government of Newfoundland and Labrador is considering all options including the total unlocking of pension funds when an individual terminates membership in a pension plan by leaving an employer and elects to transfer the funds out of the plan. This supports the view that individuals should have control over their own finances and that the majority of individuals will do what is best for their own individual circumstances. For example, it may make more financial sense for some individuals to pay off a mortgage with these funds, while for others it may make more sense to keep all or part of the money in an RRSP." Personally, I feel that this option which the Government is considering is the only reasonable option. It is all about putting financial control in the hands of the individual - as it should be.

Furthermore, I would also like to add, that I do not agree with an option whereby funds are unlocked on the proof of financial hardship. I strongly feel that this is a violation of an individual's privacy. If I were having financial difficulties, I certainly would not appreciate having to supply details of my personal affairs to access money that is mine to begin with. Most individuals who have worked all their lives are very proud when it comes to such sensitive matters. It gives one the feeling that they are asking for a handout.

This whole consultation revolves around whether funds transferred from a registered pension plan before a person starts receiving a pension or is eligible to receive, are not required to be locked-in. I strongly feel that when a member leaves a pension plan either because of termination of employment or termination of a plan by their employer, change to the existing rules become necessary. Again, I would like to stress that total unlocking of pension funds is the only suitable option.
I want to extend a very sincere thank you for being given the opportunity to express my opinion on this matter.

Sincerely,
September 13, 2009

Mr. Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
POB 8700
ST. John's, NL
A1B 4J6

Dear Julian,

Consultations on Unlocking Pension Funds

I am writing on behalf of Canada's life and health insurance companies with respect to your June 8, 2009 Consultation Document re Unlocking Pension Funds subject to the Pension Benefits Act (1997).

As you know, the Canadian Life and Health Insurance Association (CLHIA) is a voluntary trade association that represents the collective interests of its member life and health insurers. CLHIA member companies are significant participants in the pension and retirement savings and income sector, administering over 70 percent of Canada's pension plans and an even larger proportion of alternative employer-sponsored plans such as group RRSPs. In total, CLHIA members administer over 8.3 million employment-based retirement income arrangements for individual Canadians.

Consequently, life and health insurance companies have extensive direct experience with unlocking of pension benefits, both as service providers to pension plans operating under the varied rules in effect in different jurisdictions throughout Canada, and as the administrators of individual retirement savings arrangements that are subject to locking-in provisions.
Canada's life and health insurance companies strongly support measures to preserve and promote efficient and effective retirement income security programs for Canadians. The industry believes that a vibrant and stable private pension system is central to that system.

**Harmonization**

Various provinces have adopted unlocking provisions that can apply at time of transfer of funds from a pension plan into another instrument, on attaining a prescribed age, or on an ad-hoc basis subject to specific conditions being met. These conditions include reduced life expectancy, economic hardship, becoming non-resident, and the existence of only a small balance in an individual's account. Under some regimes, limits may apply to the amount that can be unlocked; in other jurisdictions, no limits apply.

The diversity of un-locking provisions currently applicable in Canada is significant. While the industry recognizes the desire of individual governments to tailor such provisions to the specific needs of each jurisdiction, the industry does not believe that, in general, public policy arguments surrounding this issue have regionally-specific traits. As such, localized variations in un-locking provisions increase costs for all participants, with limited benefits. Moreover, by adding to the perceived compliance burden of pension plan sponsors, such differential obligations may discourage the creation of new pension plans, particularly for multi-jurisdictional employers.

Rather than further complicating this issue via the adoption of unique unlocking criteria and/or processes, Canada's life and health insurance companies encourage the government of Newfoundland and Labrador, in cooperation with its federal or provincial counterparts, to make every effort to standardize any unlocking provisions and processes. We strongly encourage your government to raise this issue within CAPSA for consideration by regulators and the Ministers to whom they report. Moreover, we urge your government to address this issue as part of the continuing pan-Canadian discussions regarding Canada's pension system and, in particular, during the Finance Ministers' meeting scheduled for December of this year.

**Generalized Unlocking**

Generalized unlocking upon termination of participation in a pension plan conflicts with the objective of providing secure, consistent and adequate streams of retirement income payments, which underlies all pension plans. This is particularly true if unlocking provisions automatically accede to consumer demands for early withdrawal of locked-in funds and remove any needs analysis from the approval of those withdrawal requests. It does not appear possible to reconcile permitting pre-retirement, lump-sum, access to retirement funds where such access will erode retirement income security with plans that are fundamentally designed to promote predictable and adequate retirement incomes.
That said, the industry recognizes that individuals who save for retirement via non-pension vehicles such as RRSPs may have easier access to such funds prior to retirement than would those who participate, or who have participated, in registered pension plans. But this easier access is frequently offset by a reduced likelihood of secure retirement income being provided in retirement. Where funds can be withdrawn easily, the experience of Canada’s life and health insurance companies is that such withdrawals will occur more frequently, and such funds may be used imprudently. Rather than being used to pay down debt, to retrain for enhanced employment - and hence retirement - prospects or invested via other tax-advantaged vehicles, too often unlocked funds are simply used to support current, discretionary, consumption.

The Consultation Document references Statistics Canada research that indicates that aggregate family retirement savings from all sources have grown. This appears to have been interpreted as demonstrating the prudence of Canadians in managing retirement savings, including funds transferred from pensions or locked-in arrangements to non-locked-in plans. Yet the Statistics Canada research referenced indicates that growth in retirement savings is primarily due to increased contributions. Increasingly aggressive asset mixes for retirement savings during and subsequent to the period of study may have made those savings more susceptible to market fluctuations and the volatility and reductions in market values in the last two years are not reflected in the Statistics Canada analyses. As well, increasing longevity does not appear to have been addressed. While continued and increasing contributions are positive actions, it is not clear that a full analysis would conclude that the increased savings identified by Statistics Canada are sufficient to provide the anticipated retirement income levels.

