

No. 51

3rd Session, 15th Legislature, Alberta
14 Elizabeth II

BILL 51

A Bill to amend The Investment Contracts Act

HON. MR. MANNING

Explanatory Note

- 1.** This Bill amends chapter 36 of the Statutes of Alberta, 1957.
- 2.** Section 15 of the present Act deals with the review by the Alberta Securities Commission of its decisions, orders, etc. This is being replaced by provisions which are almost identical with sections 34 to 41b of The Securities Act, 1955 which permit a further appeal to the Appellate Division. The result will be a uniform procedure for reviews and appeals in both Acts.

BILL

No. 51 of 1966

An Act to amend The Investment Contracts Act

(Assented to _____, 1966)

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

1. *The Investment Contracts Act* is hereby amended.
2. Section 15 and the heading preceding it are struck out and the following heading and sections are substituted:

Reviews and Appeals

15. A notice of every direction, decision, order or ruling of the Commission under this Act shall be served upon the applicant or the person or company whose registration is thereby affected and upon such other person or company as in the opinion of the Commission is primarily affected by the direction, decision, order or ruling, at the address appearing in the application or upon the records of the Commission.

15a. Any person or company

- (a) upon whom a notice is served under section 15, or
- (b) who is primarily affected by any direction, decision, order or ruling of the Commission,

may, by notice in writing served upon the Registrar within thirty days after the mailing of the notice, request a hearing and review of the direction, decision, order or ruling.

15b. (1) A hearing and review requested under section 15a shall be heard by the full Commission or a quorum thereof.

(2) Notwithstanding subsection (1), where the chairman is of the opinion that he should not sit upon a hearing and review, the Lieutenant Governor in Council may

- (a) appoint a person as an acting member of the Commission for the purposes of the hearing and review, and fix his remuneration, and
- (b) designate one of the members of the Commission to act as chairman for the purposes of the hearing and review.

15c. Where a hearing and review is requested under section 15a, the Registrar shall serve a notice in writing of the time, place and date thereof

- (a) upon the person or company requesting the hearing and review, and
- (b) upon such other persons or companies that, in the opinion of the Commission, are primarily affected by the hearing.

15d. (1) Upon the review, the Commission may hear such evidence as may be submitted to it by the person or company requesting the review or by any other person or company and which in the opinion of the Commission is relevant to the review.

(2) Upon a review the Commission is not bound by the legal or technical rules of evidence and all oral evidence submitted shall be taken down in writing and together with such documentary evidence and things as are received in evidence by the Commission shall form the record.

(3) The Attorney General may designate counsel to assist the Commission upon a review.

(4) Upon a review the Commission has the same power to summon and enforce the attendance of witnesses or persons and compel them to give evidence on oath or otherwise, and to produce documents, records and things as is vested in the Supreme Court of Alberta or a judge thereof for the trial of civil actions, but

- (a) the provisions of rules of court or of law relating to the service of subpoenas upon and to the payment of conduct money or witness fees to witnesses do not apply,
- (b) no person is entitled in respect of any document, record or thing asked for, given or produced, to claim any privilege on the ground that he might be criminated or exposed to a penalty or to civil litigation thereby,
- (c) no person shall refuse to answer any question upon any ground of privilege, but a solicitor shall not be required to disclose any communications between himself and his client, and
- (d) no provision of *The Alberta Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section.

15e. Upon a review, the Commission may by order confirm or revoke the direction, decision, order or ruling under review or may make such alteration therein or addition thereto as a majority of the members of the Commission deem proper.

15f. A notice of the order made upon every review shall be served forthwith upon the person or company requesting the review and to such other person or company as in the opinion of the Commission is primarily affected by such order.

15g. (1) Where the Commission has reviewed a direction, decision, order or ruling pursuant to this Act, any person or company upon whom a notice is served under section 15f or any other person or company who is primarily affected by such direction, decision, order or ruling or by the order made upon the review may appeal to the Appellate Division of the Supreme Court of Alberta.

(2) Every appeal shall be by notice of motion served upon the Registrar within thirty days after the mailing of the notice under section 15f and the practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court in an action, but the Lieutenant Governor in Council may vary or amend such practice and procedure or may prescribe the practice and procedure that shall be applicable to appeals taken under this section.

(3) The Registrar shall certify to the Registrar of the Appellate Division of the Supreme Court of Alberta

- (a) the direction, decision, order or ruling that has been reviewed by the Commission,
- (b) the order of the Commission upon the review, together with any statement of reasons therefor,
- (c) the record of the review, and
- (d) all written submissions to the Commission or other material that in the opinion of the Registrar are relevant to the appeal.

(4) The Attorney General may designate counsel to assist the court upon the hearing of any appeal taken under this section.

15h. Where an appeal is taken under section 15g, the court may by its order direct the Commission to make such direction, decision, order or ruling or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the court deems proper having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such direction, decision, order or ruling or do such act accordingly.

15i. An order of the court is final and there is no appeal therefrom but notwithstanding such order the Commission has power to make any further direction, decision, order or ruling upon new material or where there is a material

3. Section 27, subsection (4) presently reads:

(4) Except by way of salary or other remuneration as a director, officer or employee of the issuer, no officer, director or employee of an issuer shall take or derive, directly or indirectly, any money or benefit by reason of the issuer acquiring, buying, selling or disposing of, any securities, mortgages or real estate.

The new subsection (4) is a recast of the present subsection but with the addition of clause (b) which adds a second exception to it. This will permit an issuer of investment contracts to have an affiliated company to act as its brokerage firm in its securities dealings if the only payments made by the issuer are brokerage fees. In those circumstances, an officer, director or employee of the issuer will not be contravening the prohibition in subsection (4) by taking any benefit by reason of being a shareholder, creditor, officer, director, or employee of the brokerage firm or having an interest in it.

4. Commencement of Act.

change in the circumstances, and every direction, decision, order or ruling is subject to the provisions of this Act.

3. Section 27 is amended by striking out subsection (4) and by substituting the following:

(4) No officer, director or employee of an issuer shall take or derive, directly or indirectly, any money or benefit by reason of the issuer acquiring, buying, selling, or disposing of, any securities, mortgages or real estate, except

(a) by way of salary or other remuneration as a director, officer or employee of the issuer, or

(b) any money or benefit taken or derived by him as a shareholder, creditor, officer, director or employee of, or as a person having an interest in, a company that

(i) is registered as a broker-dealer under *The Securities Act, 1955*, and

(ii) acts as an agent on behalf of the issuer in respect of the acquisition, purchase, sale or disposition of securities,

if the only moneys paid by the issuer to that company are amounts owing as brokerage fees.

4. This Act comes into force on the day upon which it is assented to.

No. 51

THIRD SESSION
FIFTEENTH LEGISLATURE
14 ELIZABETH II
1966

BILL

An Act to amend The Investments
Contracts Act

Received and read the

First time

Second time

Third time

HON. MR. MANNING
