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SECTION: Life Income Fund/Locked-In Retirement Account

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TITLE: Requirements of the Ontario Locked-In Retirement Account (LIRA),  
PBA, 1990 s. 48, s. 65, O. Reg. 909 s. 20, s. 21

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#### **Requirements of the Ontario Locked-in Retirement Account (the "LIRA")**

The *Pension Benefits Act* (Ontario), (the "PBA (Ontario)") regulates pensions for plan members who are employed in Ontario and who do not work in "included employment". On termination of employment or when a pension plan is terminated, clause 42(1)(b) of the PBA (Ontario) gives Ontario members and former members the right to transfer the value of their pensions to a prescribed retirement savings arrangement. In some situations, the spouses of Ontario members and former members may also have a right to portability.

Until the end of 1992, the single prescribed retirement savings arrangement was a registered retirement savings plan which satisfied the contractual requirements of two statutes. The arrangement was required to be established as a Registered Retirement Savings Plan (an "RRSP") in accordance with the *Income Tax Act* (Canada), (the "ITA"). In addition, the written contract for the RRSP (the specimen document(s)) had to contain all of the provisions of subsections 21(2) and 21(4) of the Regulations under the PBA (Ontario). The pension industry informally called the arrangement a locked-in Registered Retirement Savings Plan (a "locked-in RRSP").

In the latter part of 1992, Ontario amended the Regulations to introduce a second prescribed retirement savings arrangement, the Life Income Fund (the "LIF"). The availability of the LIF as a transfer option is subject to restrictions relating to eligibility for retirement. Articles on the Ontario LIF have been published in the *PCO Bulletin* and are available on the PCO Conference #149 on the BBS.

#### **Introduction of the LIRA**

On June 24, 1994, the Regulations were amended to introduce the locked-in retirement account (the "LIRA"). The LIRA replaced the original prescribed retirement savings arrangement.

### **What is an Ontario LIRA?**

For the purpose of clause 42(1)(b) of the PBA, a LIRA must be an RRSP established under the ITA. In addition, the specimen document(s) for the LIRA must satisfy the contractual requirements set out in subsections 21(2), (2.1) and (4) of the Regulations.

Many of Ontario's statutory requirements are different from those of the other Canadian pension jurisdictions. The contractual provisions under subsections 21(2), (2.1) and (4) of the Regulations reflect Ontario's statutory requirements. This means that the contract for an Ontario LIRA differs from the contract for, for example, a Saskatchewan LIRA. Consequently, locked-in money that is required to be administered in accordance with the PBA (Ontario) may not be transferred to a prescribed retirement savings arrangement of another pension jurisdiction.

### **What are the Contractual Requirements of a LIRA?**

Money that is locked-in under the PBA (Ontario) must ultimately be used to purchase a life annuity. This means that any subsequent transfer from an Ontario LIRA, of the initial transfer amount plus accrued interest and any other investment earnings, must be restricted to four prescribed transfer arrangements identified in the LIRA contract. The LIRA documents must also set out the conditions that apply to any subsequent transfer. Provision must be made in the LIRA documents for the payment of a death benefit and for an assignment of assets on marriage breakdown.

### **Transfers From a LIRA**

In accordance with subsection 21(2)(a), the transferee institution that is now responsible for the administration of the locked-in money may only comply with a request to make a transfer to:

- ! the pension fund of a subsequent employer's Registered Pension Plan, if that employer is willing to accept the transfer,
- ! another Ontario LIRA,
- ! an Ontario LIF, or
- ! a Canadian insurance company for the purpose of purchasing an immediate or deferred life annuity that satisfies the requirements of section 22 of the Regulations.

### **Conditions Applicable to Transfers from a LIRA**

#### 1) Confirmation of Continued Administration

The LIRA contract must reflect the requirements of clauses 21(2)(f) and (g). Whenever a subsequent transfer is requested by the owner of the LIRA, the transferor must advise the new transferee, in writing, that the money is locked-in and must be administered as required by the PBA (Ontario) and the Regulations. The transferor cannot complete a transfer until the new transferee has agreed to comply with the administrative requirements.

Although it is a requirement of Schedule 1 to the Regulations (the LIF Schedule) rather than subsection 21(2), all other matters being satisfactory, the transferor cannot complete a transfer to a LIF unless the spouse, if any, has consented in writing to the transfer.

#### 2) The Earliest Date Pension Benefits May Commence to be Paid

Restrictions related to eligibility for immediate retirement pertain to requests to transfer locked-in money to an Ontario

LIF or to purchase an immediate annuity. The administrator of the LIRA, the transferor, may not comply with a request to make a transfer for either purpose if the owner of the LIRA is not eligible to retire under the terms of the pension plan from which the money was originally transferred.

