Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Life Income Fund/Locked-In Retirement Account
INDEX NO.:	L050-603
TITLE:	Ontario Life Income Funds (LIFs): Direct Transfer of Locked-in Funds and Administration Issues, O. Reg. 909, Schedule 1
APPROVED BY:	The Pension Commission of Ontario
PUBLISHED:	Bulletin 5/3 (Fall 1994)
EFFECTIVE DATE:	October 28, 1994. Updates Policy L050-500 [No longer applicable - replaced by L200-300]

This is the third in a series of articles written to provide information related to the transfer of locked-in funds to an Ontario Life Income Fund (a "LIF") and to the administration of a LIF. Information about the authority under the *Income Tax Act* (Canada), (the "ITA"), to make a direct transfer to a LIF is provided in this article. In addition, recent amendments to the *Pension Benefits Act* (the "PBA") and decisions which affect the administration of a LIF will be discussed.

Authority for Direct Transfers

Many Administrators of registered pension plans are uncertain about whether the ITA provides for the direct transfer of the "locked-in" value of a pension entitlement from a registered pension plan to a LIF. The authority for this type of transfer can be found under clauses 147.3(4)(c)(iii) [direct transfer from a defined contribution plan] and 147.3(4)(d)(iii) [direct transfer from a defined benefit plan] of the ITA. Confusion arises because the ITA provides for a transfer to a registered retirement income fund (a "RRIF"). There is no reference under the ITA to a life income fund ("LIF").

A LIF is a "locked-in" tax-sheltered arrangement which is prescribed under Regulation 909 (the "Regulation") under the *Pension Benefits Act*. A LIF is defined under the Regulation, and the contractual conditions which are applicable to the administration of a LIF are set out in Schedule 1 to the Regulation. Since the Ontario LIF is established only under provincial pension legislation, it is not mentioned in the ITA. For the purposes of the ITA, a RRIF is the appropriate transfer arrangement. In other words, an Ontario LIF is actually a RRIF with some additional conditions which make it acceptable to receive funds locked-in under provincial law. Therefore, the specimen document(s) must comply both with the contractual requirements under the ITA for a RRIF and under the Regulation for a LIF.

It follows that in order for a pension plan document to provide for a transfer to a tax-sheltered arrangement that is acceptable to both the federal and the provincial regulators, the transfer provision must contain references to both of the arrangements. For example, a portability provision that permits a transfer to "a RRIF" will reflect the language of the ITA but it will not comply with Ontario's requirements. For Ontario's purposes, a portability option which permits a transfer to "a RRIF which meets the requirements for a LIF as set out in the Regulation under the *Pension Benefits Act*, as amended from time to time" will be acceptable. Before an Administrator files an amendment to alter the portability provisions for a pension plan registered under the PBA, Revenue Canada's advice concerning the

proposed wording should be sought.

Earliest Withdrawal Date

Amendment 409/94 to Regulation 909, which was effective June 24, 1994, altered the rule affecting the earliest date withdrawals (annual minimum or maximum amounts) may commence from an Ontario LIF. Prior to June 24, subsection 4(1) of Schedule 1 restricted the date withdrawals could commence to the date the former plan member (the "annuitant") attained 55 years of age (10 years prior to the date that unreduced retirement benefits are normally payable under the CPP or the QPP, as applicable).

Effective June 24, 1994, that restriction was altered to the earlier of the date the annuitant attains 55 years of age and the earliest date the annuitant could have commenced to receive retirement income under the terms of the plan from which the "locked-in" funds were originally transferred. Where money has been transferred from the pension plans of several employers, the earliest retirement date under any of the pension plans applies to the balance of the LIF.

Financial institutions should insure that the Administrator of a pension plan identifies the applicable earliest retirement date when the original locked-in transfers are made from a pension plan. In situations where that information was or is not provided, financial institutions should obtain confirmation of any earlier date before permitting withdrawals to commence prior to the annuitant's attainment of 55 years of age.

