

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated March 4, 2002 with respect to an application for withdrawal of money from an Ontario locked-in retirement account, life income fund or 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 March 4, 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 "January 2002 Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "August 2001

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 January 2002 Application.

4. The August 2001 Application was signed by the Applicant on August 30, 2001. On September 11, 2001, the Superintendent consented to withdrawal of \$19,150.00 from the Applicant’s locked-in account, on the basis of the Applicant’s low income. Therefore, the August 2001 Application was a successful application.

5. On January 10, 2002, the Applicant signed the January 2002 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 August 2001 Application, which was made on the basis of low income, the January 2002 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 January 2002 Application cannot be granted because it fails to meet one of those requirements. If 12 months after the date of the successful August 2001 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 March 4, 2002 in respect of the January 2002 Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated March 4, 2002, directed to the Applicant.

Dated at Toronto, this 9th day of May, 2002.

"K.M" Bush
Ms. K.M. Bush
Vice-Chair, Financial Services Tribunal