

**BULLETIN NUMBER:** PENS-07-001

**TITLE:** Locking-in of Pension Benefits

**LEGISLATION:** *Pension Benefits Standards Act*

**DATE:** June 2007

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## **PURPOSE**

This bulletin provides information about the provisions of British Columbia's *Pension Benefits Standards Act* ("the Act") that apply to the "locking-in" of pension benefits under plans subject to the Act. The Bulletin is intended as an aid to plan sponsors, members, financial institutions, insurance companies and other interested parties in understanding the provisions of the Act and in dealing with questions and requests related to these rules.

### **What is "locking-in"?**

In general, Section 30 of the Act does not allow pension plan members or former members to cash in the commuted value of benefits earned in plans under the Act. This requirement applies to defined benefit pension plans, defined contribution pension plans hybrid plans, and registered retirement savings plans ("RRSP" or "RRSPs") and life income funds ("LIF" or "LIFs") created as a result of termination of membership, termination of plans, retirement or the death of the plan member.

The reason for this requirement is to ensure that a plan member's pension entitlement is used for the purpose originally intended: to provide income in retirement for that person, and where applicable that person's spouse. This section is commonly referred to as the "locking-in requirement".

Under the Act, there are very limited exceptions to this requirement. These include:

- The pension or its commuted value payable from a pension plan falls below prescribed limits.
- The balance in a locked-in RRSP or LIF falls below prescribed limits.
- A member or former member of a pension plan or the owner of a locked-in RRSP or LIF has a shortened life expectancy.
- A member or former member of a pension plan or the owner of a locked-in RRSP or LIF is a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

Details on the release of locked-in pension funds under each of these exceptions are set out below. There are no other exemptions under British Columbia legislation.

### **Pension Plan Amounts below Prescribed Limits:**

Section 40 of the Act requires that a pension plan provide for the release of the commuted value of pension benefits if the pension or its commuted value falls below a prescribed limit.

The prescribed limit depends on the calculation of maximum pensionable earnings under the Canada Pension Plan ("the CPP"). Funds will be released if:

- The lump sum transfer amount is less than 20% of the maximum pensionable earnings in the year of termination of membership, termination of the plan, pension commencement or death; or
- The monthly amount of pension payable at retirement is less than 1/12<sup>th</sup> of 10% of the maximum pensionable earnings in the year of termination of membership, termination of the plan, pension commencement or death.

In 2007, the maximum pensionable earnings under the CPP are \$43,700. This amount is indexed, and typically increases every year. The examples provided below apply only to 2007.

If either

- The lump sum amount available for transfer is less than \$8,740, or
- The monthly pension payable at retirement age is less than \$364.17

the amounts are not required to be locked-in and the person entitled to the benefits may elect to receive a cash lump sum, subject to withholding tax. Alternatively, the pension plan may, but is not required to, permit the transfer of funds to a regular RRSP.

### **Locked-in RRSP or LIF Amounts below Prescribed Limits:**

Sections 29(9.2) and 30(9.2) of the Pension Benefits Standards Regulation ("the Regulation") allow for the release of funds held in a locked-in RRSP or LIF if the value of the contract is less than 20% of the maximum pensionable earnings in a given year.

Section 30(11) of the Act allows a person age 65 or older to release all locked-in funds if the total value of all locked-in RRSPs, LIFs and any entitlement under a defined contribution pension plan is less than 40% of the maximum pensionable earnings in a given year.

Using the 2007 maximum pensionable earnings of \$43,700, if:

- The value of any of your locked-in RRSPs or LIFs is less than \$8,740, or

- You are age 65 or over and the total value of all of your locked-in RRSP or LIF accounts and any benefits held in a defined contribution pension plan is less than \$17,480.

The benefits may be released from the locking-in provisions imposed by the Act.

In the case of a locked-in RRSP or LIF with a value that is less than 20% of the maximum pensionable earnings, there are no forms to fill out, and financial institutions are expected to comply with the requirement that the benefits are not locked-in.