In accordance with subsection 21(2.1), a LIRA contract must indicate the earliest date that payments from an annuity may commence. Payments may not commence earlier than the date the individual attains 55 years of age, or at any earlier date the individual could have begun receiving payment of a pension under the terms of the pension plan from which the locked-in funds were originally transferred.

The identical restrictions under Schedule 1 to the Regulations also apply to the earliest date payments may commence from a LIF. Information about the earliest date the owner of a LIRA may begin receiving payments from an annuity or a LIF should be obtained from the administrator of the plan from which the transfer originated.

### **Payment of a Death Benefit**

The LIRA contract must contain a provision that establishes the treatment of a death benefit as provided by clause 21(2)(h). In accordance with section 48 of the PBA (Ontario), when the owner of the LIRA dies prior to purchasing an annuity, the balance of the LIRA must be payable to a spouse (married or common law) who satisfies the definition of "spouse" under the PBA (Ontario).

This legislated entitlement does not apply if the spouse had previously waived, in the prescribed manner, entitlement to the death benefit. Also, a spouse who was living separate and apart from the owner of the LIRA at the time of that person's date of death also has no legislated entitlement to the death benefit.

In circumstances where there is no spouse, the spouse has waived entitlement, or a breakdown in the marriage occurred prior to the date of death, the death benefit may be paid to the designated beneficiary or to the estate of the deceased, as applicable. In all circumstances, the death benefit may be paid, or transferred, as the case may be, as an unlocked amount.

### **Assignment of Locked-in Money on Marriage Breakdown**

In accordance with clauses 21(2)(b) and (c), the LIRA contract must provide that all money held under the LIRA cannot be assigned, charged, anticipated or given as security except as permitted by subsection 65(3) of the PBA (Ontario). On marriage breakdown, this exception permits the assignment, by an order under the *Family Law Act* or by a domestic contract as defined in Part IV of that Act, of an interest in the balance of a LIRA. Subsection 51(2) of the PBA (Ontario), permits no more than 50 per cent of the balance of a LIRA to be assigned to a spouse or former spouse on marriage breakdown.

Any portion of a LIRA that is assigned as a result of a court order on marriage breakdown must continue to be administered as a pension. This means that payment must be made as a transfer to a locked-in retirement savings arrangement of the spouse or former spouse or to purchase an lifetime annuity for the spouse or former spouse.

### **Shortened Life Expectancy of the Owner of a LIRA**

Only in one very limited circumstance may an owner of a LIRA receive payment from the LIRA. The LIRA contract must reflect the requirements of clauses 21(2)(d) and (e). Where the pension plan from which the locked-in money was originally transferred contained a section 49 provision that permitted a variation in payment of a pension or a deferred pension because of a significantly shortened life expectancy, that provision will also apply to the LIRA.

After obtaining proof that the prior employer's pension plan contains a shortened life expectancy provision, the

transferee institution that is responsible for administering the LIRA may make a decision concerning the release of locked-in funds. Any decision to pay money in a LIRA to the owner of the LIRA should be made on the basis of a written opinion of a qualified medical practitioner.

### **No Differentiation on the Basis of Sex**

Subsection 21(4) requires that the contract for the LIRA contain a statement as to whether the initial transfer amount was determined on a basis that differentiated on the basis of sex. This information is required because when an annuity is eventually purchased, the annuity cannot differentiate on the basis of the sex of the former pension plan member unless the initial transfer amount was determined on a sex distinct basis. In most cases, locked-in money that represents the value of a pension earned on or after January 1, 1987 must be determined on a basis that does not differentiate on the basis of the sex of the former plan member.

A copy of the subsections 20 and 21 of Regulation 909 under the PBA (Ontario) follows:

**20.** (1) A member of a pension plan who makes an election under section 42 of the Act or a person who is entitled to make an election under subsection 51(5) of the Act shall deliver a completed direction to the administrator within sixty days after termination of employment or, in the case of a person entitled to make an election under section 51(5) of the Act, within sixty days after receipt of notice of termination.

(2) The administrator shall comply with an election made under subsection (1) within sixty days after the receipt of all information required by the administrator to comply with the direction.

(3) The administrator shall not transfer the commuted value of a pension or deferred pension except where the transferee agrees to administer the amount transferred as a pension or deferred pension in accordance with the Act and this Regulation. R.R.O. 1990, Reg. 909, s.20.

**21.** (1) This section governs the transfer of an amount equal to the commuted value of a deferred pension under clause 43(1)(b) of the Act into a prescribed retirement savings arrangement.

