

No. 115

1st Session, 15th Legislature, Alberta
12 Elizabeth II

BILL 115

A Bill to amend The Securities Act, 1955

HON. MR. MANNING

Explanatory Note

1. The Securities Act, 1955, Statutes of Alberta 1955, chapter 64, amended.

2. Section 20 deals with exemption from registration of certain securities and types of trades in securities. The amendments here follow similar changes made in 1963 to the Securities Act of Ontario.

(a) Subsection (1) enumerates certain types of "trades" that are exempt from registration. The addition of the new subclause (iii) to clause (c) is made to exempt a trade where one of the parties is recognized by the commission as an "exempt purchaser", i.e., one recognized as being sufficiently knowledgeable in business affairs not to require the protection afforded by the Act to the public generally.

(b) (i) Section 20, subsection (2), clause (a) presently reads:

"(2) Subject to the regulations, registration is not required to trade in
(a) securities of its own issue that are distributed or issued by a company to the holders of its securities as a stock dividend or other distribution out of earnings or surplus, or securities, whether of its own issue or not, that are distributed or issued by the company to the holders of its securities as incidental to a bona fide re-organization or winding up of the company or distribution of its assets for the purpose of winding up its affairs, or the sale by a company to the holders of its securities of additional securities of its own issue, if the commission is notified in writing of the terms of the sale at least ten days before the sale is to be made, and no commission or other remuneration is paid or given to others in respect of the distribution, issuance or sale, except for ministerial or professional services or services performed by a person or company registered for trading in securities under this Act in connection with a bona fide re-organization to the company,
.....".

The new clauses (a) and (a1) are a revision of the present clause (a) in order to clearly separate the three categories of securities mentioned in it and to make substantive changes only as to third category—"additional securities". The words in the new clause (a) following subclause (ii) will no longer apply to additional securities issued by a company to its own shareholders. It was found impractical to enforce this in Ontario as many companies were in fact paying a commission to dealers under the guise of an administration fee for their services.

The new clause (a1) is different in that at present the company is only required to notify the commission "of the terms of the sale at least ten days before the sale is to be made". The new provision creates a new procedure for notice to the commission which in turn will have an opportunity to require more information on the securities issued if it thinks there is any matter of concern.

BILL

No. 115 of 1964

An Act to amend The Securities Act, 1955

(Assented to _____, 1964)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Securities Act, 1955* is hereby amended.

2. Section 20 is amended

(a) as to subsection (1), clause (c) by adding the word "or" at the end of subclause (ii) and by adding the following subclause after subclause (ii);

(iii) is a purchaser who has applied for and has been granted recognition by the commission as an exempt purchaser,

(b) as to subclause (2)

(i) by striking out clause (a) and by substituting the following:

(a) the following types of securities, namely,

(i) securities of its own issue that are distributed or issued by a company to the holders of its securities as a stock dividend or other distribution out of earnings or surplus,

(ii) securities of its own issue or not that are distributed or issued by the company to the holders of its securities as incidental to a *bona fide* re-organization or winding up of the company or distribution of assets for the purpose of winding up its affairs,

if no commission or other remuneration is paid or given to others in respect of such distribution, issuance or sale except for ministerial or professional services or for services performed by a person or company registered for trading in securities under this Act in connection with a *bona fide* re-organization of the company,

(b) (ii) The present clause (f) of section 20(2) exempts from registration trades in "negotiable promissory notes or commercial paper maturing not more than a year from the date of issue". The new clause (f) will mean that the exemption does not apply where the notes or paper are sold to natural persons in their individual capacities, that is, the members of the public generally will be afforded greater protection from a practice that has prevailed in some parts of Canada whereby individuals are induced to loan or deposit money on the security of high interest, short term promissory notes issued by persons or companies whose desire or ability to repay is questionable.

On the other hand, this will not apply to individuals who are "exempt purchasers": see note to clause 2(a) above.

(c) Subsection (3) of section 20 presently reads:

"(3) Where a person or company has been guilty of acts or conduct that, in the opinion of the commission would warrant the commission refusing to grant registration to him or it under this Act, the commission may rule that subsections (1) and (2) do not apply to him or it."

The interpretation of this provision has caused some difficulty in that it infers that the commission cannot act unless the "guilt" of a person or company has been determined by a criminal court, i.e., there must be a prior conviction. The new subsection (3) is intended to exclude that inference.

- (a1) additional securities of its own issue that are sold by a company to the holders of its securities, if the company has given the commission a written notice stating the date, amount, nature and conditions of the proposed sale, including the approximate net proceeds to be derived by the company on the basis of the additional securities being fully taken up and paid for, and either
 - (i) the commission has not informed the company in writing within ten days of the giving of such notice that it objects to the sale, or
 - (ii) the commission has within ten days of the giving of such notice required the company to file additional or more satisfactory information regarding the securities and such information is delivered to and accepted by the commission as satisfactory,
- (ii) by striking out clause (f) and by substituting the following:
 - (f) negotiable promissory notes or commercial paper maturing not more than one year from the date of issue except where such securities are offered for sale
 - (i) a natural person acting in his individual capacity and not as a trustee or in any representative capacity, or
 - (ii) two or more natural persons acting jointly in their individual capacities and not as trustees or in any representative capacity or as a partnership, unincorporated association, unincorporated organization or unincorporated syndicate,
- (c) by striking out subsection (3) and by substituting the following:
 - (3) Notwithstanding subsection (1) or (2), the commission may, where in its opinion such action is necessary in the public interest,
 - (a) order that subsection (1) does not, with respect to such of the trades mentioned in that subsection as are specified in the order, apply to the person or company named in the order, or
 - (b) order that subsection (2) does not, with respect to such of the securities as are specified in that subsection, apply to the person or company named in the order.

