

1969 Bill 57

Second Session, 16th Legislature, 18 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 57

An Act to amend The Securities Act, 1967

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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1969

An Act to amend The Securities Act, 1967

(Assented to _____, 1969)

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, 1967* is hereby amended.

2. Section 2, subsection (1), clause 27 is amended by striking out “and” at the end of subclause (xii), by adding “and” at the end of subclause (xiii) and by adding thereto the following subclause:

(xiv) any document constituting evidence of an interest in a scholarship or educational plan or trust,

3. Section 4 is amended by adding the following subsections after subsection (2);

(3) The chairman, vice-chairman or any member of the Commission may exercise the powers and shall perform such duties vested in or imposed upon the Commission by this Act or the regulations as are assigned to him by the Commission, except those referred to in sections 21 to 28.

(4) Every direction, decision, order or ruling made pursuant to an assignment under subsection (3) is subject to review by the Commission under section 28 in the same manner as if it had been made by the Director, and the person who made the direction, decision, order or ruling shall not sit on the hearing and review thereof by the Commission.

4. Section 5 is amended

- (a) by striking out the word “At” and by substituting the words “For the purposes of”,
- (b) by striking out clause 2 and by substituting the following:

Explanatory Notes

1. This Bill amends chapter 76 of the Statutes of Alberta, 1967. Almost all of the amendments in this Bill follow amendments made to the Ontario Securities Act in 1967 and 1968. The Alberta Act is modelled on the Ontario Act.

2. Section 2 (1)/27 is the definition of "security".

3. Delegation of commissions, powers and duties to any member of the Commission. Sections 21 to 28 of the Act deal with investigations by the Commission and reviews by the Commission of decisions of the Director.

4. Section 5, clause 2 presently reads:

5. At a hearing required or permitted under this Act to be held before the Commission or the Director, the following rules apply:
.....

2 At the hearing, the person presiding has, for the purpose of such hearing, the same authority, powers, rights and privileges as a person appointed to make an investigation under section 21.
.....

The content of the new clause 8 was contained in section 27 (3)(a) of The Securities Act, 1955, but was omitted in The Securities Act, 1967.

2. For the purposes of the hearing any of the persons convening the hearing or before whom the hearing is held has the same power to summons and enforce the attendance of witnesses 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 for the trial of civil actions, and the failure or refusal of a person to attend to answer questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court of Alberta as if in breach of an order or judgment of that Court.

(c) by adding the following clause:

8. The provisions of any rules of court or of law relating to the service of subpoenas to witnesses and to the payment of conduct money or witness fees do not apply.

5. Section 15, subsection (2) is amended by striking out clause (b) and by substituting the following:

- (b) any change in its officers, directors and other officials, and

6. Section 21 is amended

- (a) by striking out subsection (2) and by substituting the following:

(2) The Commission may, with the consent of the Minister, by order, appoint one or more persons to make such investigation as it considers expedient for the due administration of this Act or into any matter relating to trading in securities, and in such order shall determine and prescribe the scope of the investigation.

- (b) by adding the following subsection:

(10) The provisions of any rules of court or of law relating to the service of subpoenas to witnesses and to the payment of conduct money or witness fees do not apply with respect to investigations under this section or section 23.

(11) An order under subsection (1) or (2) may provide for the appointment of two or more persons to make the investigation.

5. Section 15 (2)(b) presently reads:

(2) Every registered security issuer shall, within five days of the event, notify the Registrar in writing of

.....

(b) any change in its officials, and

.....

6. Section 21, (1) and (2) presently reads:

21. (1) Where upon a statement made under oath it appears probable to the Commission that any person or company has

(a) contravened any of the provisions of this Act or the regulations, or

(b) committed an offence under the Criminal Code in connection with a trade in securities,

the Commission may by order appoint any person to make such investigation as it deems expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

(2) The Commission may, with the consent of the Minister, by order appoint any person to make such investigation as it deems expedient for the due administration of this Act or into any matter relating to a trade in securities, and in such order shall determine and prescribe the scope of the investigation.

The reference in subsection (2) to "a trade in securities" is changed to "trading in securities" so that the provisions will not be construed as confining the scope of an investigation to a single trade in securities.

