
Citation: *Jean Normandeau et al*, 2022 NBFCST 1

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL

Docket: PE-001-2021

IN THE MATTER OF AN APPEAL OF THE JULY 5, 2021 DECISION OF THE SUPERINTENDENT OF PENSIONS
UNDER THE *PENSION BENEFITS ACT*, S.N.B. 1987, c P-5.1

-AND-

IN THE MATTER OF A DISPUTE BETWEEN JEAN NORMANDEAU AND CANADA LIFE

DECISION

PANEL: Mélanie McGrath, Tribunal Chair
Sonia St-Pierre, Tribunal Member
Daniel Léger, Tribunal Member

DATE OF HEARING: December 15, 2021

WRITTEN REASONS: April 11, 2022

APPEARANCES : Jean Normandeau, per se
Michel Boudreau for the Superintendent of Pensions
Canada Life – did not appear

I. DECISION

1. We dismiss Jean Normandeau's appeal and affirm the Superintendent of Pensions' decision of July 5, 2021.

II. OVERVIEW

2. In 2020, Mr. Normandeau attempted to withdraw funds from his account with Canada Life, which he believed to be a registered retirement savings plan (RRSP). Canada Life advised him that these funds could not be withdrawn as they were locked-in pensions funds. Mr. Normandeau maintains the funds were locked-in in error as he has never been a member of a pension fund. He contacted the Superintendent of Pensions' office for assistance. On July 5, 2021, the Superintendent of Pensions issued her decision finding that Mr. Normandeau was not entitled to have the account unlocked. Mr. Normandeau appeals the Superintendent of Pensions' decision to the Tribunal pursuant to subsection 73(1) of the *Pension Benefits Act*, S.N.B. 1987, c P-5.1 (*Pension Benefits Act*).
3. This is an appeal *de novo*. Our role is to conduct a fresh analysis of the whole of the evidence to determine whether Mr. Normandeau is entitled to have his Canada Life account unlocked. The evidence on this appeal consists of the *Record of the Decision-making Process* prepared by the Superintendent of Pensions and the oral testimony of Barbara Bélanger and Jean Normandeau.
4. Canada Life advised the Tribunal by letter dated October 29, 2021 that it took no position on Mr. Normandeau's appeal and would not attend the hearing.

III. ISSUES

5. The issues raised on this appeal are the following:
 - a) Does the Tribunal have jurisdiction to unlock Mr. Normandeau's account?
 - b) Is Mr. Normandeau entitled to have his Canada Life account unlocked?

IV. ANALYSIS

A. Does the Tribunal Have Jurisdiction to Unlock Mr. Normandeau's Account?

6. The Superintendent of Pensions submitted in her *Statement of Position* that the Tribunal does not have jurisdiction to unlock Mr. Normandeau's account because he was not a person employed in the Province of New Brunswick as required by section 3 of the New Brunswick *Pension Benefits Act*.
7. After hearing Mr. Normandeau's testimony at the hearing, the Superintendent of Pensions withdrew her challenge to the Tribunal's jurisdiction. We are satisfied that the documentary evidence and Mr. Normandeau's testimony at the hearing confirm that he was a person employed in the Province of New Brunswick at all material times. As such, we have jurisdiction to hear this appeal under the *Pension Benefits Act* and to order the unlocking of Mr. Normandeau's account.

