

## BILL

No. 23 of 1929.

An Act for the Prevention of Fraud in connection with  
the Sale of Securities.

(Assented to \_\_\_\_\_, 1929.)

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

1. This Act may be cited as "*The Security Frauds Pre-  
vention Act, 1929.*"

2. In this Act, unless the context otherwise requires—

- (a) "Broker" shall mean every person other than a salesman who engages either for the whole or part of his time directly or through an agent in the business of trading in securities, and includes such officials of a company or partnership which trades in securities as may be designated by the regulations;
- (b) "Company" shall include any association, corporation, company or other incorporated organization, whether acting as a trustee or not;
- (c) "Fraud," "fraudulent" or "fraudulent act," in addition to its ordinary meaning, shall include—
  - (i) any intentional misrepresentation by word, conduct or in any manner of any material fact either present or past, and any intentional omission to disclose any such fact;
  - (ii) any promise or representation as to the future which is beyond reasonable expectation and not made in good faith;
  - (iii) any fictitious or pretended trade in any security;
  - (iv) the gaining of, or attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or gross profit so large and exorbitant as to be unconscionable and unreasonable;
  - (v) generally any course of conduct or business which is calculated or put forward with intent to deceive the public or the purchaser of any security as to the nature of any transaction or as to the value of such security;

- (vi) the making of any material false statement in any application, information, material or evidence submitted or given to the Attorney General, his representative or the registrar under the provisions of this Act or the regulations; or in any prospectus or return filed with the Provincial Secretary;
- (vii) the violation of any provision of this Act or of the regulations relating to the manner in which brokers or salesmen shall trade in securities and anything specifically designated in the regulations as coming within the meaning of this definition;
- (viii) any artifice, agreement, device or scheme to obtain money, profit or property by any of the means hereinbefore set forth or otherwise contrary to law;
- (d) "Person" shall mean an individual, partnership, association, syndicate and any unincorporated organization whether acting as a trustee or not;
- (e) "Registrar" shall mean the person appointed by the Lieutenant Governor in Council to act as registrar under the provisions of this Act and the regulations;
- (f) "Regulations" shall mean the regulations made from time to time by the Lieutenant Governor in Council under the provisions of this Act;
- (g) "Salesman" shall mean every person employed, appointed or authorized by any broker or company to trade in securities whether directly or through sub-agents;
- (h) "Security" shall include, subject to the provisions of subsection (1) of section 3, any document or instrument commonly known as a security, every documentary evidence of indebtedness or evidence representing or secured by some title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company, evidence of membership in an association of heirs or evidence of any option upon a security and anything designated as a security by the regulations;
- (i) "Trade" or "trading" shall include, subject to the provisions of subsection (3) of section 3, any disposition of, transaction in, or attempt to deal in, sell or dispose of a security, or interest in or option upon a security for any valuable consideration, whether the terms of payment be upon margin, instalment or otherwise, and any underwriting of any issue or part of an issue of a security, the obtaining of a subscription to the capital stock of any organization, whether incorporated or not, and any act, advertisement, conduct or negotiation directly or

indirectly in furtherance of any of the foregoing or specifically designated as "trade" or "trading" in the regulations;

- (j) "Trustee" shall mean a person, or a company, as the case may be, executing a trust expressly created by or declared in an instrument in writing other than a will or court order or judgment, where such trust is to carry on any business or to secure the payment or repayment of money.

#### PART I.

##### REGISTRATION OF BROKERS AND SALESMEN.

3.—(1) No person shall—

- (a) trade in any security unless he is registered as a broker or salesman;
- (b) act as an official of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he or the partnership or company is registered as a broker;
- (c) act as a salesman of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he is registered as a salesman—

and unless such registrations have been made in accordance with the provisions of this Act and the regulations; and any violation of this section shall constitute an offence.

(2) With the approval of the Attorney General, any partnership or company may be registered as a broker, whereupon the partnership or company may trade in securities, and the members and officials of the partnership, and the officials of the company other than branch managers or salesmen of the partnership or company, may act as such without separate registration, and the provisions of this Act, and of the regulations relating to registered persons or companies, shall be deemed to apply to such partnership or company.