As to the new subsection (10) see note to clause 4 of this Bill.

The new subsection (11) is added to avoid an interpretation that subsections (1) and (2) permit the Commission to appoint only one person to make an investigation.

7. Section 23 is struck out and the following is substituted:

23. Notwithstanding section 21, the Minister may by order appoint one or more persons to make such investigation as he deems expedient for the due administration of this Act or into any matter relating to trading in securities, in which case the person or persons so appointed, for the purposes of the investigation, have the same authority, powers, rights and privileges as a person appointed under section 21.

8. Section 52 is amended

- (a) as to subsection (1) by striking out the words "A prospectus" and by substituting the words "Subject to subsection (1a), a prospectus",
- (b) by adding the following subsection after subsection (1):

(1a) The Director may specify the officers or directors of the company who shall sign the certificate in a prospectus where the company has three directors or less and compliance with subsection (1) is by the circumstances impossible.

9. Section 58, subsection (3) is amended by striking out the words "and 64" wherever they occur and by substituting the words ", 64 and 141".

10. Section 61 is amended

- (a) as to subsection (1) by striking out the word "or" at the end of clause (d), by adding the word "or" at the end of clause (e) and by adding the following clause:
 - (f) in the case of a prospectus filed by a finance company,
 - (i) the plan of distribution of the securities offered is not acceptable to the Director,
or
 - (ii) the securities offered are not secured in such manner, on such terms and by such means as are required by the regulations,
or
 - (iii) such finance company does not meet such financial and other requirements and conditions as are specified in the regulations.
- (b) by adding the following subsection after subsection (2):

7. Section 23 presently reads:

23. Notwithstanding section 21, the Minister may by order appoint any person to make such investigation as he deems expedient for the due administration of this Act or into any matter relating to a trade in securities, in which case the person so appointed, for the purposes of the investigation, has the same authority, powers, rights and privileges as a person appointed under section 21.

The section is rewritten to change "a trade" to "trading" (see clause 6 of this Bill) and to specify that more than one person could be appointed to make the investigation.

8. Section 52 (1) reads in part:

52. (1) A prospectus shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer and, on behalf of the board of directors, by any two directors of the company, other than the foregoing, duly authorized to sign and by any person or company who is a promoter of the company:

.....
The new subsection (1a) permits the certificate to be signed otherwise than as required in subsection (1) where compliance with subsection (1) is made impossible by the fact that the company has only two or three directors.

9. Section 58 (3) presently reads:

(3) Sections 63 and 64 apply mutatis mutandis to a distribution under clause (b) of subsection (2) as if section 35 or 56 was applicable thereto, and the statement of material facts referred to in clause (b) of subsection (2) shall be conclusively deemed to be a prospectus for the purposes of sections 63 and 64.

Section 58 (2)(b) provides that the prospectus requirements do not apply to securities distributed to the public through a stock exchange if a statement of material facts is filed with the stock exchange and the Commission. Section 141 deals with the liability of directors of a company to a purchaser of securities where the purchaser relied on a material false statement in a prospectus. The result of the amendment will be to make section 141 applicable to the case where there is a material false statement in the statement of material facts referred to in section 58 (2)(b).

10. The opening words of section 61 (1) read:

61. (1) The Director may in his discretion direct the Registrar to issue a receipt for any prospectus filed under this Part, unless it appears to the Director that

.....
Section 61 (1) enumerates certain special grounds on which a receipt for a prospectus of a finance company may be refused. The new subsection (3) authorizes regulations to be made for the purposes of administering the new clause (f) of subsection (1). These amendments, the new section 62a and the amendment to section 144, follow amendments made to the Ontario Securities Act in 1967.

(3) The Lieutenant Governor in Council may make such regulations as he considers necessary or appropriate in the public interest pertaining to the matters referred to in subsection (1), clause (f) and, without limiting the generality of the foregoing, pertaining to requirements as to paid-up capital and surplus, liquidity of assets, ratios of debt to paid-up capital and surplus, audit procedures, the furnishing of interim financial statements and the provisions of trust indentures and the qualifications, rights, duties and obligations of trustees thereunder.