B. Is Mr. Normandeau Entitled to Have his Canada Life Account Unlocked?

8. For the reasons set out below, we conclude that Mr. Normandeau is not entitled to have his Canada Life account unlocked.
9. We find it useful, in beginning our analysis, to set out the characteristics of a registered retirement savings plan (RRSP), a locked-in retirement account (LIRA), and a life income fund (LIF).
10. In New Brunswick, the registered retirement savings plan (RRSP) is typically established by an individual and registered by a financial institution. The person may make contributions to an RRSP. Deductible RRSP contributions can be used to reduce income tax in the year they are made. The person can withdraw funds at any time but may have to pay tax when they make the withdrawal.
11. The locked-in retirement account (LIRA) is another type of registered retirement savings vehicle. Funds are deposited in a LIRA from an employer pension or another locked-in account for a former pension plan member. Unlike the RRSP, personal contributions to a LIRA are not possible and the amounts in a LIRA are locked-in and cannot be withdrawn before retirement except in certain circumstances. A person can hold a LIRA until December 31st of the year in which he or she reaches age 71, at which point the LIRA is converted into a life income fund.
12. A life income fund (LIF) is a special registered retirement income fund. A LIRA vests into a LIF when the account holder reaches 71 years of age, at which point he or she receives an annual amount from the LIF. The LIF is therefore used to draw a retirement income. It is not possible to withdraw from a LIF more than the maximum authorized for the year, with certain exceptions.
13. The New Brunswick *Pension Benefits Act* governs pension funds earned while a person is employed in New Brunswick, unless a person is employed in a federally regulated industry such as transportation, banking or telecommunications (*Pension Benefits Act*, s. 3). As previously discussed, Mr. Normandeau was employed in New Brunswick at all material times. Section 56 of the *Pension Benefits Act* sets out a prohibition on withdrawing funds from a pension fund except as otherwise permitted by the *Act* and its regulations:

Restriction on withdrawal of contributions

56(1) Except as otherwise specifically permitted in this Act and the regulations, contributions and interest shall not be withdrawn from a pension fund.

14. Subsection 1(1) of the *Pension Benefits Act* defines a “pension fund” as “the fund maintained to provide benefits under or related to a pension plan”. The LIRA and the LIF come within this definition. Consequently, the prohibition on withdrawals set out in section 56 of the *Act* applies to the LIRA and the LIF.
15. This matter juxtaposes the documentary evidence with Mr. Normandeau’s testimony. On the one

hand, the documentary evidence clearly indicates that the funds in the Canada Life account are locked-in pension funds. On the other hand, Mr. Normandeau is adamant that the funds came from his personal savings account and were locked-in in error.

16. We start with our analysis of the documentary evidence. On January 10, 1994, Mr. Normandeau signed an application entitled "Retirement Savings Plan Application" to deposit \$9,957.32 with Royal Bank of Canada. Mr. Normandeau's signature appears in two places on this application. Just above his first signature, it is indicated: "The Plan shall be set up as a "Locked-In" Plan to accommodate a transfer of funds to it from a registered pension plan." Beside his second signature, the words "Locked-In RSP (Vested Pension Benefits)" are indicated. This application clearly indicates that Mr. Normandeau's funds were being deposited into a locked-in retirement account.
17. We note that no pension plan is identified on this application. However, this was not a requirement under the *Pension Benefits Act* at that time; the requirement to provide this information was added in 2002 (New Brunswick Regulation 91-195, the *General Regulation – Pension Benefits Act*, ss. 21(8.1) and 21(8.2)).
18. The funds remained at Royal Bank of Canada until July 30, 2012 when Mr. Normandeau transferred them to London Life (now Canada Life). At that time, the balance of the account was \$22,613.86. To transfer the funds to London Life, Mr. Normandeau signed three forms: (1) a Transfer Authorization for Registered Investments; (2) a New Brunswick – Form 3.2 – Record of Transfer of Locked-in Retirement Funds; and (3) a Canada Revenue Agency form.
19. On the Transfer Authorization for Registered Investments form bearing Mr. Normandeau's signature, the box "LIRA" is checked beside the words "Registered Type". Section C of this form, which was to be signed by a London Life representative, provides:

C. Locked-in Confirmation: _____, as agents for _____, acknowledge that all locked-in funds from the registered plan noted in the Client Direction to the Relinquishing Institution section below will be transferred to the registered plan type noted and will continue to be administered in accordance with the governing pension legislation or contractual condition of _____ (Province or Territory; if applicable old new). Any subsequent transfer of these locked-in funds to another trustee or financial institution will be made only to another registered plan, which must continue to be administered in accordance with legislation of the jurisdiction noted above. No transfer of locked-in funds will be permitted unless the receiving plan is appropriately registered and in compliance with the applicable pension legislation, regulations and the *Income Tax Act* (Canada) and appears on the Superintendent's List of Financial Institutions authorized to administer funds in the jurisdiction noted above (if applicable).

