

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 (a "Notice") by the Superintendent of Financial Services (the "Superintendent") with respect to an application for withdrawal of money from a life income fund, a 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.

REASONS

1. The Applicant in this matter made an application to the Superintendent, on the basis of financial hardship, for access to funds associated with a locked-in account in her name. Specifically, the application was based on low income, one of several grounds of financial hardship prescribed by subsection 87(1) of Ontario Regulation 909, as amended (the "Regulation"), adopted under the Act.

2. The Superintendent proposed to refuse the application, by a Notice dated December 11, 2000, on the basis that the Applicant's expected income for the next year was more than the qualifying low income amount, determined in accordance with the formula set out in paragraph 7 of subsection 87(1) of the Regulation. The Superintendent also observed in the Notice that the Regulation (in subsection 89(6)) establishes a maximum amount, determined by a prescribed formula, that can be withdrawn from a locked-in account on the basis of low income and that in this case, applying the formula, the maximum amount would be zero.

3. In her request for a hearing before this Tribunal, the Applicant does not allege that the Superintendent made any errors in applying the formulas, set out in the Regulation, for determining the qualifying low income amount or the maximum amount of a permissible withdrawal and the Tribunal finds no such errors.

4. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Therefore, although the evidence of financial hardship on the part of the Applicant may be compelling, the application in this case cannot be granted because of the failure to meet those requirements. There are, of course, other grounds of financial hardship besides low income that can be advanced in an application for withdrawal from a locked-in account. If the circumstances of the Applicant are such that she could meet the qualifications for reliance on one or more of those other grounds, a further application could be made to the Superintendent.

5. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated December 11, 2000 in respect of the present application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice, dated December 11, 2000, directed to the Applicant.

Dated at Toronto, this 21st day of February, 2001.

"Colin H.H. McNairn"

Colin H. H. McNairn

Vice Chair

Financial Services Tribunal