11. The following section is added after section 62:

62a. (1) While primary distribution to the public of the securities to which the prospectus of a finance company relates is in progress, the Director may from time to time require the finance company to furnish to him a statement of source and application of funds or of cash receipts and disbursements in such form and for such period or periods as he may specify and such other information as may enable the Director to satisfy himself that

- (a) the securities are being distributed in a manner acceptable to him,
- (b) the securities are secured in such manner, on such terms and by such means as are required by the regulations, and
- (c) as at such date as may be acceptable to the Director, the finance company met such financial and other requirements and conditions as are specified in the regulations.

(2) Where the Director reports to the Commission that he is not satisfied with any statement or as to any matter referred to in subsection (1), the Commission may order that all trading in the primary distribution to the public of the securities to which the prospectus of the finance company relates shall cease and in any such case section 62, subsections (2) and (3) apply as if the order were made under that section.

12. Section 66 is amended by striking out subsection (2) and by substituting the following:

(2) For the purposes of subsection (1), clauses (d) and (g), a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

11. The new section 62a permits the Director of Securities to require additional financial information from a finance company during the course of a public offering of its shares. Where the information is not considered satisfactory, the Commission may prohibit further trading in the finance company's shares.

12. Section 66 (1)(d) and (2) presently reads:

66. (1) Every person or company registered for trading in securities who has acted as principal or agent in connection with any trade in a security shall promptly send or deliver to the customer a written confirmation of the transaction, setting forth

.....

(d) if acting as agent in a trade upon a stock exchange recognized by the Commission, the name of the person or company from or to or through whom the security was bought or sold.

.....

(2) Clause (d) of subsection (1) need not be complied with if the written confirmation contains a statement that the name of the person or company from or to or through whom the security was bought or sold will be furnished to the customer upon request.

(2a) Where a person or company uses a code or symbols for identification in a confirmation under subsection (1), the person or company shall forthwith file the code or symbols and their meaning with the Commission, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning.

13. Section 105 is amended by striking out the words “for or”.

14. Section 108, subsection (1), clause (c) is amended by adding the word “or” at the end of subclause (ii) and by adding the following:

- (iii) any person or company who exercises control or direction over the equity shares of a corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding.

15. Section 109 is amended

- (a) by adding after subsection (1) the following:

(1a) A person or company that is an insider of a corporation under section 108, subsection (1), clause (c), subclause (iii) shall, within 10 days after the end of the month in which this subsection comes into force, file with the Commission a report, as of such day, of the direction or control he exercises over the capital securities of the corporation.

- (b) by striking out subsections (2), (3) and (4) and by substituting the following:

(2) A person or company that becomes an insider of a corporation shall, within 10 days after the end of the month in which he becomes an insider, file with the Commission a report as of the day on which he became an insider, of his direct or indirect beneficial ownership of or control or direction over capital securities of the corporation.

(3) If a person or company that is an insider of a corporation, but has no direct or indirect beneficial ownership of or control or direction over capital securities of the corporation, acquires direct or indirect beneficial ownership of or control or direction over any such securities, he shall, within 10 days after the end of the month in which he acquired such direct or indirect beneficial ownership or such control or direction, file

13. Section 105 presently reads:

105. If the aggregate number of shares represented at a meeting by proxies required to be voted for or against a particular matter or group of matters carries, to the knowledge of the chairman of the meeting, less than 5 percent of the voting rights attached to the shares entitled to vote and represented at the meeting, the chairman of the meeting has the right not to conduct a vote by way of ballot on any such matter or group of matters unless a poll is demanded at the meeting or required by the laws of the jurisdiction of incorporation of the corporation.

Section 105 is in Part 10 dealing with Proxies and Proxy Solicitation. The result of the amendment is that the section will no longer apply where the total proxy votes represent less than 5% of the shares entitled to vote but are required to be voted in favour of the matter to be voted on. This returns to the original recommendation made in the Kimber Committee Report on which the Act is based.

14. Section 108 (1)(c) presently reads:

108. (1) In this Part,

.....

(c) "insider" or "insider of a corporation" means

(i) any director or senior officer of a corporation, or

(ii) any person or company who beneficially owns, directly or indirectly, equity shares of a corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding, provided that in computing the percentage of voting rights attached to equity shares owned by an underwriter there shall be excluded any equity shares that have been acquired by him as underwriter in the course of distribution to the public of such shares, but such exclusion ceases to have effect on completion or cessation of the distribution to the public by him.