(3) Subsections (1) and (2) shall not apply to any person in respect of any of the following classes of trades or securities:

- (a) a trade in a security taking place at a judicial, executor's, administrator's, guardian's or committee's sale, or at a sale by an authorized trustee or assignee, an interim or official receiver or a custodian under *The Bankruptcy Act*, a receiver under *The Judicature Act*, or a liquidator under *The Companies Act, 1929*;
- (b) an isolated trade in a specific security by or on behalf of the owner, for the owner's account, where

- such trade is not made in the course of continued and successive transactions of a like character;
- (r) a trade where one of the parties is an official of a bank, loan company, trust company or insurance company, or is an official or employee, in the performance of his duties as such, of His Majesty in right of the Dominion or any province or territory of Canada or of any municipal corporation, or public board or commission in Canada or is registered as a broker under the provisions of this Act;
  - (s) a trade by or for the account of a pledgee or mortgagee for the purpose of liquidating a *bona fide* debt by selling or offering for sale or delivery, in good faith, in the ordinary course of business, a security pledged in good faith as security for such debt;
  - (t) the distribution, issuance or sale by a company exclusively to the holders of its securities of capital stock, bonds or other securities as a stock dividend or other distribution out of earnings or surplus, or in the process of a *bona fide* re-organization of the company, or of additional capital stock where no commission or other remuneration is paid or given in connection therewith;
  - (u) the exchange by or on account of one company with another company of its own securities in connection with a consolidation, amalgamation or merger of either company;
  - (v) a trade in good faith by an actual prospector of a security issued by him for the purpose of financing a prospecting expedition, or for the purpose of disposing of any of his interest in a mining claim or property staked by or wholly or partly owned by him;
  - (w) securities in which trust funds may lawfully be invested in Alberta;
  - (x) bonds or notes secured by mortgage upon real estate or tangible personal property where the entire mortgage, together with all of the bonds or notes secured thereby are sold at the one time;
  - (y) negotiable promissory notes or commercial paper maturing not more than a year from the date of issue;
  - (z) securities evidencing indebtedness due under any contract made pursuant to the provisions of any statute of any Province of Canada providing for the acquisition of personal property under conditional sales contracts;
  - (aa) securities issued by a person or company organized exclusively for the promotion of art, science, charity, religion or other useful object, or for educational, benevolent, fraternal, charitable, or recreational

purposes and not for pecuniary profit, where no part of the net earnings thereof inure to the benefit of any security holder:

- (m) any class of trade or security specifically exempted from the application of subsections (1) and (2) of this section by the regulations.

4.—(1) Unless the Attorney General otherwise directs, the registrar may within ten days after the receipt by him of any application for registration cause to be entered in a book kept for such purpose and open to public inspection, hereinafter called "the Register," the name and address for service of such applicant, whereupon such applicant shall be deemed to be registered as a broker or salesman as the case may be.

(2) The registrar may upon the direction of the Attorney General or his representative authorized in writing cause a temporary entry to be made, designated as such, in the register, subject to cancellation at any time upon the order of the Attorney General.

(3) Registrations shall expire, and may be changed or renewed as the regulations shall provide.

5.—(1) Every application under this Act or the regulations shall be made in writing upon the forms provided by the registrar, and shall be accompanied by the fee prescribed by the regulations and such bond as may be required.

(2) Every applicant, whether domiciled in Alberta or not, shall state in every application an address for service in Alberta, and all notices under this Act, or the regulations and all legal process issued by or on behalf of any person or company, shall be sufficiently served for all purposes if posted by registered mail to the applicant at the latest address for service so stated, and in the case of a non-registered company whose the officials are registered, to the latest address of the person registered as the senior official of such company in Alberta.

(3) The registrar may from time to time and shall when so directed by the Attorney General require any further information or material to be submitted by any applicant or any registered person or company within a specified time and may require verification by affidavit or otherwise of any matter then or previously submitted.

