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The Standing Committee on Families and Communities  
c/o Committee Clerk  
3rd Floor, 9820 - 107 Street NW  
Edmonton, Alberta T5K 1E7

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via email at [FCCommittee.Admin@assembly.ab.ca](mailto:FCCommittee.Admin@assembly.ab.ca).

Dear Committee Members,

Thank you for the invitation to participate in your current review of the *Public Sector Compensation Transparency Act* (the **Act**). As a public agency in the province with employees and board Members whose compensation is disclosed in accordance with the Act, the Alberta Securities Commission (**ASC**) is pleased to provide written submissions for your consideration. We would also welcome the opportunity to attend any public meetings you may hold during the review process and make an oral presentation.

The ASC is funded solely through fees it charges capital market participants for regulatory services. The ASC is responsible for administering and enforcing Alberta securities laws, and our mission is to foster a fair and efficient capital market in Alberta and to protect investors. To provide some context, at the end of 2022, the public companies for which the ASC has primary oversight responsibility represented **\$742 billion** in market value, and during that year over **\$14 billion** was raised from investors by these public companies. At the staff level, our organization is comprised of employees and senior management, a large number of whom are lawyers, accountants and other experienced professionals. At the board level, our Commission Members oversee management, as well as having rule-making and adjudication responsibilities. Our Members are all senior financial services professionals with significant industry, accounting and/or securities law expertise. Lastly, of particular relevance in this context is the fact that a critical component of the capital market regulatory regime we design and administer is related to disclosure that provides decision-useful information to investors – that is, we set disclosure requirements for public companies to ensure that useful information is available to the market.

Securities regulation involves technical, complex and often novel issues, such as addressing the emergence of blockchain technology and crypto assets, global and domestic interest in the development of ESG reporting by public companies and associated disclosure standards, and the

various legal and accounting issues that arise in those contexts. In addition, our market continues to evolve at an extraordinary rate with the proliferation of financial technology and innovative business models.

In order to meet the demands of our mandate and strongly advocate for Alberta's interests within the Canadian Securities Administrators (the group of Canadian securities regulators that seek to collaborate in developing an efficient and harmonized Canadian capital market), the ASC needs to be able to acquire and retain talent that possesses critical expertise, skills and competencies. This has been an ongoing challenge for the ASC in light of the constraints and requirements contained in the Act and in the *Reform of Agencies, Boards and Commissions Compensation Act (RABCCA)*. We note the recent repeal of RABCCA alongside the government's proclamation of the amended *Public Sector Employers Amendment Act*, and we look forward to working with the government on a new compensation framework that considers the compensation and market realities for agencies like the ASC.

We are hopeful that the same willingness exists to revisit the compensation transparency requirements for agencies like the ASC. For the benefit of your current review of the Act, we make the following submissions for your consideration. Our comments below are limited to the requirement under the Act to disclose compensation paid to our employees, not the requirement to disclose compensation paid to Commission Members. In summary, our submissions highlight:

- the inherent invasion of privacy that disclosing specific compensation for named employees in an agency represents (and how that deters employment with such agencies),
- the numerous and significant harmful effects upon employees, the agency, and the public interest that flow from the compensation disclosure requirement,
- the apparent limited value that is realized from a broad requirement vis-à-vis employees to disclose compensation beyond the threshold established by the Act, and
- in light of the above, how an alternative and measured approach to compensation disclosure would better balance the needs of agencies and the desire for transparency.

## 1. Privacy Concerns

ASC employees' compensation constitutes personal information about these individuals, the disclosure of which would be an unreasonable invasion of personal privacy in the absence of the disclosure requirements imposed pursuant to external legislation such as the Act. In particular, under the *Freedom of Information and Protection of Privacy Act*, R.S.A., 2000, cF-25 (**FOIP Act**), personal information includes "information about the individual's education, financial, employment or criminal history."<sup>1</sup> Disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to employment or history.<sup>2</sup> An individual's salary<sup>3</sup> and severance payments relate to both their financial and employment history.

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<sup>1</sup> FOIP, section 1(n)(vii)

<sup>2</sup> FOIP, section 17(4)(d)

<sup>3</sup> It is acknowledged that information about an employee's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body does not constitute an invasion of privacy, FOIP, section 17(2)(e)

While we recognize the policy intent of transparency underpinning the disclosure requirements under the Act, the benefit of this transparency does not outweigh the detriment resulting from the subordination of individual privacy rights given the scope of individuals affected at the current threshold at specialized agencies like the ASC. As discussed further below, this does not assist us in attracting the staff required to deliver on the mandate as many potential candidates would rightly feel that this is unduly invasive.

## **2. Harm**

### *a) Employee Morale*

The compensation disclosure required under the Act inevitably leads to staff comparing their compensation to that of their ASC colleagues, or even to that of their peers at other public agencies. This can lead to animosity and unhelpful competitive behaviour amongst colleagues, employee dissatisfaction and, ultimately, staff turnover, all to the detriment of the organization (and its ability to serve the public interest).

It is difficult for the ASC to respond to staff's salary comparisons with employees of other organizations since it is unknown how those organizations structure their positions in terms of roles and responsibilities, required qualifications, and years of service. The only information available is the position title, and position titles are different depending on the structure of the organization, which can cause inappropriate comparisons and result in misleading conclusions being drawn about the value placed on particular employees.