(1.1) The following are the prescribed retirement savings arrangements:

1. A life income fund.
2. A locked-in retirement account.
3. An RRIF.
4. An RRSP.

(1.2) If the amount to be transferred does not exceed the amount prescribed for such a transfer under the *Income Tax Act* (Canada), it may be transferred *only* into a life income fund or a locked-in retirement account.

(1.3) If the amount to be transferred is greater than the amount prescribed for such a transfer under the *Income Tax Act* (Canada),

- (a) that portion that does not exceed the prescribed amount may be transferred only into a life income fund or a locked-in retirement account; and
- (b) that portion that exceeds the prescribed amount may be transferred only as described in

subsection (1.4) or (1.5).

(1.4) If the amount transferred under clause (1.3)(a) is transferred into a life income fund, the amount transferred under clause (1.3)(b) may be transferred only into an RRIF.

(1.5) If the amount transferred under clause (1.3)(a) is transferred into a locked-in retirement account, the amount transferred under clause (1.3)(b) may be transferred only into an RRSP. O.Reg. 409/94, s.3(1).

(2) A contract to establish a locked-in retirement account shall provide that,

- (a) no money transferred, including all investment earnings, will be withdrawn except,
  - (i) prior to maturity, to transfer the money to the pension fund of a registered pension plan,
  - (ii) prior to maturity, to transfer the money to another locked-in retirement account,
  - (iii) to purchase an immediate or deferred life annuity described in subsection (2.1) that is provided by a person authorized under the laws of Canada or a province to sell annuities as defined in section 248 of the *Income Tax Act* (Canada) under an insurance contract that meets the requirements of section 22,
  - (iv) prior to maturity, to transfer the money to a life income fund;
- (b) no money transferred, including interest, will be assigned, charged, anticipated or given as security except as permitted by subsection 65(3) of the Act;
- (c) any transaction purporting to assign, charge, anticipate or give as security money transferred, except as permitted by subsection 65(3) of the Act, is void;
- (d) except as permitted in section 49 of the Act, no money transferred, including interest, will be commuted or surrendered during the lifetime of the former member;
- (e) any transaction that contravenes clause (d) is void;
- (f) the transferee will not permit any subsequent transfer except,
  - (i) where the transfer is permitted under the Act and the regulations, and
  - (ii) the subsequent transferee agrees to administer the amount transferred as a pension or deferred pension in accordance with this Act and the regulations:
- (g) the transferee will advise in writing any subsequent transferee that the amount transferred must be administered as a pension or deferred pension under the Act and this Regulation; and
- (h) on the death of the holder of the locked-in retirement account, the transferee will administer the money in accordance with section 48 of the Act. R.R.O. 1990, Reg. 909. s. 21(2); O.Reg.

564/92, s. 1(2,3); O.Reg. 409/94, s. 3(2-4); O.Reg. 558/94, S.2(1).

(2.1) The annuity must not begin before the earlier of,

- (a) the earliest date on which the former member is entitled to receive pension benefits under the Act as a result of termination of employment or termination of membership in any pension plan from which money was transferred into the locked-in retirement account; or
- (b) the earliest date on which the former member is entitled to receive pension benefits under any pension plan described in clause (a) as a result of termination of employment or termination of membership in the plan. O.Reg. 409/94, s. 3(5).

(3) An immediate or deferred life annuity that is purchased with funds from a life income fund or locked-in retirement account shall not differentiate on the basis of the sex of the beneficiary where the fund or account resulted from the transfer of the commuted value of a pension benefit which value was determined in a manner that did not differentiate on the basis of sex. O.Reg. 558/94, s. 2(2).

(4) A life income fund or locked-in retirement account shall contain a statement as to whether the commuted value of the pension benefit transferred to it was determined on a basis that differentiated on the basis of sex. O.Reg. 558/94, s. 2(3).

(5) REVOKED: O.Reg. 558/94, s. 2(4)

**21.1** (1) This section applies if an amendment to a pension plan with defined benefits converts them to defined contribution benefits. O.Reg. 409/94, s. 4, *part*.

(2) A member with defined benefits who elects to convert them in accordance with the amendment to the pension plan is entitled to require the administrator to transfer the amount described in subsection (4) to an RRSP. O.Reg. 409/94, s. 4, *part*; O.Reg. 558/94, s. 3.

(3) The administrator shall make the transfer in accordance with the instructions of the member but only if the transfer complies with the Act and this Regulation.

(4) The amount that may be transferred is that portion of the amount of the commuted value of the member's defined benefits that exceeds the amount prescribed under the *Income Tax Act* (Canada) for a transfer of benefits from a defined benefit provision of a pension plan to a money purchase provision of the same plan.

(5) A transfer made in accordance with this section is prescribed for the purposes of clause 63(5)(c) of the Act. O.Reg. 409/94, s. 4 *part*.