6.—(1) Every applicant for registration as a broker shall before registration submit a bond by the applicant, or the person or company he represents, as the registrar may require, such bond to be in the sum of \$500 and in such form and upon such conditions as the regulations shall prescribe.

(3) The registrar may, and when so directed by the Attorney General shall, require any applicant or any registered person or company within a specified time to deliver a bond by a surety company approved by the Attorney General or any other bond in such form and upon such conditions as the regulations shall prescribe, and in such amount as the regulations or the Attorney General shall require.

(3) The registrar may, and when so directed by the Attorney General shall, require a new bond of the kind mentioned in subsections (1) or (2) to be filed within a specified time.

7.—(1) Any bond mentioned in section 6 shall be forfeit and the sum named therein shall become due and owing by the person or company bound thereby as a debt to His Majesty in right of the Province when there has been filed with the registrar the Attorney General's certificate that the person or company in respect of whose conduct the bond is conditioned, or any official, employee or salesman of such company has, in connection with a trade in a security, been—

- (a) in the case of the bond mentioned in subsection (1) of section 6—
  - (i) charged with any criminal offence; or
  - (ii) found upon investigation by the Attorney General or his representative to have committed a fraudulent act; or
- (b) in the case of the bond mentioned in subsection (2) of section 6—
  - (i) convicted of a criminal offence; or
  - (ii) convicted of an offence against any provision of this Act or the regulations; or
  - (iii) enjoined by the Supreme Court or a judge thereof otherwise than by an interim injunction.

(2) The Attorney General may assign any bond forfeited under the provisions of subsection (1) or may pay over any moneys required thereunder to any person, or into the Supreme Court in trust for such persons and companies as may become judgment creditors of the person or company bonded, or to any trustee, custodian, interim receiver, receiver or liquidator of such person or company as the case may be, such assignment or payment over to be in accordance with and upon conditions set forth in the regulations or in any special order of the Lieutenant Governor in Council.

8.—(1) The Attorney General may order that—

- (a) any application for registration, renewal or change of registration shall or shall not be granted for any reason which he may deem sufficient;
- (b) the application of any person for registration shall not be granted where it appears that such person

proposes to use or is using a trading name other than his own, or that of his partner, where such trading name is apt to lead the public to believe it is that of a business firm of longer established standing in the Province or is calculated to conceal from the public the identity of the applicant, or is for any reason objectionable;

- (c) any temporary entry in the register shall be made, suspended or cancelled for any reason which he may deem sufficient;
- (d) the registration of any person or company shall be suspended for any period or cancelled by reason of default in filing a bond when required under the provisions of subsections (2) and (3) of section 6;
- (e) the registration of any person or company shall be suspended as provided in section 10—

and no order of the Attorney General shall be subject to review in any way in any court.

(2) The registrar upon receiving any order of the Attorney General suspending or cancelling any registration shall cause immediate entry thereof to be made in the register, whereupon the suspension or cancellation shall become effective forthwith, but notice thereof and of the refusal of any application shall be sent to the person or company concerned.

(3) Notwithstanding any order of the Attorney General a further application may be made upon new or other material, or where it is clear that material circumstances have changed.

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## PART II.

### INVESTIGATION AND ACTION BY ATTORNEY GENERAL.

9.—(1) The Attorney General, or any person to whom as his representative he may in writing delegate such authority, may examine any person or thing whatsoever at any time in order to ascertain whether any fraudulent act, or any offence against this Act or the regulations has been, is being, or is about to be committed, and for such purpose shall have the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath and to produce documents, records and things as is vested in the Supreme Court or a Judge thereof for the trial of civil cases, save that no person shall be entitled to claim any privilege in respect of any evidence or document, record or thing, sought to be given or produced, on the ground that he might be incriminated or exposed to a penalty thereby.

