

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 April 20, 2001, 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;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated April 20, 2001 that denied the Applicant access to funds held in 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 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 for withdrawal based on financial hardship is subject to conditions and requirements prescribed in sections 83 through 89 of the Regulation. Relevant sections include:

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

“C” is the total of the liabilities of the owner

“(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 2001, for which the Canada Pension Plan’s YMPE was \$38,300. 50 per cent of the YMPE is \$19,150. In the application dated March 21, 2001, the Applicant stated that his expected total income from all sources before taxes for the 12 months following the date of the application was \$25,085.16. 75 per cent of this amount is \$18,813.87. The amount that the applicant can therefore apply to withdraw is $\$19,150 - \$18,813.87 = \$336.13$. The Applicant declared that he had no assets or liabilities of a category which is not excluded by the Regulation from these calculations. As a result, the Applicant is entitled to withdraw \$336.13, subject to other prescribed conditions in the legislation.
6. The calculated amount of \$336.13 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.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated April 20, 2001, is affirmed and this application is dismissed.

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

"Louis Erlichman"
Mr. Louis Erlichman
Member, Financial Services Tribunal