



Province of Alberta

FRAUDULENT PREFERENCES ACT

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Chapter F-24

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Chapter F-24

Table of Contents

- 1 Fraudulent transfers
- 2 Intent to prefer
- 3 Preferential effect
- 4 What constitutes transaction
- 5 Definition
- 6 Bona fide transactions
- 7 Payment to creditor
- 8 Restoration of security to creditor
- 9 Saving of payment to creditor
- 10 Proceedings by creditor
- 11 Proceeds of unlawfully transferred property
- 12 Bankruptcy and Insolvency Act

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

Fraudulent transfers

1 Subject to sections 6 to 9, every gift, conveyance, assignment, transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made

- (a) by a person at a time when the person is in insolvent circumstances or is unable to pay the person's debts in full or knows that the person is on the eve of insolvency, and
- (b) with intent to defeat, hinder, delay or prejudice the person's creditors or any one or more of them,

is void as against any creditor or creditors injured, delayed or prejudiced.

RSA 1980 cF-18 s1

Intent to prefer

2 Subject to sections 6 to 9, every gift, conveyance, assignment, transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made

- (a) by a person at a time when the person is in insolvent circumstances or is unable to pay the person's debts in full or knows that the person is on the eve of insolvency, and
- (b) to or for a creditor with intent to give that creditor preference over the other creditors of the debtor or over any one or more of them,

is void as against the creditor or creditors injured, delayed, prejudiced or postponed.

RSA 1980 cF-18 s2

Preferential effect

3 Subject to sections 6 to 9, every gift, conveyance, assignment, transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made

- (a) by a person at a time when the person is in insolvent circumstances or is unable to pay the person's debts in full or knows that the person is on the eve of insolvency, and
- (b) to or for a creditor and having the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them,

is, in and with respect to any action that within one year after the transaction is brought to impeach or set aside the transaction, void as against the creditor or creditors injured, delayed, prejudiced or postponed.

RSA 1980 cF-18 s3

What constitutes transaction

4(1) A transaction is deemed to be one that has the effect of giving a creditor a preference over other creditors, within the meaning of

section 3, if by the transaction a creditor is given or realizes or is placed in a position to realize payment, satisfaction or security for the debtor's indebtedness to that creditor or a portion of it greater proportionately than could be realized by or for the unsecured creditors generally of the debtor or for the unsecured portion of that creditor's liabilities out of the assets of the debtor left available and subject to judgment, writ proceedings, attachment or other process.

(2) Independently of the intent with which the transaction was entered into or of whether it was entered into voluntarily or under pressure, the preferential effect or result of the impeached transaction governs, and no pressure by a creditor or want of notice to the creditor alleged to have been so preferred of the debtor's circumstances, inability or knowledge as aforesaid, or of the effect of the transaction, avails to protect the transaction except as provided by sections 6 and 9.

RSA 1980 cF-18 s4;1994 cC-10.5 s126

Definition

5 In sections 2 to 4, "creditor" includes

- (a) a surety, and the endorser of a promissory note or bill of exchange, who would, on payment by the surety or endorser of the debt, promissory note or bill of exchange in respect of which the suretyship was entered into or endorsement was given, become a creditor of the person giving the preference within the meaning of sections 2 to 4, and
- (b) a cestui que trust or other person to whom liability is equitable only.

RSA 1980 cF-18 s5

Bona fide transactions

6 Nothing in sections 1 to 5 applies to

- (a) a bona fide sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties, or
- (b) a payment of money to a creditor, or a bona fide conveyance, assignment, transfer or delivery over of any goods, securities or property, of any kind as above mentioned, that is made in consideration of a present actual bona fide sale or delivery of goods or other property or of a present actual bona fide payment in money, or by way of security for a present actual bona fide advance of money,

if the money paid or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration for it.

RSA 1980 cF-18 s6

Payment to creditor

7 When there is a valid sale of goods, securities or property and the consideration or part of it is paid or transferred by the purchaser to the creditor of the vendor under circumstances that would render the payment or transfer void if it were made by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, is void as respects the creditor to whom it is made.

RSA 1980 cF-18 s7

Restoration of security to creditor

8 When a payment that is void under this Act has been made and a valuable security has been given up in consideration of the payment, the creditor is entitled to have the security restored or its value made good to the creditor before or as a condition of the return of the payment.

RSA 1980 cF-18 s8

Saving of payment to creditor

9 Nothing in this Act

- (a) affects a payment of money to a creditor when the creditor by reason or on account of the payment has lost or been deprived of or has in good faith given up a valid security that the creditor held for the payment of the debt so paid, unless the value of the security is restored to the creditor,
- (b) affects the substitution in good faith of one security for another security for the same debt so far as the debtor's estate is not lessened in value to the other creditors because of the substitution, or
- (c) invalidates a security given to a creditor for the pre-existing debt when, by reason or on account of the giving of the security, an advance is made in money to the debtor by the creditor in the bona fide belief that the advance will enable the debtor to continue the debtor's trade or business and pay the debtor's debts in full.

RSA 1980 cF-18 s9

Proceedings by creditor

10(1) One or more creditors may, for the benefit of creditors generally or for the benefit of those creditors who have been injured, delayed, prejudiced or postponed by the impeached transaction, sue for the rescission of, or to have declared void, agreements, deeds, instruments or other transactions made or entered into in fraud of creditors or in non-compliance with this Act or by this Act declared void.

(2) If, in an action under subsection (1), an amendment is made to the statement of claim, the amendment relates back to the commencement of the action for the purpose of the time limited by section 3.

RSA 1980 cF-18 s10

Proceeds of unlawfully transferred property

11(1) If a gift, conveyance, assignment or transfer of any property, real or personal, that in law is invalid against creditors, was made to a person, and that person has sold or disposed of, realized or collected the property or a part of it, the money or other proceeds or that amount, whether further disposed of or not, may be seized or recovered in an action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, assignment, transfer, delivery or payment was made.

(2) The right of seizure and recovery exists in favour of all creditors of the debtor.

(3) When the proceeds are of such a character as to be seizable under writ proceedings, they may be seized under the writ of any creditor and shall be distributed among creditors under the *Civil Enforcement Act*.

(4) Whether the proceeds are or are not of such a character as to be seizable under writ proceedings, an action may be brought for them or to recover the amount of them by a creditor, whether a judgment creditor or not, on behalf of that creditor and all other creditors, or any other proceedings may be taken that are necessary to render the proceeds or the amount of them available for the general benefit of the creditors.

(5) This section does not apply as against innocent purchasers of any of the property.

RSA 1980 cF-18 s11;1994 cC-10.5 s126

Bankruptcy and Insolvency Act

12 This Act shall be read and construed subject to the *Bankruptcy and Insolvency Act* (Canada).

RSA 1980 cF-18 s12;1994 c23 s51



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