

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
June 24, 2002, 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 June 24, 2002 that denied the Applicant access to funds associated with his Life Income Fund (the “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 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. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.

3. This application 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.

4. This application was signed in the year 2002, for which the Canada Pension Plan's YMPE was \$39,100, in which case $66 \frac{2}{3}$ per cent of the YMPE would be \$26,066.67. 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 \$30,365.00, which exceeds \$26,066.67. In this case, the low income circumstances of paragraph 87(1)7 of the Regulation are not satisfied, with the result that the application does not meet the requirements of subsection 67(5) of the Act.
5. The Applicant has requested that an exception be made in this case, given the circumstances of his indebtedness and the amount of funds in his locked-in account. As noted in the Superintendent's submission, this Tribunal does not have authority to direct the Superintendent to allow an application for withdrawal from a locked-in account that does not meet the requirements of the Regulation. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated June 24, 2002 in respect of this application.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated June 24, 2002, is affirmed and this application is dismissed.

Dated at Toronto this 29th day of August, 2002

"C.S. Moore"

Mr. C.S. Moore

Member, Financial Services Tribunal