

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8,
as amended (the “Act”);

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent
by the Superintendent of Financial Services (the “Superintendent”), dated
October 23, 2000, with respect to an application for withdrawal of money
from a life income fund, locked-in retirement account, or a locked-in retirement
income fund (a “locked-in account”) based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

R E A S O N S

1. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated October 23, 2000 that denied the Applicant access to funds associated with his locked-in registered retirement savings plan. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent’s grounds for denial were that:
 - (a) the low income circumstance of financial hardship prescribed by s. 87(1)7 of Regulation

909, R.R.O. 1990, as amended (the “Regulation”) is not satisfied; and

(b) the amount the Applicant may withdraw would be a negative amount, based on the prescribed formula in s. 89(6) of the Regulation.

3. Before this case was decided, a pre-hearing by telephone conference call was convened with the Applicant and counsel for the Superintendent to discuss certain preliminary matters. As a result, it was agreed that:

(a) the Tribunal hearing should be by written submission only; and

(b) the only issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.

4. This application considered by the Superintendent in reaching her decision included information provided by the Applicant in Part 2A - Withdrawal Based on Low Income. An application submitted on this basis is subject to the circumstances of financial hardship set out in paragraph 7 of subsection 87(1) of the Regulation as follows:

87.-(1) The following circumstances of financial hardship are prescribed for the purposes of subsection 67(5) of the Act:

...

7. The owner’s expected total income from all sources before taxes for the 12-month period following the date of signing the application is $66 \frac{2}{3}$ per cent or less of the Year’s Maximum Pensionable Earnings [“YMPE”] for the year in which the application is signed.

5. This application was signed in the year 2000, for which the Canada Pension Plan’s YMPE was \$37,600, in which case $66 \frac{2}{3}$ per cent of the YMPE would be \$25,066.66. The Applicant has stated that his expected total income from all sources before taxes for the 12-month period following the date of signing the application is \$43,349.02, which exceeds \$25,066.66. In this case, the low income circumstances of paragraph 87(1)7 of the Regulation are not satisfied.

6. As a result, the application does not meet the requirements of subsection 67(5) of the Act, and we need not consider the additional grounds for the Superintendent's refusal.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated October 23, 2000, is affirmed and this application is dismissed.

Dated at Toronto this 22nd day of January, 2001

"C.S. (Kit) Moore"

Mr. C.S. (Kit) Moore

Member, Financial Services Tribunal