

**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, 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 “Current Application”), which was made on the basis of low income, was made within 12 months after the date of a previous 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. As confirmed in a pre-hearing telephone conference with the Applicant and counsel for the Superintendent on December 17, 2002, the issue to be determined by the Tribunal, based on written submissions from the Applicant and Superintendent, is whether or not the Superintendent should have consented to the Current Application.
4. The Superintendent submits that the Previous Application was signed by the Applicant on July 3, 2002. On July 30, 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 successful.
5. On August 29, 2002, the Applicant signed another application, which was amended by the Applicant’s signature dated September 23, 2002, resulting in the Current Application 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 Previous Application, which was also 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. In his submissions to the Tribunal, the Applicant presented compelling evidence of his financial hardship resulting from accumulated credit card debts. However, no matter how serious these financial hardships may be, this Tribunal does not have authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. The Current Application cannot be granted because it fails to meet one of those requirements, in that a previous application

was made within the preceding 12 months, on the same basis of low income circumstances. The Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.

7. The Applicant could, of course, make a further application, without waiting for the expiry of the 12-month period from the date of the Previous Application, **if such an application could be put on the basis of one of the other criteria of financial hardship (i.e. other than low income), as prescribed by the Regulation.** For example, the Applicant may wish to make a further application if he has received a written demand for payment of rent owed, and needs funds to avoid the risk of eviction from his rented residence. Then, even if the 12-month period has not expired, the Superintendent may have authority to consider such an application on its merits.
8. In the circumstances, because the Current Application was made within 12 months after the Previous Application made on the basis of low income, and because the Current Application was also based on low income circumstances, the Tribunal must affirm the Superintendent's Notice dated October 21, 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 October 21, 2002, directed to the Applicant.**

Dated at Toronto, this 20<sup>th</sup> day of December, 2002.

“K. Moore”  
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Mr. Kit Moore  
Member, Financial Services Tribunal