Of course, independent management of savings - locked-in or otherwise - need not be unsupported. The industry provides extensive investment decision making tools and advice to individuals, and we believe that many consumers take advantage of these services, and manage their investments prudently. However, in the industry’s view, a link between increasing plan balances and prudent investment choices has not been conclusively drawn by Statistics Canada in the research cited by the Consultation Document. It may therefore be inappropriate to assume that unlocked funds will be managed in a manner that will ensure secure retirement incomes.

Generalized unlocking rights seem to directly contradict efforts to ensure the adequacy of retirement incomes. As such, the industry opposes generalized unlocking of pension funds.

**Ad-Hoc Unlocking**

Notwithstanding this view, the industry recognizes that there may be circumstances where early access to funds primarily intended to provide retirement incomes may be
appropriate. Regional economic factors may increase or decrease consumer demand for access to locked-in funds relative to other Canadian jurisdictions. The following discussion will consider each of the four ad-hoc triggers identified above.

**Small Balances**

There may be an administrative argument in support of requiring the liquidation of smaller accounts or the consolidation of such amounts with non-locked-in amounts for the same individual in order to attain greater economies of scale. Canada's life and health insurance companies would be concerned if liquidation were the default option for such arrangements, since this could have profoundly negative impacts on funds available for retirement for individuals who change employment frequently.

The primary challenge of permitting ad-hoc unlocking of small balances is the potential that other small balance accounts may exist for the same individual, and that in aggregate the value of those accounts would exceed any small balance limit. In order to avoid treating such arrangements in aggregate, it may be appropriate to permit a financial institution holding such an account to unlock it without regulatory review only within "n" months of transfer into that account directly from a pension plan. While partial unlocking of a small balance would seem unlikely, such a limitation could prevent "churning" of the account between financial institutions in an effort to remove any record that prior partial unlocking had been completed.

**Becoming a Non-Resident**

There are also circumstances, such as where an individual emigrates from Canada, where there may be a less pressing rationale for Canadian governments to preserve assets intended to fund retirement benefits for that individual. However, there is a significant risk that such individuals may return to Canada in their later years, with an expectation of public financial support. Preservation of locked-in funds as such could mitigate the liability of public programs in such circumstances.

While review of such small balance and emigration triggers is relatively straight forward, the industry appreciates the difficulties that a system of discretionary unlocking creates for consumers and regulators, particularly with respect to other triggering events. We recognize the challenges to individuals of accessing funds in a timely manner, and often under duress. The industry also respects the need of regulators to ensure that funds are only unlocked for purposes that coincide with mandated public policy objectives. A system whereby each unlocking request is adjudicated by government officials or the issuers of such plans as agents for government reviewers necessitates multiple checks and balances, and these are likely to cause friction between consumers and adjudicators, especially where the system is complex and poorly understood. This challenge is
compounded by the frequently-held view of former pension plan members that plan assets are "their own money". From that perspective, it is sometimes difficult to understand any rationale for restricting access to such funds.

**Economic Hardship and Reduced Life Expectancy**

However, the industry recognizes the value of providing a needs-based adjudicative process by which individuals suffering from economic hardship or reduced life expectancy could access all or part of locked-in savings. Access due to economic hardship might reasonably be permitted where all income from other sources is less than a prescribed percentage of the YMPE or AIW. A net worth assessment, in addition to an income test, might reasonably be applied. In cases of reduced life expectancy, a medically-assessed projected survival period, perhaps of less than ten years, might trigger access regardless of age. In cases of either economic hardship or reduced life expectancy, early access might be provided via an annuity option, rather than a lump sum payment.

Because of the potential for access requests with respect to multiple savings arrangements, adjudication of such claims is most appropriately performed by pension regulators, since individual issuers of retirement arrangements would not necessarily have complete information regarding other such arrangements. Rather than impose the cost of adjudication on applicants who may already be undergoing significant economic stress, there may be a rationale for building the cost of adjudication into ongoing pension registration and supervision fees, although this may encourage applications that are without merit. A discretionary penalty mechanism may be appropriate in such cases.

CLHIA members stand ready to work with all pension authorities in developing a consistent and responsible approach to unlocking of pension benefits. If you or your colleagues wish to review the views set out above, I would be happy to discuss these matters. As always, I can be reached by telephone at [redacted] or by email at [redacted].

Yours sincerely,

*Original signed by* 

[Signature]
Date: 14 September 2009

Subject: Consultation Document - Unlocking Pension Funds

PLEASE RUSH TO:

Name: Julian McCarthy - Deputy Superintendent of Pensions
Phone: 709-729-6014

Message:
Hi Julian,

Please find enclosed comments on the Unlocking Pension Funds consultation document on behalf of Manulife Investments.

Please feel free to contact me directly if you wish to discuss any of our comments.

Sincerely,

If you have any problems receiving information please phone.

Note: this communication is intended only for the recipient named above. It may contain information that is privileged, confidential and subject to copyright. Any unauthorized use, copying, review or disclosure is prohibited. Please notify the sender immediately if you have received this communication in error (by calling collect, if necessary) so that we can arrange for its return at our expense.

Thank you for your assistance and cooperation.
Manulife Investments

September 7, 2009

Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
2nd Floor, West Block
Confederation Building
P.O. Box 8700
St. John's NL A1B 4J6

Re: Unlocking Pension Funds Consultation

Dear Julian,

We are pleased to provide comments on the "Unlocking Pension Funds Consultation" paper.

The Manulife Investments area of Manulife Financial is responsible primarily for Locked-in Retirement Accounts (LRAs), Life Income Funds (LIFs), Locked-in Retirement Income Funds (LRIFs), and life annuities. We will therefore comment with respect to those contracts.

To reduce the complexity and cost of pensions for all Canadians, it is recommended that legislation governing pension monies be aligned as much as possible with those of other jurisdictions. The recent trend under many jurisdictions is to permit greater access to locked-in monies through more flexible payments and one-time unlocking options. Although the rules vary greatly among the jurisdictions, unlocking does not typically apply to the total amount of the funds held except for the more traditional shortened life, small amount, and non-residency exemptions.

