

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 January 11, 2002, with respect to an application for withdrawal 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 January 11, 2002 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 Applicant did not meet the conditions prescribed in Subsection 89(6) of the Regulation for a withdrawal based on low income.
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. The relevant sections for this application are:

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 November 1, 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 \$55,000. 75 per cent of this amount is \$41,250. Following 89(6), the amount that the Applicant can therefore apply to withdraw is \$19,150 - \$41,250, which is a negative amount.
6. In the Applicant’s Request for Hearing, the Applicant referred to a large debt load creating a difficult financial situation. There is, however, no discretionary in the Act or Regulation for the approval of a withdrawal which does not meet the prescribed requirements.

ORDER

The Superintendent’s Notice of Proposal to Refuse to consent, dated January 11, 2002, is affirmed and this application is dismissed.

Dated at Toronto this 29th day of May, 2002.

“Louis Erlichman”
Mr. Louis Erlichman
Member, Financial Services Tribunal