Authorized Signature _____ Name _____ Date _____

20. The "New Brunswick – Form 3.2 – Record of Transfer of Locked-in Retirement Funds" contains at least

six indications that the funds were being transferred into a locked-in account, starting with the title of the form. Second, Mr. Normandeau placed his initials beside “LIRA” in the section of the form identifying the type of fund to which assets were being transferred. Third, the Transferee Agreement, which was to be completed by London Life, indicates:

As the financial institution or pension plan to receive the assets as trustee, the assets shall only be accepted if the assets are transferred in compliance with the *Pension Benefits Act* and regulations. The assets shall be transferred into the registered account referred to in Part I. It is understood that if the assets are not transferred in compliance with the Act and regulations, the transfer is void and all assets transferred shall be returned to the transferor. The trustee undertakes to comply with the Act and the regulations while the assets remain under its trust.

21. Fourth, the section entitled “Policyowner Transfer Information”, which Mr. Normandeau signed, also references the *Pension Benefits Act*: “As the owner of the assets to be transferred, I agree to the transfer and understand that the assets must be transferred in compliance with the *Pension Benefits Act* and regulations”. Fifth, in this same section, Mr. Normandeau again placed his initials beside “LIRA” requesting that the assets be transferred into a LIRA.
22. Finally, just before Mr. Normandeau’s signature at the bottom of Form 3.2, it is written: “I certify that the information given on this form is correct and complete and I agree to comply with the terms of the transfer as required by the *Pension Benefits Act* and the regulations.
23. On the Canada Revenue Agency form entitled “Direct Transfer of a Single Amount Under Subsection 147(19) or Section 147.3”, signed by Mr. Normandeau on July 30, 2012, the box “I am a member of the RPP” is checked. RPP is a reference to a registered pension plan.
24. Mr. Normandeau’s LIRA with Canada Life was converted to a LIF the year he turned 71 years of age.
25. Mr. Normandeau has not provided any documentary evidence, such as his income tax returns prior to 1994, which would indicate whether Mr. Normandeau had or did not have a pension fund.
26. We turn to Mr. Normandeau’s testimony. He was unequivocal in his testimony that he never had a pension fund and that the funds were locked-in in error when they were deposited with Royal Bank of Canada in 1994 and transferred to Canada Life in 2012.
27. Mr. Normandeau testified that after completing a Bachelor of Arts and a Bachelor of Science in chemistry, he worked for three pharmaceutical companies before eventually owning his own pharmacy in 1998. These companies, in order, were Anca, Fraserville, and Essaim.
28. Mr. Normandeau recalls obtaining employment as a representative for Anca, a pharmaceutical company based in Ontario, after he completed his Bachelor of Science in chemistry at a Montreal university. He believes he was approximately 30 years of age at the time. While working for Anca, Mr.

Normandeau lived in New Brunswick and was responsible for a large territory which included New Brunswick and certain portions of Québec. Mr. Normandeau testified that he worked four years for Anca.

29. After leaving Anca, Mr. Normandeau testified that he worked as a representative for Fraserville, a pharmaceutical wholesaler based out of Québec. He again lived in New Brunswick and was responsible for a large territory, which included New Brunswick, Nova Scotia and Prince Edward Island. Mr. Normandeau recalls working at Fraserville for approximately 15 years. Fraserville paid for him to obtain his MBA through Western University in Ontario. This MBA, which was tailored to working businesspeople, consisted of taking intensive courses for 3 months at a time during the summer for three years. Mr. Normandeau believes he was between 40 and 45 years of age when he started his MBA. He further testified that he started his MBA in approximately 1992.
30. Mr. Normandeau testified that at some point Fraserville received an offer to sell from Universel, another pharmaceutical wholesaler. The president of Fraserville, Michel Darisse, asked him to come to Montréal during the negotiations because he had his MBA. Mr. Normandeau testified that Mr. Darisse was prepared to accept an offer, but that he advised him to ask for \$5 million more. This increased offer was accepted by Universel. Mr. Darisse rewarded M. Normandeau with a \$500,000 bonus for his efforts in obtaining the increased sale price.
31. Mr. Normandeau testified that in 1994 he deposited the \$500,000 in his bank account with Royal Bank of Canada. He testified that he took \$50,000 of this bonus and placed it in pension funds, which he also called RRSPs. He recalls meeting with Jean Dyken at Royal Bank of Canada, who placed the \$50,000 in 8 or 9 different portfolios of her choice. Mr. Normandeau testified that the \$9,957.52 indicated on the Retirement Savings Plan Application he signed on January 10, 1994 was part of the \$50,000 that was placed by Ms. Dyken in various portfolios. This was the first time Mr. Normandeau invested money.
32. After the sale of Fraserville, Mr. Normandeau took approximately six months off work. He then started working as a representative for Essaim. Mr. Normandeau believes he worked 4 or 5 years for this company out of their Moncton depot.
33. Mr. Normandeau testified that he did not have a pension fund with either Anca, Fraserville or Essaim. He also testified that he was paid a salary with all three employers; he was not paid commission by any of these employers.
34. Mr. Normandeau testified that on July 30, 2012, he transferred what he thought was his RRSP account from Royal Bank to London Life (now Canada Life) because he was not satisfied with the return on his investment. According to Mr. Normandeau, Nicole Côté and another London Life employee filled out the three forms required to accomplish the transfer: the "Transfer Authorization for Registered Investments", the New Brunswick – Form 3.2 entitled "Record of Transfer of Locked-In Retirement Funds", and the Canada Revenue Agency form entitled "Direct Transfer of a Single Amount Under

