

**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  
July 8, 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 July 8, 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”), which was made on the basis of low income, was made within 12 months after the date of another 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 is whether or not the Superintendent should have consented to the Current Application.
4. The Previous Application was signed by the Applicant on December 18, 2001. On January 2, 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 Previous Application was a successful application.
5. On June 12, 2002, the Applicant signed the Current Application, in which she applied to withdraw additional 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 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. Although the Applicant’s written submission provides compelling evidence of her financial hardship, this Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. Once 12 months have passed since the date of the successful Previous Application, a further application for withdrawal of locked-in funds may be submitted for consideration by the Superintendent, if the circumstances of the Applicant are such that she wishes to do so.
7. In the circumstances, the Tribunal must affirm the Superintendent’s Notice dated July 8, 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 July 8, 2002, directed to the Applicant.**

Dated at Toronto, this 29th day of August, 2002.

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