



Financial Hardship Unlocking

Date: January 11, 2013

Submitted to: Pension Policy Branch, Ministry of Finance

Submitted by: The Ontario Bar Association, Pension Section



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The Ontario Bar Association (“OBA”) appreciates the opportunity to comment on the proposed Financial Hardship unlocking regulatory amendments (the “proposal”).

The OBA

Established in 1907, the OBA is the largest voluntary legal association in Ontario and represents 18,000 lawyers, judges, law professors and law students. This submission was prepared by the OBA Pensions and Benefits Section, which has over 300 members, including the leading practitioners in the field. These members serve as legal counsel to virtually every stakeholder in the pension and benefits industry, including plan administrators, employers, plan members, pension and benefit consultants, investment managers, actuarial firms and other advisors. Our Members have, over the years, analyzed and provided assistance to the Ontario government on most legislative and policy initiatives in the area of pensions and related fields.

I - Further Information Required for full Analysis

In order to assess whether the proposed changes to the regulations would constitute an improvement over the existing process and to determine the feasibility of the proposal, it would be helpful for us to be able to examine some aggregated data for the past year, including:

- (a) number of applications;
- (b) most commonly relied upon criteria for unlocking;
- (c) amounts paid out;
- (d) the typical length of time to process an application;
- (e) the extent to which the applications were completed correctly (how many applications were returned to applicants or required follow up due to errors? how much time did this typically add to application processing? etc) .

If this information is available and can be provided, we would be happy to provide follow-up comments.

II – Maintaining Public Protection in the Absence of the Public Sector Intermediary

It is understood that removing the Financial Services Commission of Ontario (FSCO) from the unlocking process offers fiscal and human resources advantages for the government and a



potentially streamlined application process for applicants and other parties. However, in that the public sector intermediary will no longer have a role in every application, it is important that the government build certain public protections into the overall process. These include:

- (a) affordability - ensuring the application process itself and any related charges are affordable and do not exacerbate the circumstances of those already experiencing financial hardship;
- (b) accountability – in order to assess whether the new process is effective and is meeting its public policy goals, the information listed in sections I (a) – (e) should continue to be tracked by those involved and aggregated by the government;
- (c) Access to Assistance - applicants must have access to assistance for completing the forms – whether from FSCO or otherwise. Correctly completed forms will benefit all parties involved.

III - Timing

Many scenarios of financial hardship, particularly imminent evictions or foreclosures, demand an emergency protocol that shortens the 30-day payment period. Once the applicant has learned about the potential for unlocking, investigated whether their circumstance fits the criteria, gathered the necessary information and correctly completed the application, there will not be 30 days remaining before the devastating consequences come to fruition. There must be a process for shortening the payment period where necessary.

IV – Additional Criteria for Unlocking

There is some concern about the elimination of two of the categories/subcategories that allow for unlocking:

- (i) Expenses related to mental or psychological disability (eligibility appears limited to illness and *physical* disability. If mental or psychological disability is intended to be covered by the term “illness” this should be clarified); and
- (ii) Home renovations due to illness/physical disability.



These two criteria seem consistent with the public policy goals of financial hardship unlocking. Further discussion of the public policy rationale for their removal would be helpful.

V – Maximum Limit too Low

When one considers the typical value of the locked-in funds of those likely to experience financial hardship, the proposal's unlocking maximums may not be sufficient to allow an applicant to address the problems that the policy is designed to help them address. For example, 5% of YMPE is not sufficient to address the needs of people who require first and last month's rent deposit to avoid homelessness.

VI – Clear Warning regarding Consequences of Unlocking

The approved application form, spousal consent form (which should also be a Ministry approved form) and other required information materials should clearly warn applicants and spouses that

- i) the member cannot, on a tax-free basis, replace the money withdrawn unless he or she has available unused RRSP room; and
- ii) the member will be taxed on the amount withdrawn.

If spousal consent is to be provided on the main application form, this warning should be repeated in that section of the form.

Conclusion

We would be pleased to answer any questions you may have with respect to the issues raised and we look forward to further discussion on the issues identified. We appreciate the opportunity to consult and congratulate the Ministry on making efforts to improve this important process.