Similarly, employee compensation within the ASC is assessed on a highly individualized basis, and a number of factors are considered, including seniority, skillset, expertise, qualifications and experience, leadership and teamwork abilities. Since the individualized considerations for one member of staff are obviously not shared with other staff, this can lead to differences in compensation between individuals which, if publicly disclosed, breed feelings of unfair treatment amongst staff and a belief that an uneven playing field exists internally despite objectively sound reasons for different compensation levels. We have experienced this having a detrimental impact on ASC employee morale.

The disclosure of severance payments also raises concerns. Severance payments are calculated either based upon an employee's contractual entitlement or an assessment of our common law obligations. The common law requires careful consideration of a number of factors and no two cases are necessarily the same. Sometimes there are extenuating factors that affect the settlement. Publishing severance payments affects the individualized approach taken to determining severance and the ASC's ability to negotiate with departing employees because they inevitably review what others (in different circumstances) have received. This creates an increased demand on internal resources and the time it takes to exit employees, and acts as an impediment to resolving termination agreements expeditiously. It also affects the ASC's ability to ensure departing employees keep the details and terms of their departure confidential since the ASC is required to publish these details.

*b) ASC Recruitment*

Compensation disclosure under the Act negatively affects ASC recruitment. Candidates have a false sense of compensation as they are unaware of the other components required to be factored in to the compensation they see publicly disclosed for other similarly situated professionals within the ASC. As such, the reported figures without context are arguably misleading. We have also lost desirable candidates who, after going through our interview process, have decided that they cannot accept the position if it will require public disclosure of their compensation under the Act. They may have been happy with our offer of employment, but they were concerned about former associates and friends knowing they took a pay cut (and the extent to which they did so) to work at the ASC. The ASC, in particular, relies heavily upon bringing in people with industry experience in order to allow us to have strong operational knowledge of capital market functioning, and losing these candidates hampers our ability to achieve our goal of being a “best-in-class regulator.”

This disclosure also puts the ASC at a competitive disadvantage with the private sector as it relates to recruitment. It allows the private sector to solicit our employees with detailed knowledge of their compensation in hand, whereas the ASC does not have access to this information when recruiting in the private sector, thus placing us in a disadvantaged position.

*c) Administrative Burden*

The twice annual disclosure (in particular, the June disclosure) requires significant staffing resources across the ASC to produce, including a number of accountants (calculating the remuneration disclosure amounts to comply with the specific requirements in the Act), HR staff (working with Financial Services to ensure the correct data), IT (verifying and uploading in the required data format), Communications staff (posting the updated disclosure on the ASC’s website), and the Office of the General Counsel staff (interacting with all involved internal departments to ensure compliance with the Act and accuracy of the disclosure). In addition to the actual disclosure, there has, in recent years, been increased email correspondence with the Public Agency Secretariat in preparation of the disclosure.

**3. Value of the Disclosure under the Act**

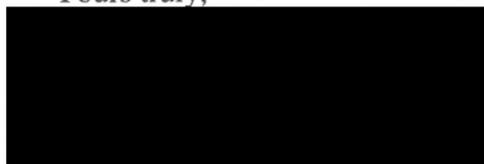
The purported objective of the Act is to increase transparency and accountability respecting compensation for public agencies. However, it is uncertain how the broad disclosure of individual employee compensation across the organization (subject to the threshold) increases accountability when the disclosure threshold captures non-executive, mid-level ASC staff. In reviewing reported commentary on compensation disclosure since the inception of the Act, we found that the focus and scrutiny was consistently on executive level compensation, specifically the highest earners in the organization, if not only the highest earners across all Alberta agencies, boards and commissions. The compensation disclosure for the remaining staff members of the organization does not generally appear to be of interest to the public, nor does it serve any productive purpose (and, indeed, acts to our detriment, as outlined above). This concern was recognized and covered

by the media in 2015, the year the Act was proposed.<sup>4</sup> As noted above, the experience of the ASC is that it does have the feared adverse effects within an organization.

We believe that the policy goal of transparency of public agencies could be achieved through disclosure of executive compensation only – not only does it appear that this is where most of the interest lies, but it is consistent with providing an understanding of the top-end of compensation in each organization (which is what allows the public to understand if compensation levels overall are something with which to take issue). I would further note that for many years, including well before the Act was put in place, the ASC has disclosed compensation for our top executives in our Annual Report – for example, see the ASC’s 2023 Annual Report, in which the compensation for our Chair and CEO, our Executive Director, and our two Vice-Chairs have been disclosed.

Thank you for your consideration of our submissions, and we remain available to discuss the contents of this letter further or answer any questions you might have.

Yours truly,

A large black rectangular redaction box covering the signature of Samir Sabharwal.

Samir Sabharwal  
Executive Director

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<sup>4</sup> At that time, two academics advised the Government of Alberta to reconsider its proposed bill to name professors, doctors and public sector workers earning more than the 2015 threshold of \$125,000 a year, and pare the list down to top-paid decision-making executives who will otherwise be lost in the disclosure required at this threshold.

