

SUBMISSION ON THE UNLOCKING OF PENSIONS

About the Canadian Union of Public Employees

The Canadian Union of Public Employees (CUPE) is Canada's largest union, including almost 700,000 public sector members working in virtually every community across the country. In Newfoundland & Labrador, we proudly represent over 6,000 workers with approximately 60 different employer groups.

Our members work on the front lines in our communities. We are tax-paying citizens and users of the public services in the Province. More importantly, we are proud of the role which we play in delivering public services to the people of Newfoundland and Labrador in health care, education, public housing, provincial libraries, municipalities, post-secondary education, child care, recycling, social services and much more.

CUPE's Position on the Proposed Amendments

The Government of Newfoundland and Labrador is again proposing to amend the *Pensions Benefit Act* "to facilitate unlocking pension funds for financial hardship." These changes are being considered "for persons who have transferred funds from a registered pension plan into a locked-in retirement savings arrangement." Government states these changes will not apply to active plan members, or defined benefit plan members. Presumably, this means the changes under consideration would apply to retired or eligible deferred members of defined contribution plans, or eligible members who have taken commuted values out of defined benefit plans and transferred them to locked-in vehicles.

CUPE Newfoundland Labrador (NL) notes that the Government consulted on this same topic in 2009 in the wake of a similarly severe financial crisis and did not make major changes to pension unlocking policy in the province.

CUPE NL has long been opposed to relaxation of pension unlocking rules, and our union is opposed to these proposed amendments. The existing provisions of the *Pension Benefits Act* are reasonable and flexible enough to assist persons truly in medical need of their pension funds.

Pension law in the province already permits plans to offer exceptions to the "locking in" requirements where a person has accumulated a small balance in the pension plan or if someone's life expectancy is likely to be shortened considerably. CUPE NL believes the narrow exceptions to "locking in" are appropriate and should remain.

The proposed changes to enable “*financial hardship*” unlocking is intended by government to be a public policy response to the COVID-19 crisis. The government’s news release stated that “*The COVID-19 pandemic led to massive lay-offs and job losses, creating financial pressures for many individuals. Since its onset, the Provincial Government has received numerous emails and calls from individuals with locked-in pensions seeking access to retirement assets to assist with financial hardship due to COVID-19.*”

CUPE NL of course recognizes the financial hardships faced by many in the province due to COVID-19. Our union has strongly advocated for public income and social support programs for those facing various personal pressures due to the pandemic. COVID-19 is a shared, public crisis which demands fair, public solutions.

CUPE NL strongly opposes the government’s choice to pursue pension unlocking as a public policy response to the pandemic. We do not agree that it is good policy to facilitate a process where individuals should have to resort to draining their retirement savings to sustain themselves during a historic public health crisis. Governments at all levels are much better positioned to respond to the financial and other challenges which individuals are facing during the midst of the pandemic.

CUPE NL believed retirement savings unlocking was wrong before the pandemic and we continue to believe so. Governments, not individual retirement savings, should be sustaining those in need during the pandemic.

If the Newfoundland Government does not feel it has the capacity to provide increased supports itself, there is another solution. The Newfoundland Government should be vocal in public and active behind the scenes to advocate on behalf of Newfoundland and Labrador residents. We need increased Federal social transfers, additional COVID-19 emergency funds, and access to Federal borrowing guarantees and capacity to provide a critical backstop for NL residents in this time of crisis.

Failure to Identify Drawbacks in Consultation Process

In presenting this issue to the public for comment, Government has made no effort to outline any of the negative outcomes which could arise for individuals from a further loosening of unlocking rules. Instead, the consultation is framed around individuals who apparently “*feel government regulation is preventing them from having access to their money, which is usually required for some urgent financial reason.*” The consultation then goes on to ask individuals how much of “*their money*” they would like access to and how quickly. There is no discussion of any of the serious downsides of pension unlocking.

