

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 dated August 14, 2000,
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 section 89(8) of the Act.

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent of Financial Services (the “Superintendent”) Notice of Proposal to Refuse to Consent dated August 14, 2000 that denied the Applicant access to funds associated with his accrued pension benefit. The Applicant had made his application for these funds pursuant to the recently amended provisions of the *Pension Benefits Act* (namely, subsection 67(5) of the *Pension Benefits Act*) to permit access to locked-in pension funds on the grounds of financial hardship.
2. The Superintendent’s grounds for the denial were that:
 - (a) the funds were not of a type to which the Superintendent could grant access under the Legislation; and
 - (b) the debt owed by the Applicant was not secured against his principle residence and there was no indication that the Applicant faced eviction.
3. Subsection 67(5) of the *Pension Benefits Act* is clear that access or “unlocking” is only possible with respect to a “prescribed retirement savings arrangement of the type that is prescribed”.

4. Section 84 of Regulation 909 of the *Pension Benefits Act* prescribes the types of retirement savings arrangements for the purposes of subsection 67(5): a life income fund; a locked-in retirement account and a locked-in retirement income fund.

5. The Regulation defines each of the above arrangements as follows:

“Life Income Fund” means a RRIF that meets the requirements set out in Schedule 1;

“Locked-in Retirement Account” means an RRSP that meets the requirements set out in subsection 21(2);

“Locked-in Retirement Income Fund” means a RRIF that meets the requirements set out in Schedule 1;

“RRIF” means a registered retirement income fund established in accordance with the *Income Tax Act* (Canada);

“RRSP” means a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada).

6. The Applicant in this case is an active member of a registered pension plan and he has sought to withdraw funds from this registered pension plan. Such access is not permitted by the *Pension Benefits Act* and Regulation. The application does not fall within subsection 67(5) of the *Pension Benefits Act*. It is therefore not necessary to consider the further ground for the Superintendent’s refusal.

Order

7. The Superintendent’s Notice of Proposal to Refuse to Consent dated August 14, 2000 is affirmed and this application is dismissed.

Dated at Toronto this 21st day of December, 2000.

“Martha Milczynski”

Martha Milczynski

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Chair
Financial Services Tribunal