



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

UNCONSCIONABLE TRANSACTIONS RELIEF ACT

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to January 1, 2009. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

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).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office

Tel: (902) 368-4292

Email: legislation@gov.pe.ca



UNCONSCIONABLE TRANSACTIONS RELIEF ACT

CHAPTER U-2

1. Definitions

In this Act

- (a) “**cost of the loan**” means the whole cost to the debtor of money lent and includes interest, discount, subscription, premium, dues, bonus, commission, fees and charges;
- (b) “**court**” means a court having jurisdiction in an action for the recovery of a debt or money demand to the amount claimed by a creditor in respect of money lent;
- (c) “**creditor**” includes the person advancing money lent and the assignee of any claim arising or security given in respect of money lent;
- (d) “**debtor**” means a person to whom or on whose account money lent is advanced and includes every surety and endorser or other person liable for the repayment of money lent or upon any agreement or collateral or other security given in respect thereof;
- (e) “**money lent**” includes money advanced to or credit granted to or on account of any person in any transaction that, whatever its form may be, is substantially one of money lending or of the extension of credit or securing the repayment of money so advanced or extended in the way of credit and includes a mortgage whether of real or personal property or both. *R.S.P.E.I. 1974, Cap. U-2, s.1.*

2. Cost of loan excessive, transaction harsh and unconscionable, court may

Where, in respect of money lent, the court finds that, having regard to the risk and to all the circumstances, the cost of the loan is excessive and that the transaction is harsh and unconscionable, the court may

- (a) reopen the transaction and take an account between the creditor and the debtor;
- (b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, *re-open* any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;
- (c) order the creditor to repay any such excess if the same has been paid or allowed on account by the debtor;
- (d) set aside either wholly or in part or revise or alter any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order him to indemnify the debtor. *R.S.P.E.I. 1974, Cap. U-2, s.2.*

3. Powers exercisable, when

The powers conferred by section 2 may be exercised

- (a) in an action or proceeding by a creditor for the recovery of money lent;

- (b) in an action or proceeding by the debtor notwithstanding any provision or agreement to the contrary, and notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived;
- (c) in an action or proceeding in which the amount due or to become due in respect of money lent is in question. *R.S.P.E.I. 1974, Cap. U-2, s.3.*

4. Relief by application to Supreme Court

- (1) In addition to any right that a debtor may have under this or any other Act or otherwise in respect of money lent, he may apply for relief under this Act to a judge of the Supreme Court and the judge on the application may exercise any of the powers of the court under section 2.

Removal of proceedings to Supreme Court

- (2) Where an application is made under subsection (1), the judge may, if he sees fit, at any time before disposing of the application, by order remove the proceedings into the Supreme Court.

Transmittal of papers to Supreme Court

- (3) When an order is made under subsection (2), the Prothonotary shall forthwith transmit the papers in the case to the proper office of the Supreme Court in the county in which the application was made.

Jurisdiction of Supreme Court

- (4) When the papers have been received in the proper office of the Supreme Court, the application is by that very fact removed into the Supreme Court and shall be heard and determined by a judge of the Supreme Court in chambers, and the judge on the application may exercise any of the powers of the court under section 2 or he may direct an issue.

Appeal

- (5) An appeal lies to the Court of Appeal from appeal any order made under subsection (1) or (4). *R.S.P.E.I. 1974, Cap. U-2, s.4; 1975, c.27, s.5; 2008,c.20,s.72(89).*

5. Saving holder for value

Nothing in this Act affects the rights of a genuine assignee or holder of value without notice, or derogates from the existing powers or jurisdiction of any court. *R.S.P.E.I. 1974, Cap. U-2, s.5.*