Should a decision be made to eliminate locking-in requirements altogether, this provision should be extended to existing LIRA, LIF and LRIF contracts. In that case, it is recommended that financial institutions be permitted to amend existing LIRA, LIF and LRIF contracts to become an RRSP or RRIF to permit owners to retain current contractual provisions, guarantees and investments intact. This is especially important in times of market turbulence as seen recently.

If the decision is made to allow a one-time unlocking option for up to a certain percentage (the trend in many jurisdictions is 50%), it is our recommendation that this option be available when the retiree starts to take an income. The amount available for unlocking could be a percentage of the value transferred to the income fund and the current age requirement of 55 for income commencement could be retained.

By tying the one-time unlocking option to income start, pension savings are retained for retirement and owners given more control over those monies at that time. There should be a limited time period under which owners could take advantage of the unlocking option (e.g. within 60 days from date of transfer), after which no further unlocking of those monies would be permitted. Any subsequent deposits coming into the income fund from a pension plan or LIRA should be given an additional unlocking period.
Manulife Investments

In order to prevent “double-dipping”, other jurisdictions have restricted transfers from an income fund back to a LIRA. Existing LIF and LRIF owners were given a specific time period (e.g. one year) in which to unlock 50% of the current value of their contract to bring them in line with the go-forward unlocking rules.

As for financial hardship unlocking, we recommend that unlocking be based on a needs assessment under criteria set out by the provincial government and that the government approve any financial hardship unlocking. Only one financial hardship unlocking should be available per calendar year.

If LIF contracts are retained, we recommend the requirement to annuitize by age 80 be removed and there be a more flexible maximum payment calculation. The trend in other jurisdictions has been to provide a harmonized payment calculation using a combination of the current LIF and LRIF calculations; that is the greater of investment earnings in the previous year and the value using the CANSIM rate. This allows the owner to take advantage of earnings in good earnings years while at the same time maintaining a consistent income in poor years. If monies are transferred to another income fund mid year, earnings from the original fund would not carry over to the new contract.

In regards to LRIF contracts, it has been our experience that these contracts are not very popular with retirees since the maximum payment can fluctuate greatly from year to year depending on how the investment performs. It is recommended that LRIF contracts be phased out and existing LRIFs be automatically amended to become a LIF with the new harmonized payment calculation. Amending the contract rather than requiring LRIF owners to purchase a new LIF contract would allow owners to retain current contractual provisions and investments.

If the above approach were adopted, it would result in one income fund contract go-forward. This would not only be simpler for financial institutions to administer, it would be less confusing for retirees.

We also ask that financial institutions be given sufficient notice of any changes to provide the time needed to update systems, procedures and forms. Depending on the complexity of the changes, system providers typically require six months to a year to design, build and test new programming. If changes are made to income payments, it is recommended that the implementation date take effect at a year end to avoid disrupting payments mid year.

We thank you for the opportunity to comment on the proposed updates and support any changes to the pension regulations which will provide consumers with additional flexibility in their retirement income and simplify administration.
McCarthy, Julian

From: [Redacted]  s. 30 (1)
Sent: Saturday, September 05, 2009 1:09 PM
To: McCarthy, Julian
Subject: Newfoundland LIRA unlocking  s. 30 (1)


I am now wondering about unlocking that LIRA and putting a portion of it into a LIF and using some of it for other purposes.

I understand that Newfoundland does not normally allow such unlocking before age 55 [Redacted] but it seems there was an exception if the pension plan in which you participated (and from which the LIRA was initially funded) allowed for an early access to that pension. In the case of the [Redacted], I believe it allowed people to participate at age 50 if they had the years of service.

My question, then, is whether this would allow me to unlock my LIRA now or not?

On a side note, with regard to the current consultation you are conducting in this regard, I definitely think Newfoundland should allow unlocking at age 50, as Alberta does. I think this allows people greater control and flexibility over what they do with those funds, realizing it is really their money after all.

Thanks for your help in this regard,

[Redacted]  s. 30 (1)
September 21, 2009

Mr. Julian McCarthy
Deputy Superintendent of Pensions
Department of Government Services
2nd Floor, West Block, Confederation Building
P.O. Box 8700
St. John’s, NL A1B 4J6

Dear Mr. McCarthy:

Reference: Unlocking Pension Funds Consultation

Thank you for the opportunity to provide input into proposed changes to the Pension and Benefits Act regarding the "locked in" status of funds transferred from a registered pension plan.

As a Plan Sponsor, we have in the past received complaints from former employees regarding the locking-in provision for vested employees. In the past vesting occurred on a graded schedule over 14 years, however now vesting occurs after only 2 years. Employees are then forced to transfer these funds to a locked-in vehicle until the earliest retirement age of our Plan which is 55.

While the fundamental purpose of the locking-in provision is to ensure a person uses their accumulated funds for retirement, there are other financial strategies which may be more beneficial than accumulating retirement income to some predetermined date. There are many examples such as paying down or eliminating a mortgage, investing in real estate, or a small business etc., A relatively young employee may want to put a down payment on a home or return to school, etc.

Currently, the defined benefit plan members are legislated to use their benefit value for retirement, whereas RRSP holders can make their own decisions regarding the mechanisms of funding their own retirements. Individuals with locked-in RRSP’s also are restricted from participating in CRA programs such as the “Home Buyers Plan” and the “Lifelong Learning Plan” which are available to regular RRSP holders.

There must be a balance however. The challenge is to enact legislation which offers more freedom than currently exists but yet provides some protection for those who may not seek financial advice and use the money imprudently. Why not allow a transfer to a normal RRSP which is not locked in? I am sure there are taxation implications to this and such a proposal would have to be analyzed. Alternatively, an “unlocking” could be allowed if the funds were to be used for a predetermined purpose which would be outlined in the legislation. For example, home purchases, mortgage reduction, education or other conservative investment instruments.
Mr. Julian McCarthy  
Deputy Superintendent of Pensions  
Department of Government Services

Reference: Unlocking Pension Funds Consultation

Eliminating the locking-in requirements makes sense and important long term financial decision-making such as retirement planning should be given back to the individual. It is necessary however to put some parameters/criteria in place to ensure that the retirement funds are invested wisely.

