

No. 47

4th Session, 13th Legislature, Alberta
6 Elizabeth II, 1958

BILL 47

A Bill Respecting Assignments of Book Debts

HON. MR. MANNING

Explanatory Note

General. The Assignment of Book Debts Act is a uniform Act prepared by the Commissioners on Uniformity of Legislation in Canada. It was first adopted by Alberta in 1929 and is now chapter 18 of the Revised Statutes of Alberta, 1955. Recently the Commissioners revised and amended their model Act. This Bill incorporates the changes made to the model Act, which are recommended for adoption by the Alberta Commissioners.

2. (1) (a) New. Permits the use of statutory declarations as well as affidavits.

(b) Present clause (a) with reference to heirs, executors, etc. added.

(c) The present clause (b).

(d) Present clause (c) with reference to heirs, executors, etc. added.

(e) The present clause (d) slightly reworded.

(f) Defines "creditor" instead of "creditors"; otherwise similar to present clause (e) but with a reference to renewal statements added.

BILL

No. 47 of 1958

An Act Respecting Assignments of Book Debts

(Assented to _____, 1958)

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

1. This Act may be cited as "*The Assignments of Book Debts Act, 1958*".

2. (1) In this Act,

- (a) "affidavit" includes statutory declaration;
- (b) "assignee" means a person to whom an assignment of book debts is made, and includes the heirs, executors, administrators, successors and assigns of that person;
- (c) "assignment" includes every legal and equitable assignment, whether absolute or by way of security, and every mortgage or other charge upon book debts;
- (d) "assignor" means a person who makes an assignment of book debts and includes the heirs, executors, administrators, successors and assigns of that person;
- (e) "books debts" means all existing or future debts that in the ordinary course of business would be entered in books, whether actually entered or not, and includes any part or class thereof;
- (f) "creditor" means a creditor of the assignor, whether an execution creditor or not, who becomes a creditor before the registration of an assignment or of a renewal statement, as the case may be, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under the *Bankruptcy Act* (Canada), and a liquidator of a company under the *Winding-Up Act* (Canada) or under a provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor or when the assignee, trustee or liquidator is appointed;

(g) New.

(h) The present clause (f).

(i) The present clause (h).

(j) Replaces the present definition of "subsequent purchasers" (clause (i)). The words "in good faith for valuable consideration and without notice" omitted. See clause 4.

(k) The present clause (j).

(2) Taken from the present section 5, subsection (1).

3. The present section 3 with references added to the bonds, debentures and debenture stocks of other corporations.

4. (1) Contains part of the present section 4, subsection (1) and incorporates the words omitted from the definition of "subsequent purchaser" (see clause 2 (i), (j)) and part of the present section 4 (3).

- (g) "document" includes an assignment, a renewal statement, an affidavit and a certificate of discharge;
- (h) "proper officer" means the officer in a registration district in whose office assignments are required to be registered;
- (i) "registration district" means a district established under this Act for the registration of assignments;
- (j) "subsequent purchaser" means a person who obtains, by assignment, an interest in book debts that have already been assigned;
- (k) "valuable consideration" includes an antecedent debt or liability and any consideration sufficient to support a simple contract.

(2) Registration of a document or copy thereof under this Act is effected by filing the document or copy with the proper officer, as herein provided.

3. This Act does not apply to

- (a) an assignment of book debts, whether by way of specific or floating charge, made by a corporation engaged in a trade or business within the Province and contained
 - (i) in a trust deed or other instrument to secure bonds, debentures or debenture stock of the corporation or of any other corporation, or
 - (ii) in any bonds, debentures or debenture stock of the corporation as well as in the trust deed or other instrument securing the same, or in a trust deed or other instrument securing bonds, debentures or debenture stock of any other corporation, or
 - (iii) in any bonds, debentures or debenture stock or any series of bonds or debentures of the corporation, not secured by a separate instrument;
- (b) an assignment of book debts due at the date of the assignment from specified debtors;
- (c) an assignment of debts becoming due under specified contracts;
- (d) an assignment of book debts included in a transfer of a business made *bona fide* and for value;
- (e) an assignment of book debts included in an authorized assignment under the *Bankruptcy Act* (Canada).

4. (1) Except as provided in this Act, unless an assignment of book debts made by a person engaged in a trade or business is evidenced by a writing registered under this Act, it is void as against a creditor and as against a subsequent purchaser who claims from or under the assignor in good faith, for valuable consideration and without notice

(2) The present section 4, subsection (3) in part.

5. The present section 5 (1) except the provision now contained in clause 2 (2) of this Bill. The rules have been reworded for greater clarity and precision. Part of the present clause (e) omitted. Rule 5 is new.

(2) Contains the provisions omitted from section 5 (1) (e). See clause 5 (1) above.

(3) The present section 4 (2) reworded.

(4) Contains the remainder of the present section 4 (1). See clause 4.

and whose assignment has been registered or is valid without registration.

(2) The assignment as against a creditor or such a subsequent purchaser takes effect only from the time of its registration.

5. (1) Registration of an assignment shall be effected within thirty days from the date of its execution, in the office of the proper officer of a registration district determined in accordance with the following rules:

1. Where the assignor is a corporation having a head or registered office within the province, in the registration district in which the head or registered office is situated;
2. Where the assignor is a corporation, not having a head or registered office within the province, in the registration district of Edmonton;
3. Where the assignor is not a corporation, in the registration district in which the assignor has a place of business at the time of the execution of the assignment;
4. Where the assignor is not a corporation and at the time of the execution of the assignment has a place of business in different registration districts, in any such registration district and in other registration districts as prescribed in subsection (2);
5. Where the assignor is not a corporation and has no place of business in the Province, in the registration district of Edmonton.

