

IN THE MATTER OF: THE SECURITIES ACT

- and -

IN THE MATTER OF: WILLIAM MACKAY

**NOTICE OF APPEAL
OF WILLIAM MACKAY**

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File No. 1103905

TAKE NOTICE THAT, pursuant to section 29(1) of *The Securities Act* of Manitoba (the “*Act*”), William MacKay hereby appeals the decision of the Director of The Manitoba Securities Commission made July 9, 2012, which denied William MacKay’s application for registration under the *Act*.

ON THE APPEAL the Commission will be asked to set aside the decision of the Director (the “Decision”), on grounds which include the following:

1. The Decision is contrary to the law, the evidence and the weight of evidence;
2. Numerous findings made by the Director are unreasonable, unfair and unsupported by the evidence, particulars of which include:
 - a) With respect to Parking Paystations International Inc. (“PPI”) and the Employment Standards Division (“ESD”);
 - i) There were in fact two orders issued by the ESD, one against PPI and one against Mr. MacKay, and the evidence indicates the one naming Mr. MacKay personally may never have been properly served on him.
 - ii) Contrary to the Director’s finding, Mr. MacKay did produce a copy of his written letter of resignation as a director of PPI to the Commission. The Director’s finding that Mr. MacKay’s resignation was a “convenient way to attempt to avoid responsibility” is unreasonable and unsupportable. Mr. MacKay continued to be shown as a director of PPI in the records of the Companies Office only because the other directors failed to file a Notice of Change of Director as they ought to have done.

- iii) Contrary to the Director's finding, there is no inconsistency between Mr. MacKay saying he decided to resign as a director of PPI and statements he made on his application. Mr. MacKay has consistently said he was asked by a board of advisors of PPI (not its Board of Directors) to turn over his management role in the company to certain other individuals, which he did. Although Mr. Mackay was elected as a director by the shareholders, he decided to resign and limit his involvement in the company to that of shareholder. It was Mr. MacKay's decision to make. These events do not support the Director's conclusion that Mr. MacKay placed his own interests ahead of others.
- iv) The legal opinion obtained by Mr. MacKay, part of which is quoted by the Director, indicated that Mr. MacKay had no recourse against ESD to have the judgment it had obtained against him set aside. This legal opinion did not indicate Mr. MacKay had no recourse against individuals who had made false or improper claims, as the Director appears to have assumed.
- v) Furthermore, Mr. MacKay's approaches to individuals who had made false or improper claims took place before he obtained the legal opinion quoted by the Director, not after as the Director appears to have assumed. These approaches to former employees of PPI were made in keeping with legal advice from Mr. MacKay's previous lawyer. The MSC was informed such steps were being taken and made no objection or suggested they were improper at the time.
- vi) Mr. MacKay had no reason to believe he was still listed as a Director of PPI at the time it ceased operations, as he had resigned months earlier, so could not have been motivated by a desire to avoid liability to former PPI employees when he

hired them. Mr. MacKay should not be criticized for hiring those former employees, who would otherwise have been out of work.

vii) Mr. MacKay was not involved in the day to day affairs of PPI after his resignation, other than as a shareholder, and the fact PPI's former landlord contacted Mr. MacKay or that he took custody of some PPI's records when the true directors of PPI abdicated their responsibilities is not evidence to the contrary.

viii) Mr. MacKay resolved matters with ESD. It is hardly surprising that the fact this meant that some people who were not entitled to any money would nevertheless be paid would be upsetting to Mr. MacKay.

b) Proforma:

- i) The two subscriptions were in process prior to the meeting with the Director on January 4, 2010, and involved Accredited Investors, such that there was no need for an exemption for them;
- ii) The Accredited Investors in question, one of whom was Mr. MacKay himself, were fully informed of and aware of the nature of this investment and its risks;
- iii) The fact these investors pooled together to make larger single investments was done to obtain a higher rate of return, and had nothing to do with avoiding any directive of the Director. An exemption from the Director was not required for these investors.

c) Donations Canada:


- i) The Director was provided with evidence in writing from the lawyer who issued the legal opinion to Mr. MacKay, indicating that the opinion applied specifically to the Donations Canada Program, contrary to the Director's findings;
- ii) Significant due diligence was performed in respect of this Program, which included two legal opinions, one provided directly to the clients and the other which Mr. MacKay obtained himself;
- iii) The Program was implemented in a manner consistent with that set out in the Schedule to the legal opinion, such that there is no reasonable basis to suggest the legal opinion in question did not apply to the Program.

d) SMART Notes:

- i) The timing of the receipt of funds from investors was related to potential tax advantages if the investment could be completed prior to year end, not because Mr. MacKay placed the possibility of obtaining a commission ahead of ensuring the investment was appropriate;
- ii) The clients were aware that due diligence had not been completed when the funds were advanced, which were held in a lawyer's trust account and were never at risk;
- iii) The investment did not proceed when information being sought by Mr. MacKay and his sons in the due diligence process was not provided in a timely fashion, and the Commission made inquiries about the product;
- iv) All funds were returned and Mr. MacKay did not receive any commission.

3. There was no reasonable basis to conclude that Mr. MacKay lacks integrity, or has or would place his own interests ahead of clients if registered, or is unsuitable for registration. In fact, there is substantial evidence to the contrary.
4. Such further and other grounds as counsel may advise and the Commission may permit.

August 7, 2012 #



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TO: Mr. Donald Murray, Chair of the Manitoba Securities Commission

AND TO: Mr. Douglas Brown, Director – Legal, The Manitoba Securities Commission