Thank you for the opportunity to comment.

Yours truly

[Signature]

Kevin Breen  
Director of Human Resources

pc: Mr. Robert Bishop, Director of Finance & City Treasurer  
    Ms. Barb Dawe, Benefits Administrator
September 8, 2009

Department of Government Services
2nd Floor, West Block
Confederation Building
P. O. Box 8700
St. John's, NL
A1B 4J6
Attention: Mr. Julian McCarthy
   Deputy Superintendent of Pensions

Dear Mr. McCarthy,

We wish to thank you for the opportunity to review and comment on the proposed amendments to the Pension Benefits Act. We commend the Department of Government Services for proposing the harmonization of some of the rules and unlocking provisions potentially with those of other pension jurisdictions. This is very helpful in the administration and understanding of locked-in retirement accounts (LIRAs), life income funds (LIFs) and locked-in retirement income funds (LRIFs), collectively, ("locked-in plans"). We would agree that finding a balance between protecting pension assets for retirement and allowing individuals to manage their own assets can be a difficult proposition.

Since the proposed changes will affect locked-in plans, we would have some concerns in regards to the timelines for implementing the required changes. Specifically, if a one-time unlocking provision on the transfer of a portion of pension funds, the removal of funds due to financial hardship or a new plan type (e.g. prescribed retirement income fund (PRIF) etc.) were introduced, we would require sufficient lead time to, i) inform the locked-in plan owners of the changes; ii) implement those changes that require system enhancements, as this involves external vendors, defining requirements, analysis and design, user acceptance testing and production implementation schedules; iii) implement or update amending agreements (this includes CRA approval, updating or creating on-line forms and in some cases, system generated forms); iv) communicate changes to clients and staff; and v) update procedures, processes and support materials. Therefore, taking into consideration the impact that any changes to the locked-in plans will have on the financial institutions, we would request notification of the changes be received at least 12 to 18 months before the changes take effect.

Again, we appreciate the opportunity to provide our comments. Should you have any questions regarding our response or require any further information, please feel free to contact me by telephone at ________________.

Sincerely,

9/9/2009
Good Morning Julian:

Please see my answers to some of the question you are seeking feedback on with respect to locked in retirement funds. I you would like to further discuss please feel free to contact me.

\(\sqrt{\text{No}}\) I don't think the Government should maintain its existing locking-in legislation for Funds accumulated in a registered pension plan only if employment is terminated. Upon termination, these funds could help an individual fund a retraining program, continue to maintain the household expenses until new employment is found or just invest in something better.

Right now for example most stocks are a good buy and from personal experience I know I could have gotten better returns on pension money (from a previous employer) that is locked in if I could have moved it into something more aggressive... non-registered....I'm young and have lots of time to recover if stock do not so well so why not have total control over MY money.

\(\sqrt{\text{No}}\) Provincial government should not eliminate locking-in requirements altogether on money that is accumulated in a registered plan where an individual leaves the plan before retirement. Only when employment is terminated or the individual chooses to leave the employer or there is a "life event" that requires emergency funds.

If a decision is made to unlock for whatever criteria don't tie a percentage to it. This just complicates matters and would in my opinion continue to frustrate people trying to access their funds...It is their money.

In looking at the remaining questions I guess the bottom line, in my opinion, is that registered pension plan funds belong to those individuals that contributed to it or worked for it as part of an employment benefits package and therefore should be theirs to do whatever they want when they want if they are no longer employed by the employer that provided it.
Unlocking Pension Funds

Consultations by the Newfoundland and Labrador Government

Submission by Newfoundland and Labrador Federation of Labour
October 2009
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Introduction

The Newfoundland and Labrador Federation of Labour (NLFL) represents approximately 30 affiliated unions and 65,000 working women and men in every sector of the province’s economy. We are dedicated to enhancing the lives of our members and of working people and society in general by promoting better laws, equality and social justice.

The Federation of Labour welcomes the opportunity to present our views with respect to the provincial government’s consultations on pensions, in particular the “unlocking of pension funds.”

Pensions, of course, are of critical importance to the unions affiliated with the Federation and our members. In addition to our own research and analysis, the Federation consulted with our affiliated unions with respect to the province’s proposals. The following represents our collective concerns regarding the proposed changes and our general concerns with respect to the state of pensions.
Standing up for Pensions

First of all, the Newfoundland and Labrador Federation of Labour (NLFL) believes every citizen should be able to retire in dignity with a decent pension.

As a trade union movement we have long advocated for defined benefit pension plans in conjunction with a strong public pension system as a means of achieving that dignity. Since defined benefit plans operate through collective pooling of contributions and assets over a long period of time, they provide a degree of security or insurance against many of the risks confronting retirees, such as outliving their savings or experiencing poor investment returns. Because defined benefit plans spread these risks among all plan members, they help ensure that retirees will have a source of income, a defined benefit, until death.

Simply put, defined benefit plans are a collective approach to securing adequate and predictable pension income.

By contrast, defined contribution plans shift the risk to the individual. Yet the factors which control the size of the pension wage received by the individual who gains the “benefit” of the defined contribution “investment” cannot be controlled by individuals. Given the frenzy of the stock market, this individual approach to retirement savings is at best unpredictable and often inadequate.

We raise these two competing notions in relation to the province’s proposal to allow for the total or partial unlocking of pension funds when persons have left an employer. The Federation of Labour believes such a proposal undermines the principles, purpose and intent of pension plans - to defend and protect pension monies.

In putting forward the unlocking proposal, the provincial government appears to be supporting the view that individuals should take control of their own retirement savings as a more “effective” means of providing for their retirement security.