Subclause (ii) of the definition refers only to the beneficial owner of equity shares of the corporation. The new subclause (iii) will extend the definition of "insider" to include a person who is not the beneficial owner but exercises control and direction over equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding. The change in the definition necessitates amendment to section 109 so as to include reference to persons who exercise control or direction over equity shares.

15. Section 109 presently reads:

109. (1) A person or company that is an insider of a corporation on the day on which this Act comes into force shall, within 10 days after the end of the month in which such day occurs, file with the Commission a report, as of such day, of his direct or indirect beneficial ownership of capital securities of the corporation.

(2) A person or company that, after the day on which this Act comes into force, becomes an insider of a corporation shall, within 10 days after the end of the month in which he becomes an insider, file with the Commission a report, as of the day on which he became an insider, of his direct or indirect beneficial ownership of capital securities of the corporation.

(3) If a person or company that is an insider of a corporation, but has no direct or indirect beneficial ownership of capital securities of the corporation, acquires direct or indirect beneficial ownership of any such securities, he shall, within 10 days after the end of the month in which he acquired such direct or indirect beneficial ownership, file with the Commission a report, as of the date of such acquisition, of his direct or indirect beneficial ownership of capital securities of the corporation.

(4) A person or company who has filed or is required to file a report under subsection (1), (2) or (3) and whose direct or indirect beneficial ownership of capital securities of the corporation changes from that shown or required to be shown in such report or in the last report filed by him under this subsection shall, within 10 days following the end of the month in which such change takes place, provided that he was an insider of the corporation at any time during such month, file with the Commission a report of his direct or indirect beneficial ownership of capital securities of the corporation at the end of such month and the change or changes therein that occurred during the month and giving such details of each transaction as may be required by the regulations.

See note to clause 14 of this Bill.

with the Commission a report, as of the date of such acquisition, of his direct or indirect beneficial ownership of or control or direction over capital securities of the corporation.

(4) A person or company who has filed or is required to file a report under subsection (1), (1a) , (2) or (3) and whose direct or indirect beneficial ownership of or control or direction over capital securities of the corporation changes from that shown or required to be shown in such report or in the last report filed by him under this subsection shall, within 10 days following the end of the month in which such change takes place, provided that he was an insider of the corporation at any time during such month, file with the Commission a report of his direct or indirect beneficial ownership of or his control or direction over capital securities of the corporation at the end of such month and the change or changes therein that occurred during the month giving such details of each transaction as may be required by the regulations.

16. Section 112 is struck out.

17. Section 118 is amended by renumbering the section as subsection (1) and by adding the following:

(2) This Part applies *mutatis mutandis* to any person who has issued securities that, after this subsection comes into force, are distributed in the course of primary distribution to the public in respect of which a prospectus is filed with the Commission and a receipt therefor obtained, in the same manner as to a corporation.

18. Section 119 is amended by striking out subsection (3) and by substituting the following:

(3) If the financial statements contain a statement of source and application of funds or a statement of changes in net assets, the auditor shall include in his report a statement whether in his opinion, in effect, the statement of source and application of funds or the statement of changes in net assets presents fairly the information shown therein.

19. Section 120 is amended

- (a) as to subsection (1), clause (e) by adding before the words "a statement" the words "subject to subsection (5)",
- (b) by adding the following subsection:

16. Section 112 presently reads:

112. (1) Whenever it appears to the Commission that any person or company has failed to comply with section 109, it may in its discretion apply to a judge of the Supreme Court designated by the Chief Justice of the Trial Division for an order requiring such person or company to comply therewith.

(2) An appeal lies to the Appellate Division from an order made under subsection (1).

The content of section 112 is being included in the new section 147: see Clause 24 of this Bill.

17. Section 118 is in Part 12 entitled "Financial Disclosure". Part 12 presently applies only to certain corporations but the new subsection (2) will extend the Part to persons who are not within the definition of "corporation", e.g., a natural person or unincorporated group administering a mutual fund set up by way of a trust deed.

18. Section 119 (3) presently reads:

(3) If the financial statements contain a statement of source and application of funds, the auditor shall include in his report a statement whether in his opinion, in effect, the statement of source and application of funds presents fairly the information shown therein.

