

**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 22, 2001, with respect to an application for withdrawal 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;

**REASONS**

1. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated November 22, 2001 that denied the Applicant access to funds held in a locked-in account. 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 Applicant did not meet the conditions prescribed in Subsection 89(6) of the Regulation for a withdrawal based on low income.
3. The Superintendent also questioned the jurisdiction of the Tribunal to hold a hearing on the basis that the Applicant did not meet the time limit for requesting a hearing under Subsection 89(6) of the Act. The Tribunal has, however, received evidence that the Applicant did in fact request a hearing within the prescribed time limit. Therefore, the Tribunal has jurisdiction to hold a hearing.
4. The only issue to be determined by the Tribunal is therefore whether the Superintendent should have consented to the application.
5. An application for withdrawal based on financial hardship is subject to conditions and

requirements prescribed in sections 83 through 89 of the Regulation. The relevant sections for this application are:

**88(2)** Subject to section 89... the owner is entitled to withdraw an amount calculated using the formula,  $A-(B-C) = D$ , in which

“A” is the amount the owner applies to withdraw;

“B” is the market value of all assets of the owner...

“C” is the total of the liabilities of the owner...

“(B-C)” cannot be less than 0;

“D” is the amount the owner is entitled to withdraw, net of any withholding tax and fee.

**89(6)** The amount the owner may apply to withdraw under section 88 is the amount by which “E” exceeds “F” where,

“E” is 50 per cent of the Year’s Maximum Pensionable Earnings (YMPE) for the year in which the application is signed; and

“F” is 75 per cent of the owner’s expected total income from all sources before taxes for the 12-month period following the date of signing the application.

6. This application was signed in the year 2001, for which the Canada Pension Plan’s YMPE was \$38,300. 50 per cent of the YMPE is \$19,150. In the application dated August, 2001, the Applicant stated that his expected total income from all sources before taxes for the 12 months following the date of the application was \$30,000. 75 per cent of this amount is \$22,500. Following 89(6), the amount that the Applicant can therefore apply to withdraw is  $\$19,150 - \$22,500$ , which is a negative amount.
7. In the Applicant’s Request for Hearing, the Applicant expressed a desire to pay off debts and noted a recent reduction in his income to \$23,000. There is no discretionary in the Act or Regulation for the approval of a withdrawal which does not meet the prescribed requirements. A reduction in expected income to \$23,000 would allow for some withdrawal of locked-in funds under the terms of the Act (though not the full amount previously requested). The Applicant is not precluded from re-applying for a withdrawal on that basis.

**ORDER**

The Superintendent's Notice of Proposal to Refuse to consent, dated November 22, 2001, is affirmed and this application is dismissed.

Dated at Toronto this 29th day of May, 2002.

“Louis Erlichman”

Mr. Louis Erlichman  
Member, Financial Services Tribunal