On the surface, the government seems to be arguing that even in the face of the greatest global financial meltdown since the Great Depression,
that registered retirement savings plans and defined contribution pension plans - which are totally dependent on the whim of the stock market with all the risk being borne by the individual - are somehow a better retirement tool than registered defined benefit pension plans.

The apparent bias in the province’s consultation document is that employer-sponsored and defined benefit plans are somehow “paternalistic” because workers cannot “take control” of their own money or choose their own investment. Yet quite often, even when given individualized investment choices, as are sometimes available under defined contribution plans or through individually purchased RRSPs, people often lack the financial knowledge or skills necessary to optimize their investment returns and often seek financial advice. This was most recently pointed out by the Ontario Expert Commission on Pensions which reported in October 2008.

Even if people have “control” over their investment decisions, studies have shown that individuals do NOT defer wages on their own for retirement security. The beauty of defined benefit workplace pension plans is that they often require mandatory contributions by employees.

According to the Ontario Commission on Pensions, study after study confirms that given the choice people tend not to save enough for retirement, if indeed they save at all. This conclusion certainly contradicts the Consultation Document’s unlocking premise that “the vast majority will keep their money for retirement purposes, either leaving it in an RRSP even if an unlocking option is available, or investing it in some way to support their retirement. Providing individuals with control over these funds allows them to choose how much they want to leave for retirement and how much to use for other purposes.”

As we point out later in our submission, there is absolutely no evidence to support the conclusion that the vast majority who take advantage of any unlocking provisions will indeed keep the money for retirement.

In fact, the provincial government’s proposal flies in the face of why we establish pension plans in the first place by suggesting and allowing individuals the ability to access this money and use it for whatever purpose they wish such as paying down a mortgage.
After all, as is pointed out further in the government’s document, “the main objective of requiring funds to be locked-in is to protect pension money for retirement. This is consistent with the primary purpose of a pension plan, which is to facilitate self-sufficiency by ensuring enough money is available to the individual to live on when they retire.”

The individual vs the collective

The Federation would also like to make a number of comments on the tone, bias and overall direction of the Consultation Document from the Office of the Superintendent of Pensions.

As mentioned above, there is a clear bias in the consultation document towards individual retirement savings versus a more collective approach which is often viewed by some, including the current Harper government, as a “paternalistic” approach to retirement security.

At the Federation of Labour, we do not view such collective approaches as paternalistic, but rather as a means of ensuring decent and adequate retirement security for all citizens. It is the same approach to take to ensure every citizen in Canada has free medical care and a decent public education.

Indeed, the very rationale for allowing the unlocking of pension funds to occur – that the complaints and requests from individuals wishing access to the pension funds “for some urgent reason” - would suggest that this money will not be transferred into another retirement savings vehicle. Indeed in consultation with our affiliated unions, many recounted stories of people who had been allowed to unlock retirement monies, such as is permitted under the federal Pension Benefits Standards Act, prior to retirement and ended up strongly regretting that decision because they ended up suffering financially in retirement.

This assumption that people will transfer the unlocked monies into RRSPs is also in conflict with the government’s consideration of unlocking monies in the case of financial hardship. We would suggest that it is very doubtful that someone in need of funds because they face financial
hardship will be transferring unlocked pension funds into a retirement vehicle. While the Consultation document refers to a number of provinces who have addressed this issue in recent years by allowing for the partial or total unlocking of pension funds on proof of financial hardship, only three provinces actually allow for unlocking for reasons of financial hardship – Alberta, Ontario and Nova Scotia. Other provinces allow for unlocking for reasons such as shortened life expectancy, as does Newfoundland and Labrador, and at age 50 some provinces allow for partial unlocking.

In addition, the document appears to rely on a 2007 Statistics Canada report as support for RRSP and individual savings. Yet the Statistics Canada report makes no such conclusion about RRSPs being a better retirement tool or that people manage them to provide for a better retirement.

A more recent study done for the Ontario Expert Commission on Pensions by Keith Horner found that while RRSP contributions grew faster than pension contributions before 1995, the RRSP contribution rate declined between 1995 and 2005, providing “no evidence of an offset to falling pension coverage.”

The Ontario Expert Pension Commission noted that while sometimes it is suggested that personal RRSPs can and will fill the void in retiree income left by the diminishing coverage of occupational pension plans, the Horner study suggests that this is unlikely to be the case, as RRSP contribution rates seem to be declining in tandem with the decline in occupational pension coverage. The Commission concludes that “the consequences in pension coverage must therefore be confronted head on.”

In addition, as was pointed out by the Alberta – B.C. independent review of pensions in 2008, entitled “Getting our Acts Together,” the personal savings rate of Canadians has been in general decline since 1982, standing at 2.7% in 2007. As we know, personal savings is often considered the third pillar of retirement security. And yet, according to a study quoted in the Alberta – B.C. review, Canadians are currently on track to replace only 50% of their pre-retirement income. (The Changing State of Retirement in Canada – Solutions for New Times – 2007 FMR LLC (Fidelity Investments Canada ULC).
It is this declining pension coverage, and the global financial meltdown that has resulted in a re-focus on the state of pensions in Canada, including a call by the country’s premiers and the labour movement for a national summit on pensions.

And yet in the face of what some are describing as a time to rebuild Canada’s pension safety net, the Newfoundland and Labrador government is considering a loosening of rules that would in essence encourage non-saving.

In addition, the Statistics Canada report quoted in the provincial government’s consultation document concludes that while on average Canadian families are better prepared than their counterparts in the past (because more women have retirement income today as a result of their labourforce participation than in the past), this does not apply universally and at no time do the report’s authors suggest that individuals on average manage their RRSPs to better provide for their retirement.

Indeed, what the Statistics Canada report found is that not all Canadians are better prepared for retirement nor are they managing their RRSPs – as a large segment of the population have no RRSPs to manage. Indeed, nearly one-third of Canadians have no retirement savings at all.