The subsection is the same except for the reference to "a statement of changes in net assets". The expression "a statement of source and application of funds" is not appropriate in the case of a mutual fund company or investment company. See clauses 19, 21 and 22 of this Bill which deal with statement of changes in net assets of mutual fund companies and investment companies.

19. Section 120 (1)(e) presently reads:

120. (1) A corporation shall file with the Commission, within 170 days of the date to which it is made up, comparative financial statements relating separately to

.....
(e) a statement of source and application of funds for each period, and
.....

See note to clause 18 of this Bill.

(5) A mutual fund company or an investment company, as defined in the regulations, shall file a statement of changes in net assets for each period, in lieu of a statement of source and application of funds as required by subsection (1), clause (e).

20. Section 121 is amended by adding the following subsection:

(4) The statement of profit and loss of a mutual fund company or an investment company, as defined in the regulations, shall also distinguish the average net investment income per share and an item of this nature may be shown by way of note to the statement of profit and loss.

21. The following section is added after section 123:

123a. (1) The statement of changes in net assets referred to in section 120, subsection (5) and section 129, subsection (1a) shall be drawn up so as to present fairly the information shown therein for the period and shall show separately at least:

1. Net assets at beginning of the period;
2. Net investment income or loss;
3. Aggregate proceeds on sale of portfolio securities;
4. Aggregate cost of portfolio securities owned at beginning of the period;
5. Aggregate cost of purchases of portfolio securities;
6. Aggregate cost of portfolio securities owned at end of the period;
7. Aggregate cost of portfolio securities sold;
8. Realized profit or loss on securities sold;
9. Distributions, showing separately the amount out of net investment income and out of realized profits;
10. Proceeds from shares issued;
11. Cost of shares redeemed;
12. Net increase or decrease in unrealized appreciation or depreciation of portfolio securities;
13. Net assets at end of the period;
14. Net asset value per share at end of the period;
15. Net asset value per share at beginning of the period;
16. Distribution per share out of net investment income;

20. Section 121 deals with statement of profit and loss. Self-explanatory.

21. The content of statement of changes in net assets of a mutual fund company or an investment company. See note to clause 18 of this Bill.

17. Distribution per share out of realized profits.

(2) Notwithstanding subsection (1), items of the natures described in clauses 14, 15, 16 and 17 of that subsection may be shown by way of note to the statement of changes in net assets.

22. Section 129 is amended by adding the following after subsection (1) :

(1a) A mutual fund company or an investment company, as defined in the regulations, shall file a statement of changes in net assets for each period that complies with section 123a in lieu of a statement of source and application of funds as required by subsection (1), clause (a).

23. Section 144 is amended by striking out clause (a) and by substituting the following:

(a) prescribing categories for companies and the manner of allocating companies to categories, and prescribing the form and content of prospectuses and statements of material facts to be filed with the Commission by companies in accordance with their categories,

24. Section 147 is struck out and the following is substituted:

147. (1) Where it appears to the Commission that any person or company has failed to comply with or is violating any provision of this Act or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights it may have, the Commission may apply to the Supreme Court of Alberta by way of originating notice of motion for an order directing such person or company to comply with such provision or for an order restraining such person or company from violating such provision, and upon such application the Court may make such order or such other order as it thinks fit.

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

(3) An appeal lies to the Appellate Division of the Court from an order made under subsection (1).

25. This Act comes into force on July 1, 1969.

22. Section 129 deals with comparative interim financial statements and subsection (1)(a) requires the statement to include a statement of source and application of funds. See note to clause 18 of this Bill.

23. Section 144, clause (a) presently reads:

144. The Lieutenant Governor in Council may make regulations
(a) prescribing the form and content of prospectuses and statements of material facts,
.....

The regulations will now be permitted to categorize companies, e.g., finance companies, and prescribe different requirements for each category as to the form and content of prospectuses and statements of material facts.

24. Order to compel compliance or restrain violation of Act.
The present section provides only for injunctions to restrain violations and reads:

147. (1) The Commission
(a) upon the commencement of or after the investigation of a person or company under section 21 or 23, 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 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 to do 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 10 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.
(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.