

## Amendments to the BC Securities Act Grant New Powers to the BCSC to Seek Administrative Contempt Charges and Investigate Investment Market Misconduct

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On March 9, 2023, Bill 4 of the *Finance Statutes Amendment Act, 2023* received Royal Assent. The changes came into force on July 17, 2023, and are touted as a modernization of the *Securities Act* (the Act).

The changes to the Act include provisions that enable the BC Securities Commission (the BCSC) to impose serious administrative consequences for failing to comply with a summons or a demand for information. Before the implementation of these new powers, the BCSC had to apply to the BC Supreme Court for an order that a non-cooperative party be held liable for contempt.

The new powers stemmed from an attempt in 2020 by the Enforcement Branch of the BCSC to question two individuals in compelled interviews. Both individuals refused to comply with BCSC summonses to attend their interviews. The BCSC applied to the BC Supreme Court for an order(s) that the individuals were in contempt of the summonses issued to them. The individuals defended by challenging the Act's provisions for contempt orders, arguing that the Act's provisions were unconstitutional and overly broad or vague. However, the court disagreed, noting that compelled testimony is a valid tool to achieve effective regulation of the securities market and failing to enforce it would render the power to compel testimony meaningless.

Despite its victory in court, the BCSC nevertheless sought new powers through amendments to the Act - and got them. With these new powers, the BCSC can now use its internal administrative processes, rather than a contempt application to Supreme Court, to impose swifter consequences upon uncooperative targets of investigations. The consequences are serious and can include restrictions on market participation and administrative penalties of up to \$500,000 for individuals and \$1 million for companies for failure to comply with a summons or a demand to produce information.

Brenda Leong, the BCSC's Chair and CEO, in a statement explained the purpose of the BCSC's new powers as: "*The BCSC's enforcement and collection capabilities were already among the strongest of any securities regulator in Canada. These amendments strengthen BCSC's ability to investigate misconduct and support stronger protections for investors.*"

In addition to the Act's amendments, the *Pension Benefits Standards Act* and the *Pooled Registered Pensions Plans Act* were amended to make clear that certain pension derived funds will not be exempt from

the enforcement processes.

Some of the other notable recent updates to the Act include:

- The granting to the BCSC authority to create rules to regulate auditors of registrants, setting standards for audits of registrants similar to those applicable to auditors of US registrants;
- Authority to impose continuous disclosure obligations on issuers that are not reporting issuers, such as pooled funds; and,
- Power to seek court orders, including restitution or damages payments, in cases where a person has been convicted of a Criminal Code offence related to securities or derivatives.

For more information about the new BCSC legislative amendments or other securities litigation issues in Canada, please do not hesitate to contact Carey Veinotte, Raj Mittal, or Logan Rogers.

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