

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 September 23, 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 September 23, 2002 that denied the Applicant access to funds held in a locked-in account (in this case, the Applicant’s life income fund). 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. An application for withdrawal based on financial hardship is subject to the conditions and requirements prescribed in sections 83 through 89 of the Regulation.
4. In this case, the application to the Superintendent under subsection 67(5) of the Act was based on the circumstances prescribed in paragraph 87(1)7 of the Regulation. The

relevant sections for purposes of an application based on paragraph 87(1)7 of the Regulation 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.

5. Based on the information provided by the Applicant in his application dated June 22, 2002, the amount that the Applicant is entitled to withdraw under section 88 of the Act is \$6,050.00 (calculated in accordance with subsection 89(6) of the Act). This amount is “A” in the formula described in subsection 88(2) of the Act.
6. In this case, the formula in subsection 88(2) of the Regulation result in no amount being eligible for withdrawal, as the calculation would be: $\$6,050.00 - (\$15,000 - \$500) = 0$. (The calculation cannot result in a negative amount.)
7. As a result, the application does not meet the requirements of subsection 67(5) of the Act. The Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the application in this case cannot be granted because it does not meet those requirements and therefore the Superintendent’s refusal is affirmed.

O R D E R

The Superintendent’s Notice of Proposal to Refuse to Consent, dated September 23, 2002, is affirmed and this application is dismissed.

Dated at Toronto this 23rd day of December, 2002.

“Paul W. Litner”

Mr. Paul W. Litner
Member, Financial Services Tribunal