

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 7, 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 October 7, 2002, 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 “August 2002 Application”), which was made on the basis of low income, was made within 12 months after the date of a previous successful application (the “December 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 August 2002 Application.
4. The Superintendent submits that the December 2001 Application was signed by the Applicant on December 10, 2001. On December 13, 2001, 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 December 2001 Application was successful.
5. On August 20, 2002, the Applicant signed the August 2002 Application, in which he applied 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 December 2001 Application, which was also made on the basis of low income, the August 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 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 2002 Application cannot be granted because it fails to meet one of those requirements. In the circumstances, the Tribunal must affirm the Superintendent’s Notice dated October 7, 2002 in respect of the August 2002 Application.
7. **However, as of December 10, 2002, 12 months will have passed since the date of the**

successful December 2001 Application, with the result that a further application for withdrawal of locked-in funds can then be made to the Superintendent. If the circumstances of the Applicant are such that he wishes to do so, a new application can be submitted to the Superintendent on or after December 10, 2002.

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 7, 2002, directed to the Applicant.

Dated at Toronto, this 28th day of November, 2002.

“C.S. Moore”

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