Section 23.1 of the Regulation requires that an individual is 65 years of age or older who wishes to unlock funds because their total entitlements are less than 40% of the maximum pensionable earnings must complete Form 5 for each locked-in RRSP, LIF and defined contribution pension plan. The form(s) must be submitted to each pension plan administrator and financial institution holding locked-in pension funds. **Do not submit any forms to the Superintendent, as the Superintendent does not receive Form 5 or approve unlocking of pension benefits**

This section of the Regulation also requires that if the individual has a spouse, the spouse must complete Form 2 and that the Form 2 be attached to each Form 5 required to be submitted to the financial institution holding the locked-in funds.

There are restrictions in the Act and Regulation prohibiting the splitting of locked-in RRSPs or LIFs to fraudulently take advantage of the provisions noted above.

[Links to all forms and websites are attached at the end of this bulletin.](#)

### **Shortened Life Expectancy:**

Section 40 of the Act allows but does not require a pension plan locked-in RRSP or LIF to unlock pension funds if a plan member or owner of a locked-in RRSP or LIF, as applicable, has a shortened life expectancy.

If permitted under the pension plan, locked-in RRSP or LIF, the person wishing to unlock funds using this option must get a certificate from a medical doctor stating that, in their opinion, the person has a physical disability that is likely to considerably shorten their life expectancy. This certificate must be submitted to the pension plan administrator or the financial institution holding the locked-in funds, along with any other documents they may require. **Do not submit any forms or documents to the Superintendent, as the Superintendent does not receive forms or documents or approve unlocking of pension benefits.**

It is important to note that this provision is optional and a plan member or owner of a locked-in RRSP or LIF should verify whether the provision applies in their particular circumstances by contacting their plan administrator or the financial institution holding their funds, as appropriate.

Section 34 of the Regulation requires that, if the person seeking to unlock benefits in such circumstances has a spouse, the spouse will have to complete Form 2 waiving his/her rights to certain benefits.

It is the responsibility of the pension plan administrator or financial institution holding the funds to make a determination concerning applicability of this exception. The Superintendent has no role in this process.

**Non-Resident of Canada:**

Section 30(12) of the Act allows for the release of funds if a member or former member of a pension plan, or the owner of a locked-in RRSP or LIF has been a non-resident of Canada for purposes of the *Income Tax Act* (Canada) for a minimum period of two (2) years and has documentation from the Canada Revenue Agency supporting their non-residency.

Section 23.1 of the Regulation requires that the owner of a locked-in RRSP or LIF seeking release of funds under this provision to complete Form 6 – Certificate of Non-residency. Further, if that person has a spouse, the spouse will have to complete Form 2 waiving his/her rights to certain benefits. **Do not submit any forms to the Superintendent, as the Superintendent does not receive Form 6 or approve unlocking of pension benefits.**

A member or former member of a pension plan, or the owner of a locked-in RRSP or LIF who wants to release locked-in funds because they are no longer a resident of Canada for purposes of the *Income Tax Act* (Canada) should review the information available on the Canada Revenue Agency - International Taxation Office's website.

If you have further questions concerning the requirements for non-residency, contact the Canada Revenue Agency International Taxation Office at:

2204 Walkley Road  
Ottawa ON K1A 1A8  
Calls from Canada and the U.S.: 1-800-267-5177  
Calls from outside Canada and the U.S.: 613-952-3741  
Fax number: 613-941-2505

**PLEASE NOTE: British Columbia law does not allow for the release of locked-in pension funds owing to financial hardship.**

**The Superintendent of Pensions has no role in applying the above noted exceptions and has no authority to allow the release of locked-in funds in any circumstance.**

## Links to Forms and Websites:

FICOM:

Form 2: <http://www.fic.gov.bc.ca/pdf/Pensions/form02.pdf>

Form 5: <http://www.fic.gov.bc.ca/pdf/Pensions/form05.pdf>

Form 6: <http://www.fic.gov.bc.ca/pdf/Pensions/form06.pdf>

International Taxation Office:

<http://www.cra-arc.gc.ca/tax/nonresidents/common/residency-e.html>

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At the Financial Institutions Commission, we issue interpretation bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Pension Benefits Standards Act* and Regulations. While the comments in a particular part of an interpretation bulletin may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, an interpretation or position contained in an interpretation bulletin generally applies as of the date on which it was published, unless otherwise specified.

If you have any questions with respect to the contents of this Information Bulletin, please contact:

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