

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 three successive applications to the Superintendent for access to funds associated with a locked-in account in her name. In each case, the application was based on low income, one of several criteria of financial hardship prescribed by subsection 87(1) of Ontario Regulation 909, as amended (the "Regulation"), adopted under the Act.

2. The first such application, which requested a withdrawal of \$5000 from the locked-in account, was dated June 27, 2000. The Superintendent allowed that application, in the full amount requested, by a Consent dated July 13, 2000. Although the Applicant subsequently characterized this application, in her Request for Hearing in this matter, as "based on property," the application included a completed Part 2A, which relates to withdrawal based on low income. The application did not include any of the other versions of Part 2, which relate to withdrawal based on other prescribed criteria of financial hardship.

3. The second application, which requested a withdrawal of an additional amount from the locked-in account, was dated August 10, 2000. The Superintendent proposed to refuse that application, by a Notice dated November 6, 2000, on the basis that section 89 of the Regulation precludes the making of more than one application for withdrawal from a locked-in account on the

basis of low income during any 12-month period.

4. The third application, which requested the withdrawal of an amount from the locked-in account that was substantially the same as that requested in the second application, was dated September 5, 2000. The Superintendent proposed to refuse that application, by a Notice that was also dated November 6, 2000, on the same basis as she proposed to refuse the second application.

5. The Applicant submitted a Request for Hearing, dated November 25, 2000, to this Tribunal in accordance with the Act. The Notice that was attached to that Request was the Notice in respect of the second application. Therefore, the Request for Hearing should be treated as being in relation to the Superintendent's proposed refusal of the second application.

6. The Hearing before the Tribunal in this matter was held by means of the exchange of documents.

7. Section 89 of the Regulation provides that the Superintendent's authority to consent to a withdrawal of funds from a locked-in account on applications based on low income is subject to the condition that only one such application may be made during each 12-month period, but an unsuccessful application is not to be counted as an application for the purposes of that limitation. In the present case, as the second application was based on low income and was made within 12 months of the first application, which was made successfully on the same basis, the Superintendent had no authority to approve the second application even if the low income criterion of financial hardship, which was found to be satisfied on the first application, continued to be met on the occasion of the second application, as may well have been the case. In other words, the Superintendent was not entitled to consider the merits of the second application. This Tribunal cannot consider those merits and direct the Superintendent to act in a manner that is inconsistent

with the Regulation.

8. The Applicant could, of course, make a further application, without waiting for the expiry of the 12-month period from the first application, if such an application could be put on the basis of one of the criteria of financial hardship prescribed by the Regulation other than low income - for example, receipt by the Applicant or her spouse of a written demand in respect of a mortgage debt on her principal residence where she could face eviction if the debt were to remain unpaid. The Superintendent would have the authority to consider any such application on its merits.

9. In the circumstances, we must affirm the Superintendent's Notice in respect of the second application. Our reasons for that conclusion would equally apply if the Notice in respect of the third application were at issue before this Tribunal, with the result that our conclusion would be the same in respect of that Notice.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in her Notice of Proposal to Refuse to Consent, dated November 6, 2000, directed to the Applicant and relating to an application dated August 10, 2000 for a withdrawal from a locked-in account of the Applicant.

Dated at Toronto, this 26th day of January, 2001.

"Colin H.H. McNairn"

Colin H. H. McNairn

Vice Chair

Financial Services Tribunal