

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
December 10, 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 December 10, 2000 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. The Superintendent’s ground for denial was that the maximum amount the Applicant may withdraw, determined in accordance with subsections 89(6) and 88(2) of the Regulation, would be less than the minimum \$500 withdrawal that may be authorized by the Superintendent, as specified under subsection 85(2)(a) of the Regulation.

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.
4. An application of this nature is also subject to conditions and requirements prescribed in sections 83 through 89 of the Regulation. The following excerpts from those sections are particularly relevant to this application:

85.-(2)(a) The application shall request that the consent authorize the withdrawal of...the amount calculated under this Part, which shall not be less than \$500;

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 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 [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. This application was signed in the year 2000, for which the Canada Pension Plan’s YMPE was \$37,600, in which case 50 per cent of the YMPE would be \$18,800. In Part 2A of the application, the Applicant has stated that her expected total income from all sources before taxes for the 12-month period following the date of signing the application is \$24,000, in which case 75 per cent of this amount would be \$18,000. In this case, the amount the Applicant may apply to withdraw is \$18,800 less \$18,000, or \$800, determined in accordance with subsection 89(6) of the Regulation.
6. In Part 3 of the application, the Applicant stated that the total market value of assets to be included was \$400 and total liabilities to be included were \$0, resulting in a difference of \$400. As a result, the amount the Applicant is entitled to withdraw, subject to any other prescribed conditions in the Regulation, is \$400, determined in accordance with the formula contained in subsection 88(2) of the Regulation, as follows:

$$D = \$800 - (\$400 - \$0) = \$400.$$

7. The calculated amount of \$400 does not meet the minimum amount of withdrawal to which the Superintendent may consent, as prescribed by subsection 85(2)(a), which requires that “the amount

calculated under this Part...shall not be less than \$500". Therefore, the application does not meet the requirements of subsection 67(5) of the Act.

O R D E R

The Superintendent's Notice of Proposal to Refuse to Consent, dated December 10, 2000, is affirmed and this application is dismissed.

Dated at Toronto this 30th day of January, 2001

"C.S. (Kit) Moore" _____

Mr. C.S. (Kit) Moore

Member, Financial Services Tribunal