

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
October 7, 2002, 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 October 7, 2002, denying 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 “Current Application”), which was made on the basis of low income, was made within 12 months after the date of a previous successful application (the “Previous 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, based on written submissions from the Applicant and Superintendent, is whether or not the Superintendent should have consented to the Current Application.
4. The Superintendent submits that the Previous Application was signed by the Applicant on August 2, 2002, resulting in the Superintendent’s consent to withdrawal of funds from the Applicant’s locked-in account, on the basis of the Applicant’s low income. Therefore, the Previous Application was successful.
5. On August 27, 2002, the Applicant signed the Current Application, requesting consent to withdraw funds from her locked-in account on the basis of low income. As this application was made within 12 months after the successful Previous Application, which was also made on the basis of low income, the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. In her submissions to the Tribunal, the Applicant presented compelling evidence of her financial hardship, and has clearly explained the misunderstandings that led to insufficient funds being requested in the Previous Application. However, we must agree with the position stated by the Superintendent regarding these issues. No matter how serious the Applicant’s financial hardships and misunderstandings may be, this Tribunal has no authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. The Current Application cannot be granted because it fails to meet one of those requirements, in that a previous application was made within the preceding 12 months, on the same basis of low income circumstances. The

Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.

7. The Applicant could, of course, make a further application, without waiting for the expiry of the 12-month period from the date of the Previous Application, **if such an application could be put on the basis of one of the other criteria of financial hardship (i.e. other than low income), as prescribed by the Regulation.** For example, the Applicant may wish to make a further application if she has received a written demand for payment of rent owed, and needs funds to avoid the risk of eviction from her rented residence. Then, even if the 12-month period has not expired, the Superintendent may have authority to consider such an application on its merits.
8. In the circumstances, because the Current Application was made within 12 months after the Previous Application made on the basis of low income, and because the Current Application was also based on low income circumstances, the Tribunal must affirm the Superintendent's Notice dated October 7, 2002 in respect of the Current 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 October 7, 2002, directed to the Applicant.

Dated at Toronto, this 20th day of December, 2002.

"K. Moore"

Mr. Kit Moore

Member, Financial Services Tribunal