

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”) on October 6, 2004 with respect to an application for withdrawal of money from a life income fund, locked-in retirement account (a “locked-in account”) based upon financial hardship;

AND IN THE MATTER OF a Request for Hearing under subsection 89(8) of the Act;

R E A S O N S

1. The Applicant applied to withdraw under Part 2A “the maximum amount allowed” from his locked-in account based upon the need for “additional money to meet some personal obligations” and low income, in an application dated July 13, 2004.
2. On October 6, 2004, the Superintendent issued a Notice of Proposal to Refuse to Consent to the application. The Superintendent stated that he does not have the authority under law to consent to the application as the Applicant’s expected total income for the 12 month period following the date of the signing of the application was stated to be \$30,000, which is greater than $66 \frac{2}{3}$ of the Year’s Maximum Pensionable Earnings.
3. The Applicant in this matter requested a hearing on November 4, 2004 in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated October 6, 2004.
4. Section 67(1) of the Pension Benefits Act, R.S.O. 1990, c. P.8, generally prohibits the commutation or surrender of a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement.

Section 67(5) of the Act provides an exception to the rule in circumstances of financial hardship.

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 section if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

5. Subsection 87(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation") prescribes the circumstances of financial hardship in which the Superintendent may consent to such applications. As noted in Point 1, the application was based on the basis of low income and "the need for additional monies to meet personal obligations". Paragraph 7 of subsection 87(1) of the Regulation states that:

The owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application is 66 2/3 per cent or less of the Year's Maximum Pensionable Earnings for the year in which the application is signed.

6. The application was signed in the year 2004, for which the Canada Pension Plan's Year's Maximum Pensionable Earnings ("YMPE") was \$40,500. 66 2/3 per cent of the YMPE is \$27,000. The applicant stated expected income (as stated on the Application) before taxes is \$30,000, which exceed \$27,000. In this case, the low income circumstances of paragraph 87 (1) 7 of the Regulation are not satisfied.
7. The Applicant may have a genuine financial hardship however the application does not meet the requirements of subsection 67(5) of the Act. The Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the strict requirements of the Regulation. As such, the Superintendent's refusal is affirmed.

O R D E R

The Superintendent's Notice of Proposal to Refuse to Consent, dated October 6, 2004 is affirmed and this application is dismissed.

Dated at Toronto this 13th day of December, 2004.

"Kevin G. Ashe"

Kevin G. Ashe

Member, Financial Services Tribunal