

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 20, 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;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated December 20, 2002, 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 "Current Application dated November 27, 2002), which was made on the basis of low income, was made within 12 months after the date of another successful application (the Previous Application dated June 2002) 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 27, 2002 Application.
4. The June 2002 Application was signed by the Applicant on June 27, 2002. On July 18, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore the June 2002 Application was a successful application.
5. On November 27, 2002, the Applicant signed the November 27, 2002 Application, in which he applied to withdraw additional funds from his locked-in account on the basis that he believed that he had overestimated his projected income in the June 2002 Application and therefore received less than he was entitled to receive. There is nothing in the Regulation which allows an Applicant to make a second application on the same ground of financial hardship or retroactively amend a successful application after a consent has been issued on the grounds that insufficient funds were originally requested. As this application was made within 12 months after the successful June 2002 Application, which was based on low income, the November 27, 2002 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. The Tribunal 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 November 27, 2002 Application cannot be granted because it fails to meet one of those requirements, in that a previous successful application (June 2002) 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. In the circumstances, the Tribunal must affirm the Superintendent's Notice of Proposal to Refuse to Consent, dated December 20, 2003, in respect of the November 27, 2002 Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated December 20, 2002, directed to the Applicant.

Dated at Toronto, this 24th day of March 2003.

“J.P. Martin”

Mr. J. P. Martin
Member, Financial Services Tribunal