

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 May 27, 2003, 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;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent, dated May 27, 2003, 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 the current application (the “April 2003 Application”, subsequently amended), which was made on the basis of low income, was within 12 months after the date of another successful application (the “November 2002 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 April 21, 2003 Application.
4. The November 2002 Application was signed by the Applicant on November 19, 2002. On December 23, 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 November 2002 Application was a successful application.
5. On April 21, 2003, the Applicant signed the Current 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 November 2002 Application (made on the basis of low income), the April 2003 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 April 2003 Application cannot be granted because it fails to meet the time requirement in the Regulation.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice of Proposal to Refuse to Consent, dated May 27, 2003, in respect of the April 2003 Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated May 27, 2003 directed to the Applicant.

Dated at Toronto, this 14th day of July 2003.

“ J.P. Martin” _____

Mr. J. P. Martin
Member, Financial Services Tribunal