Statistics Canada found that the poorest 20% of Canadian families are no better prepared, yet those in the top 20% earnings distribution of Canadian families appear to be better prepared. In fact, the report notes that there is a growing inequality in retirement savings which is reflective of the large increase in family earnings inequality over the past two decades.

In addition, the authors of the Statistics Canada report noted that their study examined the evolution of retirement preparedness since the mid-1980s, “not the degree to which current retirement savings are adequate to maintain living standards once retirement age is reached.”

This income inequality is reflected in contributions of today’s working age population towards retirement. In other words those with higher incomes are better able to save and invest which could in future actually make the income distribution among seniors more unequal.
The report makes no conclusions that individuals, on average, manage their RRSPs to better provide for their retirement. Instead, it notes that it did not take into account implications for economic security for Canadian workers as a result of the decline in defined benefit RPP coverage and the increase in defined contribution RPPs. Nor did this report look at the increased longevity of seniors. Yet it did conclude “these two factors will clearly influence families’ living standards after retirement.” If anything, the report raises clear concerns about the declining RPP coverage with respect to living standards after retirement.

The Federation would suggest that the ability of the citizens of Newfoundland and Labrador to maintain living standards into retirement ought to be the main focus of pension consultations, not setting up flawed arguments with respect to whether RRSPs as a tool are an effective means of retirement savings or loosening rules around the unlocking of pension funds.

RRSPs may work for top-income earners, but that is not true of the majority. Indeed, RRSPs as an effective retirement savings tool have come under considerable scrutiny as of late – including from bank economists.

Voluntary programs such as RRSPs have been “ineffective in sufficiently buoying retirement savings.”
Don Drummond, Chief Economist
TD Bank, August 2009

The chief economist with the TD Bank, Don Drummond, noted in a Special Report for TD Economics (August 24, 2009) that individual savings as a means to retirement security has failed the vast majority of Canadians. Mr. Drummond pointed out in his report that voluntary programs such as RRSPs have been “ineffective in sufficiently buoying retirement savings.” RRSP contributions, according to Mr. Drummond, are low (page 9) with only 31% of eligible tax filers making an RRSP contribution in 2007 and contributions represented only 6% of the room available to filers. “Further evidence is that contributions are biased towards individuals in the top 20% of the income distribution.”
It seems out-of-step for our province to be contemplating the unlocking of pension funds at a time when Canada is grappling with how best to deal with retirement security and when our pension system has come under such scrutiny. It is also short-sighted to be promoting RRSPs and individual investment as the preferred option given what the collapse of the stock market has meant to RRSPs and retirement security in recent months. Even with some gains since the big meltdown, most RRSPs are still worth about one-third less of what they were worth more than a year ago. And even if that were not the case, it is clear for the vast majority - as Mr. Drummond has pointed out - that voluntary savings options are just not working.

Most experts agree that a decent retirement income is equal to about 70% of a person's working income yet far too many Canadians never reach that threshold.

Canada's pension and retirement income system is based on three pillars:

- OAS and GIS
- CPP
- Private Pensions and Savings

Combined, the first two pillars provide for a replacement rate of about 40% of the average working income. CPP has a 25% replacement rate. That means in order to reach a 70% replacement rate, allowing for retirees to maintain some sort of standard of living, they need decent private pensions and/or savings. And yet at least 30% of Canadians have no retirement savings outside of OAS, GIS and CPP. In fact only 38% of Canadians have an employer-sponsored pension plan - whether it is defined benefit or defined contribution.

In other words, far too much of Canada's retirement system is based on a "fend-for-yourself" approach. It is exactly this problem that the labour movement and others have been trying to address with its proposals to enhance CPP, OAS and GIS - all of which are defined benefit-type plans and which provide the best kind of security for retirees.
As mentioned there is at the moment a debate in our country about the state of pensions and in particular our retirement system has come under considerable scrutiny which is why these kind of unlocking proposals appear to be at odds with the broader issue of retirement security. As was pointed out by the Alberta – B.C. pension review the submissions it received with respect to unlocking were indicative of “the lack of uniformity and indeed the polarized perspectives surrounding this issue.”

In fact, the pension panel noted that there was no consensus on the unlocking of pension funds in Canada.

“The many and varied approaches to the topic across the country demonstrate that reactions have been made at the political level, and that no generally accepted policy perspective exists beyond traditional areas of ‘compassionate’ or ‘expedient’ unlocking. In the panel’s view, pension plans are intended to provide secure income in retirement and the tax-advantaged status of pension contributions and entitlements are designed with that in mind. The Panel does not support unlocking of pension entitlements in general. This view has also been supported by the British Columbia government’s position on the issue to date.


In the end, while the Expert Panel voiced its concerns and opposition to unlocking pension entitlements, a compromise position was recommended by the Panel based on the fact that Alberta had allowed to some unlocking.

Perhaps most interestingly is the Joint Expert Panel for British Columbia and Alberta recommended the creation of a new pension plan system, to be operated as a non-profit entity at arm’s length from
government, but regulated under the pensions' standard legislation as a means of improving pension coverage in the private sector. The proposal recommended a "pooling pension risks and assets as well as access to investment expertise and products not currently available to small pension plans and individual investors."

As referred to above, Ontario has also reviewed the state of pension coverage as has Nova Scotia. And a review of jurisdictions across the country has found that there are a variety of measures in place to deal with the issue of unlocking. Some provinces allow unlocking in certain limited circumstances, as we do in Newfoundland and Labrador. And other provinces have looser rules around unlocking. What is not clear is as a result of what we would describe as a total re-think on pensions whether jurisdictions with looser rules will begin to re-examine their unlocking provisions or what the impact unlocking rules will have on retirement security in future as there has been no analysis or study of the impact of pension unlocking.

Having said that, in the United Kingdom, where unlocking has been in place for quite a number of years, there are widespread concerns, as noted quite forcibly by the Financial Services Authority, about the problems associated with unlocking schemes. More on that below.
The Provincial Government’s Proposal – Labour’s Response

As you have been hearing from individual affiliated unions with the NLFL, there is strong and consistent opposition to the province’s proposal to allow for the total or partial unlocking of pension funds under any circumstances except those already allowed for under the *Pensions Benefit Act*.

