

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 26, 2003, 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 26, 2003 that denied the Applicant access to funds associated with 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. An application for withdrawal of funds from a locked-in account, based on financial hardship, is also subject to the conditions and requirements prescribed in sections 83 through 89 of Regulation 909, as amended (the “Regulation”). The Superintendent’s ground for denial was that the requirements of subsection 88(2) of the Regulation do not allow the Applicant to withdraw any amount of funds from her locked-in account in this situation.
3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.
4. Subsections 88(2) and 89(6) of the Regulation are relevant to this application, and read as follows:

88.-(2) Subject to section 89, unless the application relates to expenses incurred or to be incurred for the benefit of a dependant, 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 and the spouse or same-sex partner except the following:

1. The owner’s principal residence and all personal property related to its use.
2. Motor vehicles.
3. Personal effects, including clothing and jewellery.
4. Tools of the trade that are essential to the employment of the owner or the spouse or same-sex partner.
5. Assets that are necessary to the operation of a business or farm which the owner or the spouse or same-sex partner operates and has an interest in, up to a maximum of \$50,000 for each person and for each business or farm. However, if the owner and the spouse or same-sex partner operate and have an interest in the same business or farm, the total amount for that business or farm shall not exceed \$50,000;

“C” is the total of the liabilities of the owner and the spouse or same-sex

partner, except liabilities secured against excluded assets listed under “B”;

“(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 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 her application dated October 9, 2003, she has applied to withdraw the maximum amount, in this case calculated to be an amount of \$19,729.44, in accordance with subsection 89(6) of the Regulation. This amount is “A” in the formula described in subsection 88(2) of the Regulation. In that formula, “B” and “C” are determined by information provided in the application, using the assets and liabilities of the owner and her spouse, and have the following values in this situation:

“B” equals \$129,000 (the market value of all included assets of the owner and spouse); and

“C” equals \$0 (the corresponding liabilities of the owner and spouse).

6. In this case, the formula in subsection 88(2) of the Regulation allows for no amount to be withdrawn, based on the following calculation:

$$\begin{aligned} D &= A - (B - C) \\ &= \$19,729.44 - (\$129,000 - \$0) \\ &= \$19,729.44 - \$129,000 \end{aligned}$$

= - \$109,270.56

As the value of “D” is less than zero, “D” is determined to be zero, and the Applicant is not entitled to withdraw any funds from her locked-in account.

7. In her submissions to the Tribunal, the Applicant has provided statements regarding her finances and health considerations, and has indicated that she and her spouse wish to allocate their existing assets of \$129,000 for home improvements and retirement needs. However, in making a determination of this matter, the Tribunal cannot direct the Superintendent to approve an application that does not meet the requirements of the Act and Regulation. In this case, all net assets shown in the application, including those of the Applicant and her spouse, must be included when calculating “D” in subsection 88(2), with the result that the Applicant is not entitled to withdraw any amount from her locked-in account.
8. The inclusion of a spouse’s assets and liabilities in the calculation is a requirement of the Regulation, and cannot be waived by the Superintendent or by the Tribunal. As a result, this application cannot be granted, as it does not meet the relevant requirements of the Regulation, and the Tribunal affirms the Superintendent’s decision not to consent to the application.

O R D E R

The Superintendent’s Notice of Proposal to Refuse to Consent, dated November 26, 2003, is affirmed and this application is dismissed.

Dated at Toronto this 1st day of March, 2004.

“C.S. Moore”

Mr. C.S. (Kit) Moore

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Member, Financial Services Tribunal