

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 November 27, 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 November 27, 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 ground for denial was that the requirements of subsection 88(2) of Regulation 909, as amended, to the Act (the “Regulation”) do not permit a withdrawal of any amount in this case.
3. Under subsection 88(2) of the Regulation an individual is entitled to withdraw an amount calculated using the formula $A - (B - C) = D$, where A is the amount the Applicant applied to withdraw, B is the market value of all the assets of the Applicant, and their spouse or same-sex partner, subject to certain prescribed exclusions, C is the total liabilities of the Applicant, and their spouse or same-sex partner, subject to certain prescribed exclusions, and D is the amount that the Applicant is entitled to withdraw.

4. In this case, the formula in subsection 88(2) of the Regulation results in no amount being eligible for withdrawal as the calculation would be: $\$14,000 - (\$66,300 - 0) = 0$. (The calculation cannot result in a negative amount.)
5. As a result, the application does not meet the requirements of subsection 67(5) of the Act, and therefore the Superintendent's refusal is affirmed.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated November 27, 2000, is affirmed and this application is dismissed.

Dated at Toronto this 29th day of January, 2001.

"Kathryn M. Bush"
Ms. Kathryn M. Bush
Vice-Chair, Financial Services Tribunal