For example, the Canadian Union of Public Employees and the Newfoundland and Labrador Regional Council of the Carpenter, Millwrights and Allied Workers, as well as other unions, have adamantly opposed the government’s proposal in their written submissions.

The Federation recently held a roundtable session on the unlocking proposals with representatives from many of our affiliated unions, including for example NAPE, CUPE, the Carpenters Union, and PSAC. The conclusion was an adamant rejection of the unlocking proposals.

Most of those reasons are clearly outlined above and form the basis of our rationale for not supporting unlocking of pension funds except in cases already defined by legislation. In addition to the above analysis and position with respect to pensions, the Federation of Labour adds the following:

1. **Should the Provincial Government maintain its existing locking-in legislation for funds accumulated in a registered pension plan? Why or Why not?**

   a. The Federation of Labour believes the province should maintain its existing locking-in legislation. By their very nature, these monies have been set aside for retirement to allow those monies in certain circumstances (other than those already outlined in legislation) to be unlocked defies the spirit, intent and purpose of pension legislation. That does not mean though that the Federation would be opposed to the transport or portability of pensions from one locked-in plan to another.
2. Should the Provincial Government eliminate locking-in requirements altogether on money that is accumulated in a registered pension plan where an individual leaves the plan before retirement? Why or Why not?

a. The Federation of Labour believes the provincial government should not eliminate locking-in requirements where an individual leaves the pension plan before retirement. Since beginning this process of consulting with our affiliated unions with respect to this consultation we have had numerous stories of individuals who could access pension funds and did so, using them for purposes other than retirement and then living to regret their decision upon reaching retirement.

b. This could, as others have highlighted, also impact on a person’s access to other post-retirement benefits such as health plans.

c. In addition we are very concerned about what impact this could have on spousal and survivor benefit entitlement. For example, allowing pension plan members to spend deferred pension benefits could have serious negative implications for their spouses in the event of marriage breakdown. We do not believe this impact has been given appropriate consideration by the province’s proposals.

d. As well, government and employers might consider how important pension plans are as a recruitment and retention tool in today’s highly mobile labour market. Allowing employees to unlock pension monies could actually impair retention efforts. In fact a study by economist Morley Gunderson for the Ontario Expert Commission on Pensions found that both defined benefit and defined contribution pension plans are associated with reduced quits and lower turnover rates.
3. Should the Provincial Government provide for only a portion of funds, such as 25% or 50% that is accumulated in a registered pension plan to be unlocked where an individual leaves the plan before retirement? If so, why and how much should be unlocked.

   a. Since, the Federation has noted its complete opposition to unlocking and for the above stated reasons, then our answer here is the same. We do not support the partial unlocking of pensions funds.

4. Should the Provincial Government allow for all, or a portion, of funds that are accumulated in a registered plan to be unlocked only where there is financial hardship determined through a needs assessment? If so, why and who should do the needs assessment and who should pay to have the assessment done? If not, why not?

   a. The Federation does not support unlocking because of financial hardship. As pointed out below with respect to the unlocking experience in the UK where this measure has been in place for a number of years, there have been considerable risks associated with it. Once you open the door it will become increasingly more difficult to put boxes around it thus preserving the spirit, intent and purpose of pension plans.

5. Should the Provincial Government permit unlocking of pension funds only after a plan member has reached a certain age, such as 50 or 55? If so what should be the age and why?

   a. The Federation is not in favour of unlocking based on age. The Financial Services Authority of the United Kingdom which is accountable to the UK Government and advises and regulates on financial services matters as well as provides consumer protection advice has warned against the dangers of unlocking at age 50. In the UK, someone over the age of 50 is permitted to unlock pension funds before they reach retirement. But the FSA says this is “an expensive way to free up extra cash...it will affect your income and retirement for the rest of your life – there are likely to be better ways to address any short-term cash needs so think very carefully about it.” In addition, the authority found that as a result of having the ability to unlock, some firms
targeted vulnerable consumers, such as people struggling to service debt, without making them fully aware of the long-term implications. The authority went so far as to publish a consumer alert about the risks associated with unlocking. http://www.fsa.gov.uk/Pages/Library/Communication/Speeches/2004/SP170.shtml

6. Should the Provincial Government allow for all, or a portion of funds, that are accumulated in a registered plan to be unlocked under conditions or criteria beyond financial hardship? If so, why and which conditions or criteria should be applied.

   a. As stated several times, the Federation of Labour is not in favour of unlocking for reasons other than those outlined in the legislation currently.

As a province we should be promoting ways and means of improving retirement income security for all citizens.

We were pleased to see our Premier, (through Deputy Premier Kathy Dunderdale) join with other premiers this summer in calling for a national stakeholder summit on pensions and retirement income. The point of the summit according to the Council of the Federation would be to “discuss possible options to improve saving options for Canadians and to encourage greater saving.”

The Federation of Labour would suggest that the unlocking of pension funds is in clear contradiction of this direction.

Please note we have attached a discussion paper by the Canadian Labour Congress on the future of Canadian pensions and the need to enhance OAS, GIS and CPP to ensure better retirement security for all citizens as an appendix to our brief.
Response to Unlocking Pension Funds Consultation
Government of Newfoundland and Labrador

Submitted by

NAPE
Newfoundland and Labrador Association of Public and Private Employees

October 15, 2009
The Office of the Superintendent of Pensions, Government of Newfoundland and Labrador, is seeking input into the issue of amending legislation for the purpose of unlocking pension plans.

In its consultation paper, it appears that the purpose of unlocking pension plans is to give greater access to funds to individual plan members. The main reasons given are to enable those who wish to avail of the funds for personal reasons and to give members an opportunity to take ownership, i.e. avail of self-directed plans.

