

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 5, 2001, 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 5, 2001 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 "August Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "June 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 August Application.
4. The June Application was signed by the Applicant on June 1, 2001. On June 4, 2001, the Superintendent consented to withdrawal of \$10,042.00 from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the June Application was a successful application.
5. On August 22, 2001, the Applicant signed the August Application, in which he applied to withdraw the maximum amount allowed from his locked-in account on the basis of low income. As this application was made within 12 months after the successful June Application, which was made on the basis of low income, the August 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 August Application cannot be granted because it fails to meet one of those requirements. If in June 2002, 12 months after the date of the successful June Application, the circumstances of the

Applicant are such that he could meet the qualifications for reliance on low income, a further such application for withdrawal of locked-in funds can then be made to the Superintendent.

7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated October 5, 2001 in respect of the August 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 5, 2001, directed to the Applicant.

Dated at Toronto, this 20th day of December, 2001.

"C.S. Moore"

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