

## Into Force Today: Significant Amendments to the BC Securities Act

March 27, 2020

On March 2, 2020, the British Columbia (BC) government passed an [Order in Council](#) proclaiming into force most of the amendments outlined in the *Securities Amendment Act, 2019*<sup>1</sup> (the Amendments). The Amendments are extensive and will come into force today (March 27, 2020). We anticipate the Amendments will result in significant *Charter* challenges.

The Amendments provide the BC Securities Commission (the Commission) with new enforcement, compliance, investor protection and sanction collection tools. Many of the Amendments will also provide the Commission with the strongest powers among securities regulators in Canada to address misconduct in the financial markets.

Notably, the Amendments expand the Commission's powers to issue preservation orders (freeze orders, disposition orders, etc.) against property transferred to a family member or third party.<sup>2</sup> More particularly, the Amendments expand the Commission's powers to apply **retrospectively** for any property that was transferred to a family member or third party, in a non-arm's length transaction. The Commission will have these powers even in circumstances where it **proposes**<sup>3</sup>, but has not yet issued, an Investigation Order<sup>4</sup>, an Enforcement Order<sup>5</sup>, or an Order for Compliance<sup>6</sup>.

Furthermore, the Amendments provide that the Commission can seek an order from the Supreme Court of BC that a family member or third party who received property undervalue, from a person subject to a disgorgement order, would be jointly and severally liable to the Commission in an amount equal to the lesser of:

- a) the undervalue benefit received by the family member or third-party recipient; or
- b) the amount specified in the disgorgement order.<sup>7</sup>

The Amendments also provide for financial sanctions when there are assets to collect, including seizing RRSPs<sup>8</sup> and asking ICBC to refuse to renew driver's licenses and license plates until financial sanctions are paid to the Commission<sup>9</sup>.

Summarily, the Amendments also include:

- increasing maximum fine amounts (now \$5 million) and jail term (now five years) for committing an

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offence under the *Securities Act*<sup>10</sup>;

- expanding the Commission's investigative powers, including powers to obtain information;
- strengthening obligations and sanctions relating to records;
- adding an ability to order administrative monetary penalties without a hearing for contraventions of regulations or decisions; and
- adding protection for whistleblowers.

In addition to enhancing the Commission's collection and enforcement powers, the Amendments aim to modernize the *Securities Act*<sup>11</sup> and to ensure it is keeping pace with evolving markets and systemic risks. Specifically, the Amendments aim to modernize the legislative framework for regulating derivatives, expand the Commission's powers with respect to corporate transactions and modernize the prohibition on securities registrants using another registrant's name, among other things.

We anticipate that the Amendments will result in significant *Charter* challenges in the coming months and years.

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<sup>1</sup> S.B.C. 2019, c. 38 [the "*Amendment Act*"]

<sup>2</sup> *Ibid.*, at s. 164.04.

<sup>3</sup> *Ibid.*, at s. 164.04(3).

<sup>4</sup> *Ibid.*, at ss. 142, 147.

<sup>5</sup> *Ibid.*, at s. 161(1)(g).

<sup>6</sup> *Ibid.*, at s. 157.

<sup>7</sup> *Ibid.*, at s. 164.09.

<sup>8</sup> Section 71.3(3) of the *Court Order Enforcement Act*, R.S.B.C. 1996 c. 78 was amended to include the following paragraph: "(e) to an enforcement process arising from an order made under the *Securities Act*."

<sup>9</sup> *Amendment Act*, supra note 1 at s. 163.2.

<sup>10</sup> R.S.B.C. 1996, c. 418 [the "*Securities Act*"]

<sup>11</sup> *Ibid.*