(2) The failure without reasonable excuse of any person or company to furnish information required by the registrar under Part I within the time limited, or the failure without reasonable excuse of any person summoned for examination under subsection (1) to appear or his refusal to give evidence, or to answer any question, or the failure without reasonable excuse or refusal of any person or company to produce anything where the evidence, answer or production would be required in an action shall constitute an offence and shall also be *prima facie* evidence upon which—

- (a) the Attorney General, or his representative, may base an affirmative finding concerning any fraudulent act to which he may deem it relevant; or
  - (b) the Supreme Court, or a judge thereof, may grant an interim or permanent injunction; or
  - (c) a police magistrate may base a conviction for an offence against this Act or the regulations.
- (3) Disclosure by any person other than the Attorney General, his representative or the registrar, without the consent of any one of them, of any information or evidence obtained, or the name of any witness examined or sought to be examined under subsection (1), shall constitute an offence.

10. If the Attorney General or his representative upon investigation finds that any fraudulent act, or that any offence against this Act or the regulations, has been, is being, or is about to be committed, the Attorney General—

- (a) may where a registered broker, company or salesman is in his opinion concerned therein, order that the broker, company or salesman and any other registered broker, company or salesman connected with the same organization, be suspended from registration for any period not exceeding ten days; or
- (b) may where he considers a suspension for ten days inadequate, or where any unregistered person or company is in his opinion concerned in such fraudulent act or in such offence, proceed under the provisions of section 11, or otherwise under this Act or the regulations; or
- (c) may give notice of the fraudulent act to the public by advertisement or otherwise or to any individual by letter or otherwise, whenever he deems it advisable.

11.—(1) The Supreme Court or any judge thereof, upon the application of the Attorney General, where it is made to appear upon the material filed or evidence adduced that any fraudulent act, or any offence against this Act or the regulations has been, is being, or is about to be committed, may by order enjoin—



- (a) any registered broker, company or salesman or any person or company implicated with any of them in the same matter from trading in any security whatever absolutely or for such period of time as shall seem just, and any such injunction shall *ipso facto* suspend the registration of any registered person or company named in the order during the same period; or
- (b) any person or company from trading in any security whatever, or in any specific security, or from committing any specific fraudulent act or series of fraudulent acts absolutely or for such period of time as shall seem just.

(2) The application of the Attorney General under subsection (1) may be made without any action being instituted either—

- (a) by an *ex parte* motion for an interim injunction which shall, if granted, remain in full force for ten days from the date thereof unless the time is extended or the originating motion mentioned in clause (b) is sooner heard and determined; or
- (b) by an originating notice of motion, which, if an interim injunction has been granted, shall be served within five and returnable within ten days from the date of such interim injunction.

(3) Any information, evidence, exhibit or thing obtained by the Attorney General or his representative or the registrar under the provisions of this Act or the regulations, or copies thereof, certified by the Attorney General or the registrar shall, so far as relevant, be receivable in evidence for all purposes in any action, proceeding or prosecution and, in proceedings under this section only, the evidence of a witness may be used against him notwithstanding anything in *The Alberta Evidence Act* contained.

**12.—(1)** The Attorney General may—

- (a) when he is about to examine or during or after the examination of any person or company under the provisions of section 9; or
- (b) when he is about to apply for, or has applied for, or has obtained an injunction interim or otherwise against any person or company under the provisions of section 11; or
- (c) where criminal proceedings which in his opinion are connected with or arise out of any security or any trade therein, or out of any business conducted by the person, are about to be or have been instituted against any person—

in writing or by telegram direct any person or company having in Alberta on deposit or under control or for safe keeping any funds or securities of the person or company

so to be or actually examined, enjoined or charged, to hold such funds or securities in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the provisions of *The Bankruptcy Act, The Judicature Act, or The Companies Act, 1929*, or until the Attorney General in writing revokes such direction or consents to release any particular fund or security from such direction, and failure without reasonable excuse by any person or company to comply with any such direction shall constitute an offence, provided that, unless such direction expressly so states, it shall not apply to funds or securities in a stock exchange clearing house nor to securities in process of transfer by a transfer agent, and in the case of a bank, loan or trust company the direction shall only apply to the offices, branches or agencies thereof named in the direction.