Subsection 147(19) or Section 147.3". He testified that he did not receive an in-depth explanation of these forms; he was simply told to sign the forms.

35. Mr. Normandeau admits that his recollection of dates might not be precise because the events occurred a long time ago. We find that although Mr. Normandeau has difficulty recalling precise details regarding his work history, he was consistent in recalling the order of his employers and that he opened his pharmacy in 1998. While there is no indication that Mr. Normandeau is lying or trying to mislead the Tribunal, his recollection of dates and other details is not reliable.
36. In our view, the specific amount deposited with Royal Bank of Canada in 1994, being \$9,957.32, is a further indication that the funds likely originated from a pension fund rather than the investment of \$50,000 from the bonus Mr. Normandeau received upon the sale of Fraserville.
37. We therefore afford more weight to the documentary evidence than Mr. Normandeau's testimony. We find, on a balance of probabilities, that the funds deposited with Royal Bank of Canada in 1994 came from a pension fund rather than Mr. Normandeau's savings account. We therefore conclude that the funds were not locked-in in error.
38. Mr. Normandeau's LIRA was converted into a LIF the year he turned 71 years of age. In New Brunswick, the *Pension Benefits Act* and regulations do not allow for financial hardship unlocking of a LIF and only allow for a total or partial unlocking in certain circumstances. According to New Brunswick Regulation 91-195, the *General Regulation – Pension Benefits Act*, withdrawal of an amount in excess of the annual maximum is permitted in the following circumstances:
 - a) The owner of a LIF may withdraw the balance of the money in the account if a physician certifies in writing to the financial institution that is a party to the contract that the owner suffers from a significant physical or mental disability that considerably reduces life expectancy (see ss.21(2)(d) and 22(1)(a)),
 - b) The owner of a LIF may withdraw the balance of the money in the account if neither the member nor his/her spouse are Canadian citizens, neither the member nor his/her spouse are residents of Canada, and the member's spouse signs a spousal waiver (Form 3.5). All three criteria must be met in order to qualify for unlocking under this provision (see ss. 21(2)(g.1) and 22(1)(a)), or
 - c) The owner of a LIF may make a once-in-a-lifetime withdrawal from a LIF of three (3) times the annual amount to a maximum of 25% of the balance in the LIF. This option may only be exercised if an amount has never previously been transferred under this subsection (see ss.22(6.1)).
39. Mr. Normandeau has not provided any evidence indicating that the exceptions set out in paragraphs 21(2)(d) and 21(2)(g.1) of the *General Regulation – Pension Benefits Act* are applicable. Mr.

Normandeau may apply, pursuant to ss. 22(6.1) of the *General Regulation – Pension Benefits Act* for a one-time withdrawal from his Canada Life account of three times the annual amount to a maximum of 25% of the balance of his account.

V. CONCLUSION AND ORDER

40. We dismiss Jean Normandeau’s appeal and affirm the decision of the Superintendent of Pensions dated July 5, 2021.

DATED this 11th day of April, 2022.

Mélanie McGrath

Mélanie McGrath, Tribunal Chair

Sonia St-Pierre

Sonia St-Pierre, Tribunal Member

Daniel Léger

Daniel Léger, Tribunal Member