

**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 21, 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 21, 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 “September Application”), which was made on the basis of low income, was made within 12 months after the date of another

successful application (the “May 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 September Application.
4. The Superintendent submits that the May Application was signed by the Applicant on May 24, 2002. On June 5, 2002, the Superintendent consented to withdrawal of the amount requested, on the basis of the Applicant’s low income. Therefore, the May Application was a successful application.
5. On September 17, 2002, the Applicant signed the September Application, in which he applied to withdraw \$16,000 from his locked-in account on the basis of low income. As this application was made within 12 months after the successful May Application, which was also on the basis of low income, the September Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. The evidence of financial hardship on the part of the Applicant is compelling in this situation, but this Tribunal does not have 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. In this case, the September Application cannot be granted because it clearly fails to meet one of those requirements.
7. If in May, 2003, 12 months after the date of the successful May Application, the circumstances of

the Applicant are such that he could meet the qualifications for reliance on low income, a further application for withdrawal of locked-in funds can then be made to the Superintendent. Prior to that time, the Superintendent would have authority to consider the merits of a financial hardship application submitted on one of the prescribed grounds of financial hardship **other than low income**.

8. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated October 21, 2002 in respect of the September 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 September 21, 2002, directed to the Applicant.**

Dated at Toronto, this 17<sup>th</sup> day of December, 2002

"K. Moore"  
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Mr. Kit Moore  
Member, Financial Services Tribunal