



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

FRAUDS ON CREDITORS ACT

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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FRAUDS ON CREDITORS ACT

CHAPTER F-15

1. Confession of judgment or warrant of attorney to confess judgment, given to defeat creditors

If any person, being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily or under pressure or by collusion with a creditor or creditors, gives a confession of judgment or warrant of attorney to confess judgment, with intent, in giving the confession or warrant of attorney to confess judgment, to defeat or delay his creditors wholly or in part, or with intent thereby to give one or more of his creditors a preference over his other creditors, or over any one or more of the creditors, every such confession or warrant of attorney to confess judgment shall be deemed to be void as against the creditors of the person giving it, and shall be invalid and ineffectual to support any judgment or writ of execution. *R.S.P.E.I. 1974, Cap. F-13, s.1.*

2. Gifts, conveyances etc. when insolvent and with intent to defraud: void

- (1) Subject to section 3, every gift, conveyance, assignment or 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 by a person when he is in insolvent circumstances, or unable to pay his debts in full, or knows that he is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice his creditors, or any one or more of them, shall as against the creditor or creditors injured, delayed or prejudiced, be utterly void, whether it is made voluntarily or under pressure.

Intent to give preference to certain creditors, gift, etc. void

- (2) Subject to section 3, every gift, conveyance, assignment or 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 by a person when he is in insolvent circumstances, or unable to pay his debts in full, or knows that he is on the eve of insolvency, to or for a creditor with intent to give the creditor an unjust preference over his other creditors, or over any one or more of them shall, as against the creditor or creditors injured, delayed, prejudiced or postponed, be utterly void, whether the same be made voluntarily or under pressure.

Certain transactions deemed to give preference between creditors

- (3) Subject to section 3, if any transaction referred to in section 1, or in this section, with or for a creditor, has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, it shall in and with reference to any action or proceeding which within sixty days thereafter is brought to impeach or set aside the transaction, be presumed *prima facie* to have been made with the intent aforesaid, and to be void within the meaning of this Act, whether the same be made voluntarily or under pressure.

Creditor deemed to include surety, where

- (4) Where the word “creditor” in this Act indicates the creditor to whom a preference is given over the other creditors of the debtor, it shall be deemed to include any surety, and the endorser of any promissory note or bill of exchange, who would upon payment by him of the debt, promissory note or bill of exchange, in respect of which the suretyship was entered into or the endorsement given, become a creditor of the person giving the preference within the meaning of this Act.

Intent defined

- (5) The intent referred to in this section and in section 1 is the intent of the assignor or transferor, and no concurrence therein, or knowledge thereof, or of insolvency, need be shown in the assignee or transferee. *R.S.P.E.I. 1974, Cap. F-13, s.2.*

3. Exemptions, proceedings under the *Bankruptcy Act* etc.

- (1) Nothing in the preceding section applies to any authorized assignment made under the *Bankruptcy Act* (Canada) R.S.C. 1985, Chap. B-3, nor to any sale or payment made in good faith in the ordinary course of trade or calling to innocent purchasers or parties, nor to any payment of money to a creditor, nor to any gift, conveyance, assignment, transfer or delivery over of any goods, securities, or property of any kind, as above mentioned, which is made in good faith in consideration of any present actual payment in money, or by way of security for any present actual advance of money, or which is made in good faith in consideration of any present actual sale or delivery of goods or other property if the money paid or the goods or other property sold or delivered, bear a fair and reasonable relative value to the consideration therefor.

Transfer of consideration, where valid sale of goods, void

- (2) In case of a valid sale of goods, securities or property, and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor under circumstances which would render void such a payment or transfer by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made.

Payments made and security given, creditor entitled, where

- (3) Where a payment has been made which is void under this Act, and any 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 him before, or as a condition of, the return of the payment.

Exemption of creditor in receipt of certain payments

- (4) Nothing herein contained affects any payment of money to a creditor, where the creditor by reason or on account of the payment, has lost or been deprived of or has in good faith given up any valid security which he held for the payment of the debt so paid, unless the value of the security is restored to the creditor nor any substitution in good faith of one security for another security for the same debt as far as the debtor’s estate is not thereby lessened in value to the other creditors; nor shall anything herein contained invalidate a security given to a creditor for a pre-existing debt, where by reason or on account of the giving of the security an advance of money is made to the debtor by the creditor in the belief in good faith that the advance will enable the debtor to continue his trade or business and to pay his debts in full. *R.S.P.E.I. 1974, Cap. F-13, s.3.*



4. Limitation of action

No chattel mortgage or assignment of chattels nor conveyance of or security upon land, nor any judgment in the Supreme Court, made or given, or entered up in good faith for valuable consideration, shall be deemed to be invalid under this Act, unless proceedings are taken within one year after the registration or entering up thereof. *R.S.P.E.I. 1974, Cap. F-13, s.4.*