



# ASC NOTICE AND REQUEST FOR COMMENT PROPOSED AMENDMENTS TO THE *ALBERTA SECURITIES COMMISSION* *RULES (GENERAL)*

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**February 16, 2017**

## **Introduction**

The Alberta Securities Commission (ASC) is publishing for a 30-day comment period proposed amendments (**Proposed Amendments**) to the *Alberta Securities Commission Rules (General)*.

The Proposed Amendments, if adopted, will establish parameters with respect to the service of a summons under the Act, and the various allowances payable and reimbursement of expenses that will be provided to a summoned person.

The text of the Proposed Amendments is attached as Annex A to this Notice and will be available on the ASC's website at: [www.albertasecurities.com](http://www.albertasecurities.com)

## **Background**

Currently, the combined effect of sections 29 and 42 of the *Securities Act (Alberta) (Act)*, and section 4 of the *Alberta Securities Commission Rules (General)*, is that the provisions of the *Alberta Rules of Court* apply in respect of compelling the attendance of witnesses under the Act. Given the differences between civil proceedings before the courts and administrative proceedings in the public interest under the Act, the ASC feels that the application of those provisions of the *Alberta Rules of Court* is not the most appropriate manner in which to govern compelling witnesses in the administrative context under the Act. To that end, amendments to sections 29 and 42 were enacted as part of the *Securities Amendment Act, 2016 (Alberta)* such that both those provisions will stipulate that matters relating to compelling the attendance of witnesses, including the payment of fees, expenses and allowances, will be determined in accordance with the regulations. These legislative amendments are subject to proclamation by an Order in Council, which the ASC will request in due course.

## **Summary of the Proposed Amendments**

The Proposed Amendments will address the matters that are currently addressed by the *Alberta Rules of Court* as a result of the noted cross-references. Once the amendments to sections 29 and 42 are proclaimed in force, and if the Proposed Amendments are adopted, the following substantive changes will occur:

- (a) the summons must be served at least 10 days before the examination or hearing date in question (as opposed to the current minimum of 20 days), subject to an

abridgement of that minimum period of time by the Executive Director of the ASC (**Executive Director**) or the Members of the ASC, as the case may be;

- (b) service of the summons may be effected by electronic means (in addition to personal delivery and delivery by “prepaid post”), but enforcement of the summons will still be subject to a determination that service was properly effected;
- (c) although the witness allowance remains the same (\$50 per day), the allowance for the first day shall be paid on the day the witness attends (as opposed to no less than 10 days before the date in question), and the allowance for subsequent days shall be paid as soon as is practicable after the examination or hearing;
- (d) the amount paid for meals and accommodation will be the actual amount paid, subject to the Executive Director’s determination that the amount is reasonable (as opposed to the quantum being tied to the amount payable to Government of Alberta (**GoA**) employees under the *Public Service Act* (Alberta));
- (e) in respect of travel by private vehicle to and from the location of the examination or hearing, the amount paid will be a reasonable amount as determined by the Executive Director (as opposed to using the rate payable to GoA employees under the *Public Service Act* (Alberta));
- (f) if a witness must travel more than 250 kilometres each way to and from the location of the hearing or examination (as opposed to 200 kilometres in total), and uses a regularly scheduled air carrier to do so, the witness will be reimbursed the actual amount of the airfare, subject to the Executive Director’s determination that the amount is reasonable; and
- (g) determinations as to the reasonableness of amounts claimed by a witness are to be made by the Executive Director, and where the amount claimed is found not to be reasonable, the Executive Director will determine the amount that should be paid in satisfaction of the claim (as opposed to the processes contemplated by the *Alberta Rules of Court*).

### **Effective Date and Transition Period**

Assuming the comment process does not result in any material changes to the Proposed Amendments and the referenced amendments to section 29 and 42 of the Act are proclaimed in force as requested, the ASC anticipates having the Proposed Amendments effective on June 1, 2017. There is no transition period included in the Proposed Amendments.

### **Request for comments**

We welcome all comments on the Proposed Amendments. Please submit your comments in writing on or before **March 20, 2017**. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Please note that comments received may be made publicly available and a summary may be posted on the ASC website ([www.albertasecurities.com](http://www.albertasecurities.com)). You should not include personal

information directly in the comments to be published. It is important that you state on whose behalf you are making the submission.

Please deliver your submission to the only following person:

Samir Sabharwal  
Associate General Counsel  
Office of the General Counsel  
Alberta Securities Commission  
250-5<sup>th</sup> Street S.W.  
Calgary, AB T2P 0R4  
samir.sabharwal@asc.ca

**Contents of Annex**

This Notice contains the following annex:

- Annex A - Proposed Amendments to the *Alberta Securities Commission Rules* (General)

## ANNEX A

### PROPOSED AMENDMENTS TO ALBERTA SECURITIES COMMISSION RULES (GENERAL)

**1. *The Alberta Securities Commission Rules (General) is amended by this Instrument.***

**2. *Section 4 is replaced by the following:***

**4** The following apply to a summons issued under any of sections 28, 29 or 42 of the Act:

- (a) every summons issued to a witness shall be completed substantially in accordance with Form 1;
- (b) the summons to a witness must be served at least 10 days before the examination or hearing date to which it applies, unless
  - (i) in the case of a summons issued by the Executive Director, the Executive Director determines that it is appropriate in the circumstances to abridge the time for service, or
  - (ii) in the case of a summons issued by the Commission, the Commission determines that it is appropriate in the circumstances to abridge the time for service;
- (c) if a person or company is represented by a lawyer, the summons may be served on the lawyer;
- (d) the allowance that shall be paid for each day or part of a day necessarily spent by a witness in travelling to, staying as long as is reasonably necessary to give evidence, and travelling back from the location of the hearing or examination shall be \$50.00;
- (e) if a witness does not reside within reasonable commuting distance of the location of the hearing or examination, the witness will be reimbursed the amount actually paid for accommodation, provided the Executive Director determines the amount is reasonable;
- (f) during days spent by the witness in travelling to, staying as long as is reasonably necessary to give evidence, and travelling back from the location of the hearing or examination, the witness will be reimbursed the amount actually paid for necessary meals, provided the Executive Director determines the amount is reasonable;
- (g) when a witness travels to, and returns from, the location of the hearing or examination
  - (i) by train, bus or other public transportation, the witness will be reimbursed the reasonable fare actually paid by the witness, provided the Executive Director determines the amount is reasonable; or

- (ii) by private vehicle, the witness will be paid a reasonable allowance, as determined by the Executive Director, for the distance travelled;
- (h) if a witness must travel over 250 kilometres each way to and from the location of the hearing or examination, and uses a regularly scheduled air carrier, the witness will be reimbursed the airfare actually paid by the witness, provided the Executive Director determines the amount is reasonable;
- (i) the allowance for the first day that the witness is required to attend at the hearing or examination shall be provided to the witness on the day the witness attends the hearing or the examination, as the case may be, and all other allowances and reimbursement of expenses or fees that are required to be provided to the witness shall be provided as soon as practicable after the hearing or examination;
- (j) where this section contemplates that the Executive Director will determine the reasonableness of the amount claimed by a witness as an expense incurred and the Executive Director determines that the amount claimed is not reasonable, the Executive Director may determine the amount that should be paid or reimbursed to that witness in satisfaction of the claim;
- (k) the service of a summons on a witness, and the payment of conduct money, fees, expenses or allowances to a witness may be proved by an affidavit completed substantially in accordance with Form 2..

3. These changes become effective on • .