The unlocking of the pension plans is an opportunity for the employer, in this case the Government of Newfoundland and Labrador, to be alleviated of some of its financial obligations to future retirees.

Considerable emphasis is placed on the need for those persons experiencing financial difficulty, or having undue hardship, to avail of the funds to help alleviate their momentary hardship or to simply pay off a debt such as a mortgage.

The issue the Office of the Superintendent raises of unlocking a pension to enable a financially stressed individual to resolve a financial obligation ignores the need for future financial stability. The outright ability to simply access one’s pension contributions could result in employees actually quitting their jobs to unlock their pension for a momentary expenditure, while jeopardizing their futures.

Case in point. Several years ago an employee [redacted] decided, after much deliberation, to resign from his government job. The reason for his decision was that having amassed considerable debt on his credit cards, he was experiencing financial difficulties. He believed that if he resigned he would be able to access the money in the pension plan and any other monies owing to him. It was his intention to use the money to pay off his credit card debt. After being informed that his pension contributions were locked in, the idea of leaving his job became a forgotten notion. Some ten years later, this individual is still in the employ of Her Majesty and is now looking forward to his retirement with the financial security of a pension.

In this circumstance, not only was an individual prepared to forfeit his future income by unlocking his pension, but was prepared to give up his job to do so, with no other employment prospects in sight, in order to pay off credit card debt.

Frankly, we are appalled with the suggestion that people in financial difficulty could have early access to their pensions, if it is Government’s intention to have plan members bare their souls or produce documentation of their hardship in order to unlock their pension.
If it is the intention to alleviate the current financial stress for individuals, what Government is proposing is, in effect, to ensure such individuals are penalized for the rest of their lives, in particular in their retirement when their income is reduced.

We do not dispute that there are circumstances where individuals may wish to access funds they may have available to them for whatever reasons; however, the purpose of a pension fund is simple. The pension is to ensure that employees, after years of contributing to the workforce, can retire with some ability to support themselves in retirement.

Reference is made to Canadians being better prepared for retirement than in the past. Not unlike any other type of investment, there are some who will be diligent in making efforts to save money for retirement, through whatever mechanism; however, it is evident that the people who Government would accommodate through the unlocking of pension funds would not have such savings, and if they did those funds would be promptly used for other reasons than retirement.

While statistics may show an increase in those saving for retirement, the reality is that many people will not, for any number of reasons. Those struggling day to day to make ends meet would not have the money to put toward a retirement plan. Those who do not look to tomorrow, will not plan for retirement. There are those who simply will not save money for retirement.

Case in point. [Redacted] is now trying to find a way to care for her sick and disabled husband while continuing to work. She cannot retire as she is not a member of a pension plan. She did not opt to join the plan when the exemption for married women was lifted many years ago. Now, while all of her younger co-workers are leaving to retire, she finds herself disadvantaged because, as a young married woman, she was not automatically entitled to be a member of the plan.

Legislation provides for a sharing of a pension in the event of a marriage breakup. There may be a legal argument that a married individual does not have the right to withdraw funds from a pension fund. The fact that a pension is considered matrimonial property upon the dissolution of a marriage could possibly result in legal action being taken should an individual make early withdrawal of funds from a pension plan. In the event that an unlocking of the pension plan is granted, there is a possibility that an individual might withdraw the funds for the explicit purpose of ensuring there is no division of such funds. In other words, someone planning to leave a marriage might withdraw the money for the explicit reason of ensuring the other party does not get a share. It is statistically proven that men earn more money than women; that a greater percentage of men are members of a pension plan; and that men have significantly higher pensions than women. This proposal would compromise the other parties’ share of the pension most often resulting in a financial attack on women.
In the consultation paper there is reference to enabling members to access the funds to pay off debts, for example. Yet there is no consideration in the consultation paper to providing an opportunity for a plan member to repay the money should circumstances change.

There is an inference that unlocking would enable individuals to have greater control by transferring the funds to another plan. There is also reference to those who have self-directed pension plans; however, the consultation paper does not give consideration to those who would unlock their pension benefits and the impact that might have upon RRSP contribution room that had been reduced or eliminated while paying into a pension plan in the first place. We are less than certain that the RRSP contribution room can be re-established after a withdrawal is made. If our observations are correct, employees who withdraw premiums from their plan may not be able to place this money back into an RRSP at a later date because the contribution room has been used up. In other words, the problems created by withdrawing money to pay down debt may result in an inability to contribute when or if the person becomes more financially secure in the future.

It seems there has been very little research carried out to support this initiative. In fact, some of the rationale offered in support of unlocking pension funds appears to be in conflict. There are no compelling arguments, credible research, or empirical data to support the positions put forward in the consultation paper.

We have had much debate and discussion with Government regarding the pension plans. These all involved improvements to the plans. In recent years Government has worked with public sector unions to address unfunded liabilities in the Public Service Pension Plan, the Teachers’ Pension Plan, and the Uniformed Services Pension Plan, with an infusion of billions of dollars. To the credit of the current Government, it recognized the need to address these concerns and took action to repay monies and address the issue of the unfunded liabilities. This was a very positive move on the part of the Williams’ Government. Clearly, at the time, Government understood the importance of ensuring a viable pension plan.

While there is no reference to portability in the consultation paper, we point out that we are not opposed to the portability of pension funds.

We are not aware of any study which has been carried out on the effects or impact of unlocking pension funds. We believe that such a study should be undertaken before any changes are made to pension legislation. The benefit of a pension in one’s retirement cannot be overestimated. It is NAPE’s position that a study has to be conducted on the benefits and possible financial and legal ramifications of such action before consideration is given to altering the pension legislation.
The consultation paper makes reference to only a few issues and clearly does not comment on the multitude of other issues that need to be given consideration before recommending change. It is our opinion that such change at this time, in light of the lack of substantive support, would be premature and would create numerous problems. Frankly, the consultation paper seems to indicate a concept with little, if any consideration to the details; therefore, it is NAPE's position that the action proposed is absent of merit.