3. The new section 33a enables the commission to obtain an injunction against a person violating the Act while his registration is suspended or cancelled or during or after an investigation or criminal proceedings. This implements one of the recommendations contained in the report of the Royal Commission on Pre-arranged Funeral Services.

3. The following section is added after section 33:

33a. (1) The commission

- (a) upon the commencement of or after the investigation of a person or company under section 27 or 29, or
- (b) where it has made a direction, decision, order or ruling suspending or cancelling the registration of a person or company or affecting the right of a person or company to trade in securities, or
- (c) where
 - (i) criminal proceedings, or
 - (ii) proceedings in respect of a violation of this Act or the regulations,have been instituted against a person or company and, in the opinion of the commission, are connected with or arise out of any security or any trade therein or out of any business conducted by that person or company involving securities,

may by originating notice of motion apply to a judge of the Supreme Court of Alberta for an injunction to restrain that person or company from doing any act that is similar to or related to any act or matter that is the subject of any investigation, direction, decision, order, ruling or proceedings referred to in clause (a), (b) or (c).

(2) The originating notice shall be served at least two clear days before the day named in the notice for hearing the application.

(3) The court may grant the injunction or interlocutory injunction applied for where

- (a) it appears from the material and the evidence adduced that the person or company to be restrained is apparently continuing or may in future do the act complained of, and
- (b) it is satisfied that the granting of the injunction or interlocutory injunction is in the interest of the public generally or any person or class of persons in particular.

(4) An application may be made under subsection (1) *ex parte* upon the filing of the originating notice and the court may grant an interlocutory injunction for a period not exceeding ten days.

(5) An interlocutory injunction made under subsection (4) remains in force for the period specified therein unless the period is extended upon application made *ex parte* but if it is in force on the day when the originating motion is determined, it shall be deemed to be dissolved on that day.

4. Section 68, clause (a) presently reads:

“68. Parts VIII, IX and X do not apply to trades mentioned in clause (c) or (f) of subsection (1) of section 20 nor to securities that are

(a) mentioned in subsection (2) of section 20,
.....”.

Not all the securities “mentioned” in section 20, subsection (2) are exempted from registration requirements.

5. General. The new Part XVI will regulate the sale or leasing of subdivision lots outside Alberta and require the promoters to file a prospectus acceptable to the securities commission. The new Part follows closely the amendments made in 1963 to The Real Estate and Business Brokers Act of Ontario.

114. Definitions.

115. Non-application of Part.

(6) An injunction or interlocutory injunction made under this section may be enforced in the same manner as any other injunction or interlocutory injunction of the Supreme Court of Alberta and may be varied or discharged upon an application made by notice.

(7) Except where otherwise provided, the Consolidated Rules of the Supreme Court of Alberta apply to proceedings under this section.

4. Section 68 is amended by striking out clause (a) and by substituting the following:

(a) exempted by subsection (2) of section 20,

5. The following new Part is added after section 113:

PART XVI

TRADING IN SUBDIVISION LOTS OUTSIDE ALBERTA

114. In this Part,

- (a) "broker" means a person who, for another or others, for compensation, gain or reward or hope or promise thereof, either alone or through one or more salesmen, trades in real estate, or a person who holds himself out as such;
- (b) "prescribed" means prescribed by the regulations;
- (c) "subdivision" means improved or unimproved land divided or proposed to be divided into five or more lots or other units for the purpose of sale or lease;
- (d) "trade" includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition or transaction, and any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt, and the verb "trade" has a corresponding meaning;

and the definitions of "broker", "company", "person", "salesman" and "trade" or "trading" in section 2 do not apply.

115. This Part does not apply in respect of an isolated trade in one or more lots or units in a subdivision by or on behalf of the owner and for the owner's account where the trade is not made in the course of continued and successive transactions of a like nature.

116. (1) Requirement as to prospectus.
(2) Certain representations prohibited.

117. Duties of vendor to purchaser; rights of purchaser.

118. Material in support of prospectus.

116. (1) No person shall, in any capacity, trade in lots or units of land in a subdivision located outside Alberta until there has been filed with the commission a prospectus containing the prescribed information and until there has been obtained from the commission a certificate of acceptance thereof.

(2) No person shall make any representation, written or oral, that the commission has passed upon the financial standing, fitness or conduct of any person in connection with the filed prospectus or upon the merits of the prospectus.