Pension unlocking is a very complex issue with far-ranging outcomes for working people. In our view there are many downsides and complications which must be weighed in discussing this policy change. The government consultation has done nothing to identify these complications. Specifically, the government has failed to discuss the following issues:

1. The downsides of using pension funds for purposes for which they are not designed, *and*
2. Fairness, Bias and Equity Issues this proposal raises.

We describe these issues in turn.

The Downside of Using Pension Funds for Purposes for Which They Are Not Designed

- The value of funds withdrawn from a locked in account will decline significantly on withdrawal, as these withdrawals will be subject to a withholding tax. Based on the information in the consultation, individuals may not understand that their locked in retirement funds have always been sheltered from tax, and that any withdrawals will be subject to income tax.
- Unlocking funds from a retirement account seriously reduces an individual's ability to retire with security and dignity. Government suggests withdrawals would only be available to those experiencing "*sufficient financial strain*." It is more likely workers and retirees will be experiencing such financial strain during recessions, when labour markets are more challenging. However, during such economic downturns, it is often the case that financial markets and asset prices are similarly suppressed. Facilitating more unlocking during economic downturns would effectively lock in these market losses permanently for individuals who make withdrawals. When markets do rebound, these individuals would also miss out on important asset price gains, as well as years of future market gains. Locking in a market downturn and missing out on any subsequent rebound will make the goal of achieving a decent retirement even more difficult to achieve.
- Funds in locked-in accounts are generally protected from creditors, but withdrawals from those plans are likely not similarly protected. This can be an important loss of financial security associated with unlocking withdrawals, particularly for individuals experiencing financial strain.

Fairness, Conflict of Interest and Equity Issues This Proposal Raises

- Spousal benefits, survivor benefit entitlement and pension income splitting rules that are used in separation and divorce negotiations in family breakdown situations will be negatively impaired. Pension plan members who spend deferred pension benefits now, may negatively affect their spouses, who, in the event of marriage breakdown would otherwise be entitled to spousal benefits and shared pension benefits. CUPE is also concerned about the possible future negative effect on dependent children.
- In the questionnaire, the government asks if advice from a financial advisor or financial institution should be a pre-requisite to financial hardship unlocking. In our view, there are serious potential conflict of interest issues if these for-profit actors are given a legislated role in unlocking decisions. Financial industry professionals, who do not always have fiduciary duties to represent the best interests of their clients, may favour more unlocking, particularly if they are able to extract fees to manage the newly unlocked funds. CUPE sees this as an important conflict of interest that the government should carefully consider.
- The government refers to pension regulations in several different provinces and asks if any of these provisions should be adopted in Newfoundland and Labrador. However, the province has simply linked to the text of the legislation or regulations in these jurisdictions without providing any plain language explanation of what these provisions say. In our view, this is not a real engagement on these issues, as the text of pension laws and regulations can often be very technical and difficult to understand.

The government has clearly failed to outline all the serious drawbacks that unlocking can provide. Instead, government has simply asked individuals via a short online questionnaire how much of “*their money*” they want access to, without engaging on the substantive issues. In our view, this will produce consultation responses which will likely favour more unlocking due to the consultation’s failure to properly outline all sides of this important issue.

Transparent and open government requires that on such a complex issue people are given enough information to make an informed decision. We suggest, given these shortcomings, the government re-start this flawed process with a properly fulsome discussion of the complicated issue of unlocking.

Conclusion

CUPE NL is opposed to further easing of pension unlocking rules. We are opposed to allowing more unlocking in normal times, and we are opposed during the COVID-19 pandemic. Our shared public health emergency demands a fair, public response from our governments. We should not be making public policy decisions that unfairly shift this responsibility to individuals, particularly at the expense of their future retirement security.

The government’s consultation process fails to properly outline many of the serious downsides to pension unlocking. In our view, this failure will severely limit the effectiveness and reliability of this consultation’s results. As such, the government should re-start this process, complete with a more fulsome discussion of all sides of this complicated issue.

CUPE thanks the government for the opportunity to participate in this consultation. We remain available to discuss these issues in more depth with government representatives at your convenience.

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