Application of the CANSIM Rate

The maximum amount which may be withdrawn from a LIF during any fiscal year of the LIF is restricted to an amount which must be calculated annually in accordance with formulae which are identified under Schedule 1 of the Regulation. There are two methods of determining the annual maximum payout from a LIF. Both are based, in part, on the use of the prescribed rates of interest.

The annual maximum withdrawal amount which is applicable to any twelve-month fiscal year of the LIF must be determined as at January 1 (the valuation date) of that year. If the method selected by the financial institution is the CANSIM method, a rate not to exceed the CANSIM series B-14013 rate for December of the preceding year is the prescribed rate for the calculation on the first fifteen years of the LIF. The Canadian Socio-Economic Information Management (CANSIM) series is compiled by Statistics Canada and is published in the Bank of Canada Review. Series B-14013 is applicable to long-term bonds issued by the Government of Canada.

Information released in the *PCO Bulletin* previously indicated that an assumed January 1 valuation date was also applicable in the initial fiscal year of an Ontario LIF, even though that initial fiscal year might be less than twelve months. However, the wording of subsection 5(1) and clause 5(3)2.(ii) of Schedule 1 was recently reviewed in detail as part of an undertaking to establish greater consistency in the practices of all jurisdictions which offer similar LIF arrangements.

After careful consideration of those provisions and following consultation with Ministry staff, it was concluded that the wording of section 5 is broad enough to accommodate a change in the method of determining the annual maximum withdrawal amount in the first fiscal year of a LIF. This change will apply only where the first fiscal year of a LIF is less than twelve months (fiscal years must end on December 31 and may not exceed a twelve-month period).

Now, where the initial transfer of monies to an Ontario LIF occurs after January, the use of the CANSIM rate for the month preceding the month in which the monies are transferred to the LIF will be permitted. For example, if the initial transfer is received during the month of May, the April CANSIM rate may be used to calculate the annual maximum withdrawal amount for the initial eight-month fiscal year. Calculations performed in January of each subsequent year must be based on the prescribed December rate.

It is our hope that Schedule 1 will be amended at the earliest opportunity to provide greater clarity concerning the

requirements for the administration of an Ontario LIF, including more explicit direction about the calculations to determine annual maximum withdrawal amounts.

Minimum Withdrawal Requirement

The annual minimum withdrawal requirement for an Ontario LIF is now consistent with the minimum requirement under the ITA for withdrawals from a RRIF. The amendment to subsection 5(2) of Schedule 1 to Regulation 909 was part of Ontario Regulation 665/94 which was effective October 28, 1994. Please refer to page 6 of this issue (Fall 1994 Bulletin 5/3) for more information about O. Reg. 665/94.

Written Consent of a Spouse

Locked-in money (money which must be administered in accordance with the PBA and Regulation 909) may not be transferred to a LIF unless the written consent of the spouse of the member or former member of a pension plan, as applicable, is obtained. Pension plan administrators and financial institutions are responsible for ensuring that transfers do not contravene this requirement.

The written consent of a spouse must be obtained because the amount of the legislated survivor benefits to which a spouse is entitled will be reduced as a result of withdrawals made from a LIF. Under circumstances where a member or former member dies before locked-in money is transferred to purchase a life annuity, a spouse who is not living separate and apart from the member is entitled to the death benefit. When a life annuity is purchased, if a spouse is not living separate and apart, a life annuity which provides a 60 per cent survivor benefit must be arranged. Spouses may waive the right to legislated survivor benefits by completing the prescribed form.

The requirement to obtain a spouse's written consent to a transfer to a LIF is being confused in some cases with a spouse's voluntary waiver of survivor benefits. By consenting to a transfer to a LIF, a spouse is not waiving his/her entitlement to survivor benefits.

The PCO is developing a suggested consent form which will assist spouses in understanding the consent requirement. Use of the suggested form will also help to ease the administrative burden on pension plan administrators and financial institutions. The suggested consent form will be published in an upcoming edition of the *PCO Bulletin*.

Previously published information on the LIF is available under Policy index number L050.