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Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “PBA”);

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to Consent, under section 62.1(5) of the PBA, to a payment out of the Pension Plan for Kenneth MacEachern, Audrey MacEachern and Lawson MacEachern, Registration Number 1059302 (the “Plan”).

TO:

K & A MacEachern Holdings Ltd.
74 Bellevue Road
Stratford PE C1B 2T8

Attention:

Audrey MacEachern
President

Applicant and Employer

AND TO:

William Johnston, LL.L,LL.B
9 Barton Street
Ottawa ON K1S 5M6

NOTICE OF INTENDED DECISION

I INTEND TO CONSENT, under section 62.1(5) of the PBA, to the payment from the pension fund for the Plan to K & A MacEachern Holdings Ltd., in the amount of \$91,108 as at August 26, 2015, plus investment earnings thereon to the date of payment.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the PBA. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you¹.** A copy of that form is included with this Notice of Intended Decision.

Additional copies can be obtained by visiting the Tribunal's website at www.fstontario.ca.

If a Request for Hearing (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you, subsections 89(8) and 89(9) of the PBA provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the "Superintendent") to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the PBA and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

IF NO WRITTEN REQUEST FOR A HEARING IS MADE within thirty 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will carry out the CONSENT pursuant to Section 89(7) of the PBA.

A completed Request for Hearing form must be received by the Tribunal within 30 days of this Notice is served on you. The Request for Hearing form may be mailed, faxed or delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar
Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. Those Rules are available at the website of the Tribunal at www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

REASONS FOR DECISION

1. K & A MacEachern Holdings Ltd. is the employer and administrator as defined in the Plan (the "Employer").
2. The Employer made contribution to the Plan's pension fund on the basis of an actuarial report in which the employer contributions were determined using a member's estimated earnings. After the contributions were remitted to the pension fund, the Employer discovered that the member's actual earnings were less than the estimated amount. Accordingly, the excess contributions constitute an overpayment within the meaning of Section 62.1(1)(b) of the PBA.
3. Evidence of the overpayment to the pension fund has been submitted to the Financial Services Commission of Ontario.
4. Section 62.1(4) of the PBA states that if an employer makes an overpayment into the pension fund, the application to the Superintendent for reimbursement for the payment must be made before the later of: (a) 24 months after the date on which the employer made the overpayment; and (b) six months after the date on which the administrator, acting reasonably, becomes aware of the overpayment.

5. The Employer's application for reimbursement of the overpayment was made on November 20, 2015. This date is within 24 months after the date on which the Employer made the payments described in paragraph 2. Accordingly, the application has been filed within the time limits set out in section 62.1(4) of the PBA.
6. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, this 27th day of July, 2017.

Original Signed By

Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

1 NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.

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