

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 15, 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 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 15, 2000 that denied the Applicant access to funds associated with his registered pension plan. The Applicant had applied to withdraw some of 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 grounds for denial were that:

- (a) the plan from which a withdrawal was requested is a registered pension plan, which is not one of the prescribed types of retirement savings arrangements for which the Superintendent may consent to an unlocking of funds;
 - (b) 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;
and
 - (c) the amount the Applicant may withdraw would be a negative amount, based on the prescribed formula in s. 89(6) of the Regulation.
3. Subsection 67(5) of the Act is clear that commutation or surrender (that is, unlocking) of a locked-in account is possible only for “a prescribed retirement savings arrangement of a type that is prescribed”. For these purposes, section 84 of the Regulation prescribes only a life income fund, a locked-in retirement account and a locked-in retirement income fund, which are defined in the Regulation as follows:

“life income fund” means an 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 an RRIF that meets the requirements set out in Schedule 2;

The Regulation also defines an RRIF as “a registered retirement income fund established in accordance with the *Income Tax Act* (Canada), and an RRSP as “a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada).

4. The Applicant in this case has applied to withdraw funds from an account held under a registered

pension plan. A registered pension plan is not one of the types of retirement savings arrangements prescribed in section 84 of the Regulation for purposes of subsection 67(5) of the Act. As a result, the application does not meet the requirements of subsection 67(5) of the Act, and we need not consider the additional grounds for the Superintendent's refusal.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated September 15, 2000 is affirmed and this application is dismissed.

Dated at Toronto this 18th day of January, 2001.

"C.S. (Kit) Moore"

Mr. C.S. (Kit) Moore

Member, Financial Services Tribunal