(2) In any of the circumstances mentioned in clauses (a) and (b) of subsection (1), the Attorney General may make and file, in the land titles office of any land registration district in which is situated land belonging to any person or company referred to in the said clauses, a certificate that he is about to take or has taken proceedings under the provisions of section 9 or section 11, as the case may be, and such certificate shall, when registered, have the same effect as the registration of a certificate of *lis pendens*.

(3) Any person or company in receipt of a direction given under subsection (1) if in doubt as to the application of such direction to any funds or security, or in case of a claim being made thereto by any person or company not named in such direction, may apply to the Supreme Court or a judge thereof, who may direct the disposition of such fund or security and may make such order as to costs as may seem just.

(4) The Attorney General, whenever His Majesty becomes a creditor of any person or company in respect of a debt to the Crown arising from the provisions of sections 6 and 7, may take such proceedings as he shall see fit under *The Bankruptcy Act, The Judicature Act, or The Companies Act, 1929*, for the appointment of an interim receiver, custodian, trustee, receiver or liquidator as the case may be.

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### PART III.

#### GENERAL PROVISIONS.

13.—(1) A judge of the Supreme Court in exercising any of the powers conferred upon such judge by this Act shall be deemed so to act as a judge of such court and not as *persona designata*.

(2) The Attorney General shall in all proceedings under this Act or the regulations be deemed to be acting as the representative of His Majesty in the right of the Province, and not as *persona designata*.

(3) The provisions of *The Judicature Act* and the rules of court made thereunder so far as they are applicable to proceedings of a like nature, including those relating to appeals and to the enforcement of judgments and orders, shall apply to every proceeding before the Supreme Court or a judge thereof under the provisions of this Act, save that service of notices and other legal process shall be in accordance with subsection (2) of section 5 and save that costs may be awarded to but not against the Attorney General.

14. No action whatever, and no proceedings by way of injunction, mandamus, prohibition or other extraordinary remedy shall lie or be instituted against any person whether in his public or private capacity or against any company in respect of any act or omission in connection with the administration or carrying out of the provisions of this Act or the regulations where such person is the Attorney General or his representative, or the registrar or where such person or company was proceeding under the written or verbal direction or consent of any one of them, or under an order of the Supreme Court or a judge thereof made under the provisions of this Act.

15. The Lieutenant Governor in Council may make regulations not inconsistent with this Act for the better carrying out of the provisions of this Act, for the more efficient administration thereof and for the prevention of fraud in trading in securities whether upon any stock exchange or elsewhere in the Province, for the creation of offences, and for any other purpose elsewhere indicated in this Act, and all such regulations and any amendment, alteration or repeal thereof shall become effective in all respects as if enacted in this Act upon the publication thereof in *The Alberta Gazette*.

16.—(1) Every person who violates any provision of this Act or the regulations designated as an offence, or who does any fraudulent act not punishable under the provisions of *The Criminal Code*, shall be liable upon summary conviction to a penalty of not less than five hundred dollars nor more than one thousand dollars for a first offence, and not less than one thousand dollars nor more than two thousand dollars for a second or subsequent offence, and in case of either a first or a subsequent offence either in default of payment of any penalty imposed, or in addition to such penalty, to imprisonment for a term not exceeding six months.

(2) The provisions of subsection (1) shall be deemed to apply *mutatis mutandis*, to any company save that the money penalties may be increased in the discretion of the magistrate to a sum not exceeding twenty-five thousand dollars.

(3) No proceedings under this section shall be instituted except with the consent or under the direction of the Attorney General.

(4) Subject to the provisions of subsection (3), any police officer or police constable may, without warrant, arrest any person whom he believes to have committed an offence against this Act, and enter any place, if need be by force, and seize such documents or other things whatsoever as he finds therein.

**17.** *The Sales of Shares Act* is hereby repealed.

**18.** This Act shall come into force on a day to be determined by proclamation of the Lieutenant Governor.

THIRD SESSION  
SIXTH LEGISLATURE  
19 GEORGE V  
1929

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**B I L L**

An Act for the Prevention of Fraud  
in connection with the Sale of  
Securities

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. LYNNAN

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