

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”) on January 6, 2003 with respect to an application for withdrawal of money from a life income fund, locked-in retirement account (a “locked-in account”) based upon financial hardship;

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

R E A S O N S

1. The Applicant applied to withdraw \$17,225 from his locked-in account based upon low income in an application dated November 13, 2002 and amended on November 24, 2002.
2. On January 6, 2003, the Superintendent issued a Notice of Proposal to Refuse to Consent to the application. The Superintendent stated that he does not have the authority under law to consent to the application as the Applicant’s and spouse’s net assets exceed the amount he may apply to withdraw.
3. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated January 6th, 2003.
4. Section 67(1) of the Pension Benefits Act, R.S.O. 190, c. P.8, generally prohibits the commutation or surrender of a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement. Section 67(5) of the Act provides an exception to the rule in circumstances of financial hardship.

5. Subsection 87(1) of Regulation 909, R.R.O. 1990, as amended (the “Regulation”) prescribes the circumstances of financial hardship in which the Superintendent may consent to such applications. As noted in Point 1, the application was based on low income. Paragraph 7 of subsection 87(1) of the Regulation states that:

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 2/3 per cent or less of the Year’s Maximum Pensionable Earnings for the year in which the application is signed.

6. Section 88(2) of the Regulation sets out the formula for determining the amount the owner (the Applicant in this case) may apply to withdraw, as follows: $A - (B - C) = D$.

“A” is the amount the owner may apply to withdraw.

“B” is the market value of all assets of the applicant and the spouse...

“C” is the total of all liabilities of the applicant and spouse....

“(B-C)” is the net assets of the applicant and spouse.

“D” is the amount an applicant is ultimately entitled to withdraw.

7. Based on the information provided by the Applicant in his application of November 13, 2002 and amended on November 24, 2002, the amount the Applicant is entitled to withdraw is “D” as referenced above. The amount the applicant may apply to withdraw is “A”, \$13,250. The Applicant and spouse’s net assets, “B-C”, are \$14,030. The amount the Applicant is entitled to withdraw for the purposes of subsection 88(2) of the Regulation, “D” is \$0. (the calculation cannot result in a negative amount).

8. The Applicant submits that the RRSP of his spouse should not be included in the calculation. Subsection 88(2) set out several types of assets to be excluded from the calculations of net assets, but the applicant or spouse’s RRSP is not one mentioned for exclusion in the Regulation.

9. 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 strict requirements of the Regulation. As such, the Superintendent’s refusal is affirmed.

O R D E R

The Superintendent's Notice of Proposal to Refuse to Consent, dated January 6, 2003 is affirmed and this application is dismissed.

Dated at Toronto this 10th day of March, 2003.

"Kevin G. Ashe"

Kevin G. Ashe

Member, Financial Services Tribunal