

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
May 15, 2003, 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 May 15, 2003, 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 signed on April 9, 2003 and was made on the basis of low income, was made within 12 months after the date of a previous successful application (the “Previous Application”), which was signed on March 7, 2003 and was also 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 has stated that the Applicant signed the Previous Application on March 7, 2003 resulting in the Superintendent’s consent to the withdrawal of funds from the Applicant’s locked-in account, on the basis of the Applicant’s low income. The Applicant has not refuted this statement by the Superintendent, nor has he referred to the Previous Application in the Current Application. We conclude that the Previous Application was successful.
5. On April 9, 2003, the Applicant signed the Current Application, requesting consent to withdraw funds from his 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. This Tribunal has no authority to direct the Superintendent to allow an application from a locked-in account 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 Tribunal affirms the Superintendent's Notice to Propose to Refuse to Consent dated May 15, 2003, regarding the Current Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated May 15, 2003, directed to the Applicant.

Dated at Toronto, this 17th day of July, 2003.

"Kit Moore"

Mr. Kit Moore
Member, Financial Services Tribunal