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How Pension Legislation Affects Locked-in RRSP Funds

Effective April 1, 1987, the pension portability became a major cornerstone of pension reform in Ontario. Since that date, many former plan members who are entitled to receive pensions payable from private plans have transferred locked-in funds to their individual RRSPs. Transfers of locked-in contributions are permitted when financial institutions, the issuers or underwriters of RRSPs, agree to administer the transferred funds and all earned interest in accordance with Ontario pension law. The *Pension Benefits Act* requires that those funds be locked-in until a member reaches pensionable age at which time the proceeds are used to purchase a life annuity. The Pension Commission receives numerous requests for clarification on how pension legislation continues to affect money held in locked-in RRSPs.

Under Ontario law, the use of the proceeds of locked-in RRSPs (prescribed RRSPs) is restricted to the purchase of a stream of retirement income. Although the holder of the RRSP may purchase an annuity as early as age 55, the purchase may be delayed until Revenue Canada, Taxation requires the collapse of the RRSP - the end of the year in which the plan holder attains age 71.

Pension legislation provides certain rights to spouses of pension plan members if the member dies prior to retirement and also when the member begins to receive a retirement income. These rights continue to be protected by legislation when locked-in pension monies are transferred to a prescribed RRSP. If the holder of a prescribed RRSP has a spouse at the date the locked-in monies are used to purchase an annuity, the form of annuity chosen must provide a 60% continuation benefit to a surviving spouse on the death of the annuitant. This legislated requirement is imposed unless the annuitant and the spouse have waived the requirement in writing. It is apparent from the questions being asked that many financial institutions have accepted transfers of locked-in pension monies without being fully aware of the responsibility they were assuming. In some instances, it appears that the obligation to administer locked-in monies in accordance with pension legislation is being disregarded by financial institutions. For example, locked-in monies may be permitted to be transferred to successor RRSPs that are not locked-in and RRSP holders may be allowed to withdraw locked-in funds.

When financial institutions fail to administer locked-in RRSPs as required, they are in contravention of the *Pension Benefits Act*, RSO, 1990. An individual who is convicted of such an offence under this Act is liable for a fine of up to $25,000. Where a corporation is found guilty of the offence, an officer, official, director or agent of the corporation who

is found liable is also subject to a similar fine. Fines up to $100,000 also may be imposed on corporations. When financial institutions release locked-in funds and do not enforce the 60% spousal continuation requirement, spouses are denied rights and benefits provided by pension legislation. Spouses may initiate legal proceedings against financial institutions to claim restitution for lost rights and benefits.

Recent enquiries have focused on the release of locked-in RRSP monies to fund the purchase of a home. Funds held in regular locked-in RRSPs may not be withdrawn for this purpose. However, in Ontario, self-administered, locked-in RRSPs are permitted to hold the mortgage of the plan holder as an investment. The mortgage process is strictly overseen by an administrator. In instances where the mortgage payments are in default, the administrator of the mortgage may foreclose. The property can be sold and any outstanding loan amount must be paid back into the locked-in RRSP.

When the impact of pension legislation is discussed with former plan members, many mistakenly express their understanding that the lock-in requirement expires upon their attainment of normal retirement age. Some people believe the locking-in requirement expires if the transferred funds are redirected to a successor RRSP, or if the funds are transferred to an RRSP issued by a financial institution outside Ontario.

Some former plan members are also under the misconception that interest credited on the transfer amount is not subject to pension legislation and therefore, is available for withdrawal at any time. Often the option of locking-in RRSP fund assets for a period of time, from one to five years, in order to secure a guaranteed rate of return is confused with the legislated requirement to lock-in pension monies until pension income is secured by way of an annuity purchase. There is also a general misapprehension that the authority exists for locked-in monies to be released in circumstances where the RRSP plan holder is experiencing financial difficulty.

Some former plan members and representatives of financial institutions have expressed the view that the requirement to subject locked-in RRSPs to continued compliance with pension legislation is an unfair penalty imposed on the RRSP holder. In many cases, enquirers are seeking some means of circumventing the legislation. The fact is that this requirement was devised for the protection of plan members and their spouses. Except in situations where a marriage breakdown has occurred, assets held in locked-in RRSPs cannot be assigned or accessed by creditors. This restriction ensures that the retirement pension promised to be paid from a former employer's pension plan will in fact be paid.

PCO Staff Comment: This article was accurate at the time of writing. However, Revenue Canada has changed the latest date at which the RRSP must be collapsed to the end of the year in which the plan holder attains age 69.