

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
December 12, 2000, 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;

R E A S O N S

1. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated December 12, 2000 that denied the Applicant access to funds associated with 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 this application (the “November Application”), which was made on the basis of low income, was made within 12 months after the date of another successful application (the “July Application”) made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the

“Regulation”), as follows:

89.–(4) Only one application may be made during each 12-month period.

(5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the November Application.
4. The July Application was first received by the Superintendent on June 26, 2000, then amended and re-signed by the Applicant on July 5, 2000. On July 24, 2000, the Superintendent consented to withdrawal of the full amounts requested by the Applicant, on the basis of low income, and also on the basis of a debt against the principal residence. Therefore, the July Application was a successful application on both bases for which withdrawals were requested. Only the consent on the basis of low income is relevant to the matter now before the Tribunal.
5. On November 9, 2000, the Applicant signed the November Application, in which she applied to withdraw \$5,000 from her locked-in account on the basis of low income. As this application was made within 12 months after the successful June Application, which also included a request on the basis of low income, the November Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. 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. Although the evidence of financial hardship on the part of the Applicant may be compelling, the November Application cannot be granted because it fails to meet one of those requirements. If in July, 2001, 12 months after the date of the successful July Application, the circumstances of the

Applicant are such that she could meet the qualifications for reliance on low income or debt against the principal residence, a further application for withdrawal of locked-in funds can then be made to the Superintendent. Prior to that time, any application of this nature must be on one of the other grounds of financial hardship prescribed by the Regulation.

7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated December 12, 2000 in respect of the November Application.

O R D E R

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated December 12, 2000, directed to the Applicant.

Dated at Toronto, this 27th day of February, 2001.

“C.S. Moore”

Mr. C. S. Moore
Member, Financial Services Tribunal