117. (1) No person shall, either as a vendor or as a broker or salesman, enter into or negotiate any contract for the sale or lease of a lot or a unit of land in a subdivision located outside Alberta unless

- (a) a copy of the prospectus referred to in section 116 has been delivered to the prospective purchaser or tenant, as the case may be, and
- (b) the prospective purchaser or tenant has in writing acknowledged receipt of a copy of the prospectus and that he has been afforded the opportunity to read it.

(2) Every acknowledgment referred to in subsection (1) shall be retained by the vendor or broker and be available for inspection by the commission for a period of not less than three years.

(3) A purchaser or tenant who has entered into a contract to which subsection (1) applies is entitled to rescission of the contract if,

- (a) subsection (1) has not been complied with, and
- (b) written notice of exercising the right of rescission is served on the vendor or broker within ninety days of the signing of the contract.

(4) In an action for rescission under subsection (3), the onus of proving compliance with subsection (1) rests upon the vendor.

(5) The right of rescission provided in this section is in addition to any other rights that the purchaser or tenant may have in respect of the contract.

118. Each prospectus submitted to the commission for filing shall be accompanied by

- (a) an affidavit of the owner of the subdivision or, where the owner is a corporation, any three directors thereof, as to the correctness of every matter of fact stated in the prospectus,
- (b) a copy of every plan referred to in the prospectus,
- (c) a copy of every form of contract referred to in the prospectus,

119. Grounds for refusal of acceptance of prospectus.

120. Inquiries by commission.

121. Powers of commission.

122. Stop orders.

- (d) such documents as the commission may require to support any statement of fact, proposal or estimate set out in the prospectus,
- (e) such financial particulars of the owner as the commission may require, and
- (f) the prescribed fees.

119. The commission shall not grant a certificate of acceptance where it appears that

- (a) the prospectus contains any statement, promise or forecast that is misleading, false or deceptive, or has the effect of concealing material facts, or
- (b) adequate provision has not been made for the protection of deposits or other funds of purchasers or for assurance of title or other interest contracted for, or
- (c) the prospectus fails to comply in any substantial respect with any of the requirements prescribed, or
- (d) the requirements of section 118 have not been complied with in any substantial respect.

120. (1) The commission may, before issuing a certificate of acceptance, make such inquiries as he deems necessary, including

- (a) an examination of the subdivision and any of the surrounding circumstances, and
- (b) the obtaining of reports from public authorities or others in the jurisdiction in which the subdivision is located.

(2) The reasonable and proper costs of such inquiries or reports shall be borne by the person on whose behalf the prospectus was filed or submitted for filing.

121. The commission shall grant the certificate of acceptance where the requirements of this Part and the regulations have been complied with and in its opinion such action is in the public interest, but the commission shall not refuse to grant the certificate without giving the person on whose behalf the prospectus was filed an opportunity to be heard.

122. Where it appears to the commission, subsequent to the filing of a prospectus and the granting of a certificate of acceptance therefor, that any of the conditions referred to in section 119 exist or where in its opinion such action is necessary in the public interest, the commission may, after giving the person on whose behalf the prospectus was filed an opportunity to be heard, cancel the certificate of acceptance and order that all trading in the subdivision to which the prospectus refers shall cease forthwith.

123. Review and appeal.

124. Amended or new prospectus.

125. Regulations re fees.

126. Offences and penalties.

6. Commencement of Act.

123. Part V applies in any case where the commission has refused to grant or has cancelled a certificate of acceptance.

124. (1) If a change occurs with regard to any of the matters set out in any prospectus,

(a) that would have the effect of rendering a statement in the prospectus false or misleading, or

(b) that brings into being a fact or proposal that should have been disclosed in the prospectus if the fact or proposal had existed at the time of filing,

the persons who filed the prospectus shall, within twenty days of the change occurring, notify the commission in writing of the change and shall file a copy of the prospectus with the changes incorporated in it.

(2) Where the trading referred to in section 116 is still in progress twelve months from the date of the filing of the last prospectus, a new prospectus shall be filed with the commission within twenty days from the expiration of such twelve-month period.

(3) Sections 116 to 123 apply to an amended prospectus or a new prospectus filed under this section.

125. The Lieutenant Governor in Council may make regulations prescribing the information to be contained in a prospectus required to be filed under this Part.

126. (1) A person who contravenes a provision of this Part is guilty of an offence and liable on summary conviction

(a) in the case of a person other than a corporation, to a fine of not more than two thousand dollars or to imprisonment for a term of not more than one year or to both, or

(b) in the case of a corporation, to a fine of not more than twenty-five thousand dollars.

(2) No proceedings shall be instituted under this section

(a) except with the consent of the Attorney General, and

(b) unless the information is laid within two years after the facts upon which the proceedings are based first came to the knowledge of the commission.

6. This Act comes into force on the first day of July, 1964.

No. 115

FIRST SESSION

FIFTEENTH LEGISLATURE

12 ELIZABETH II

1964

BILL

An Act to amend The Securities Act,
1955

Received and read the

First time

Second time

Third time

HON. MR. MANNING
