



Province of Alberta

# **FRUSTRATED CONTRACTS ACT**

Revised Statutes of Alberta 2000  
Chapter F-27

Current as of January 1, 2002

© Published by Alberta Queen's Printer

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# FRUSTRATED CONTRACTS ACT

## Chapter F-27

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

#### **Definitions**

**1** In this Act,

- (a) “contract” includes a contract to which the Crown is a party;
- (b) “court” means the court or arbitrator by or before whom a matter is brought to be determined;
- (c) “discharged” means relieved from further performance of the contract.

RSA 1980 cF-20 s1

#### **Application of Act**

**2(1)** This Act applies to a contract, whenever made, governed by the law of Alberta that, on or after March 29, 1949, has become impossible of performance or been otherwise frustrated and the parties to which for that reason have been discharged.

**(2)** This Act does not apply

- (a) to a charterparty or to a contract for the carriage of goods by sea, except a time charterparty or a charterparty by way of demise,
- (b) to a contract of insurance, or
- (c) to a contract for the sale of specific goods when the goods,
  - (i) without the knowledge of the seller, have perished at the time when the contract is made, or
  - (ii) without any fault on the part of the seller or buyer, perish before the risk passes to the buyer.

RSA 1980 cF-20 s2

**Sums payable before discharge****3** The sums paid or payable to a party, in pursuance of a contract before the parties were discharged,

- (a) in the case of sums paid, are recoverable from that party as money received by that party for the use of the party by whom the sums were paid, and
- (b) in the case of sums payable, cease to be payable.

RSA 1980 cF-20 s3

**Expenses****4(1)** If, before the parties were discharged, the party to whom the sums were paid or payable incurred expenses in connection with the performance of the contract, the court, if it considers it just to do so having regard to all the circumstances, may allow the party to retain or to recover, as the case may be, the whole or a part of the sums paid or payable not exceeding the amount of the expenses.**(2)** Without restricting the generality of subsection (1), the court, in estimating the amount of the expenses, may include a sum that appears to be reasonable in respect of overhead expenses and in respect of work or services performed personally by the party incurring the expenses.

RSA 1980 cF-20 s4

**Benefit****5(1)** If, before the parties were discharged, any of them has, by reason of anything done by another party in connection with the performance of the contract, obtained a valuable benefit other than

a payment of money, the court, if it considers it just to do so having regard to all the circumstances, may allow the other party to recover from the party benefited the whole or a part of the value of the benefit.

(2) When a party has assumed an obligation under the contract in consideration of the conferring of a benefit by another party to the contract on another person, whether a party to the contract or not, the court, if it considers it just to do so having regard to all the circumstances, may for the purposes of subsection (1) treat a benefit so conferred as a benefit obtained by the party who has assumed the obligation.

RSA 1980 cF-20 s5

### **Insurance**

6 In considering whether a sum ought to be recovered or retained under this Act by a party to the contract, the court shall not take into account a sum that, by reason of the circumstances giving rise to the frustration of the contract, has become payable to that party under a contract of insurance, unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under an enactment.

RSA 1980 cF-20 s6

### **Frustration contemplated**

7 If the contract contains a provision that, on the true construction of the contract, the contract is intended to have effect

- (a) in the event of circumstances that operate, or but for that provision would operate, to frustrate the contract, or
- (b) whether those circumstances arise or not,

the court shall give effect to the provision and shall give effect to this Act only to the extent, if any, that appears to the court to be consistent with that provision.

RSA 1980 cF-20 s7

### **Severance**

8 If it appears to the court that a part of the contract can be severed properly from the remainder of the contract, being a part

- (a) wholly performed before the parties were discharged, or
- (b) wholly performed except for the payment in respect of that part of the contract of sums that are or can be ascertained under the contract,

the court shall treat that part of the contract as if it were a separate contract that had not been frustrated and shall treat this Act as applicable only to the remainder of the contract.

RSA 1980 cF-20 s8





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