

4711 Yonge Street
Suite 700
Toronto ON M2N 6K8
Telephone: 416-325-9444
Toll Free 1-800-268-6653
Fax: 416-325-9722

4711, rue Yonge
Bureau 700
Toronto (Ontario) M2N 6K8
Téléphone : 416 325-9444
Sans frais 1 800 268-6653
Télécopieur : 416 325-9722



SECTOR RELEASE

July 13, 2011

Number 65

To All Board of Directors, Managers and CEOs

DICO Successful in First Appeal of its Regulatory Authority

When the Act was amended in 2009, the revisions provided that the Deposit Insurance Corporation of Ontario (“DICO”) would have the authority to issue various orders including placing a credit union under its supervision. As part of the process to ensure fairness, the Act also provided for an appeal to the Financial Services Tribunal (the “FST” or the “Tribunal”) to allow credit unions that felt that the order was unjustified to challenge the order.

On May 18, 2010 the DICO made an order placing Arnstein Community Credit Union (the “Credit Union”) under supervision, after providing notice of its intention to do so pursuant to s. 240.1 (2) of the *Credit Unions and Caisses Populaires Act, 1994*, (the “Act”). DICO issued the order as it believed the Credit Union was conducting its affairs in a way that might be expected to harm the interests of members or depositors or that tended to increase the risk of claims by depositors against DICO. The grounds for this belief included material non-compliance with DICO’s By-law #5 – *Standards of Sound Business and Financial Practices*, and several contraventions of the Act and DICO By-law #6 – *Impaired Loans*.

The Credit Union appealed the supervision order to the FST based on several issues as to the fundamental relationships between and among DICO, credit unions and the FST as the appellate body. This was the first appeal of a DICO order to the FST.

The Tribunal’s decision establishes a number of important principles for the regulation of credit unions in Ontario. The decision makes clear that DICO’s authority to order that a credit union be supervised requires only that DICO have a reasonable belief that there *may* be a risk of harm to the interests of members or depositors or that there *may* be an increased risk of claims against the statutory Deposit Insurance Reserve Fund if a supervision order is not made. To place a credit union under its supervision, DICO is not required to prove that, absent a supervision order, harm *would* occur or claims against deposit insurance *would* actually increase.

Additionally, DICO may rely on the facts and conclusions set out in its examination reports in making a supervision order. To successfully appeal a supervision order, a credit union must disprove facts included in the examination report. In the case of the Credit Union, the FST held that DICO’s examination reports constituted a reasonable basis for DICO’s belief that there may be a risk of harm

to the interests of members or depositors or may be an increased risk of claims against the deposit insurance fund.

The Tribunal also considered issues of procedural fairness as they apply to DICO's decision-making authority and held that:

1. DICO is only obliged to meet the statutory notice requirements. Therefore, DICO is not required to notify a credit union that it has been placed on an internal "watchlist";
2. Written reasons for its order are required but the reasons may consist of DICO's notice to the credit union and its supervision order if they make reference to the substantive facts and issues raised and outlined in DICO's examination reports; and
3. DICO is under no duty to provide guidance to a credit union on how to conduct its affairs so to avoid a supervision order.

The full text of the order can be accessed at DICO's website at www.dico.com/design/5_9_Eng.html, and the Tribunal's decision, *Arnstein Credit Union Limited v Deposit Insurance Corporation of Ontario*, can be accessed at www.fstontario.ca/english/decisions/credunions/CU441-2010-1.pdf.