(2) Where, under rule 4 of subsection (1), registration is required to be made in other registration districts in addition to the one in which the assignment is registered, a duplicate original of the assignment and affidavits, or a copy thereof certified by the proper officer of the registration district in which the assignment is registered, shall be registered in each of the other registration districts in which the assignor, at the time of the registration, has a place of business of which the assignee has notice.

(3) Where there are two or more assignors, the date of execution of the assignment shall be deemed to be the date of the execution by the assignor who last executes it.

(4) Subject to subsection (6) of section 14, no assignment shall be registered unless it is accompanied by an affidavit of an attesting witness or affidavits of attesting witnesses of the execution thereof by the assignor or by the assignors respectively, identifying the assignment and stating the date of execution by the assignor or the respective dates of execution by the assignors, as the case may be, and a further affidavit of the assignee, or one of the several assignees, his or their agent, stating that the assignment was executed in good faith and for valuable consideration and not for the purpose of protecting the book debts therein

6. The present section 5 (2) slightly reworded.

7. New.

(1) Renewal statement must be filed after three years or assignment ceases to be valid. A form is provided.

(2) Statement to be accompanied by affidavit.

(3) Place of registration of renewal statement.

(4) Registration of renewal statement in different office constitutes registration of assignment in that office.

(5) Renewal statement must be filed every three years.

mentioned against the creditors of the assignor or for the purpose of preventing them from recovering any claims that they have against the assignor.

6. The proper officer shall cause every assignment, or copy thereof, registered in his office to be numbered, endorsed with a memorandum of the date, hour and minute of its filing, and indexed by entering in alphabetical order in a register kept by him the names of the parties to the assignment, its number and the date of its registration.

7. (1) An assignment that has been registered ceases to be valid after the expiration of three years from its registration as against a creditor and as against a subsequent purchaser whose assignment has been registered or is valid without registration, unless before the expiration of that period a renewal statement in Form 1 is registered in accordance with this section.

(2) The renewal statement shall state that the assignment is valid and subsisting, and shall be accompanied by an affidavit of the assignee or one of several assignees, his or their agent, stating that the renewal statement is true and that the assignment is not being kept in force for a fraudulent purpose or to defeat, delay or prejudice creditors of the assignor.

(3) Within thirty days after the making of the affidavit, the renewal statement and affidavit, or duplicate originals thereof, shall be registered

(a) in the office of the proper officer of each of the registration districts in which the assignment was registered, or

(b) where the assignor is a corporation that has moved its head or registered office within the Province to a registration district in the Province other than that in which the assignment was registered, in the office of the proper officer of the registration district in which the head or registered office of the corporation is situated at the time of the making of the affidavit, or

(c) where the assignor is not a corporation and has no place of business in the registration district or any one or more of the districts in which the assignment was registered in the office of the proper officer of each of the registration districts in which the assignor, at the time of the making of the affidavit, has a place of business of which the assignee, or one of several assignees, has notice.

(4) The registration of a renewal statement or a duplicate original thereof in accordance with clause (b) or (c) of subsection (3) constitutes registration of the assignment in the office.

(5) Unless a further renewal statement is registered in accordance with this section within three years from the

(6) Correction of error in renewal statement.

(7) Effect of error in renewal statement.

(8) Record of renewal statements to be kept.

8. New.

(1) A further assignment need not be but may be registered.

(2) Record of registration of further assignment to be kept.

9. New. Provides for the re-registration of assignments in new districts when the assignor moves his head office out of the original district.

registration of the first renewal statement and thereafter within three years from the registration of the last preceding renewal statement, the assignment ceases to be valid after the expiration of any such period to the extent provided in subsection (1).

(6) Where a mistake is made in a renewal statement, an amended statement verified by affidavit referring to the former statement and specifying and correcting the mistake therein may be registered.

(7) If before the registration of an amended statement a person, relying on the accuracy of the renewal statement as first registered, has in good faith made an advance of money or given valuable consideration to the assignor or has taken proceedings and incurred costs therein, the assignment, as to the amount so advanced or the valuable consideration given or costs incurred by such person, shall as against him be effective in favour of the assignee only for the amount stated in the renewal statement as first registered or to the extent or amount of the liability secured as stated in the renewal statement as first registered.

(8) The proper officer shall cause every renewal statement and every amended statement registered in his office to be numbered, endorsed and indexed in same manner as an assignment.

8. (1) Where book debts that have been assigned are further assigned by the first assignee, it is not necessary to register the further assignment thereof but it may be registered if accompanied by an affidavit of an attesting witness of the execution thereof, in any office in which the first assignment is registered.

(2) The proper officer in whose office such a further assignment is registered shall note the fact of the further assignment against each entry in the books of his office respecting the registration of the first assignment and shall make a like notation upon the assignment or each duplicate original or certified copy thereof registered in his office.

9. Where the assignor is a corporation and moves its head or registered office within the Province to a registration district in the Province other than that in which the assignment is registered, or where the assignor is not a corporation and establishes a place of business in some other registration district, the assignment ceases to be valid to the extent provided in subsection (1) of section 7 unless, within thirty days after the assignee has received notice

- (a) if the assignor is a corporation, of the place to which its head or registered office has been moved;
or
- (b) if the assignor is not a corporation, of the place or places in which the assignor has established a place of business,

10. (1) The present section 6 (1) slightly reworded to cover where the assignment is registered in more than one office and prescribing the form of the certificate of discharge.

(2) The present section 6 (2) with provision covering renewal statements added.

(3) The present section 6 (3) reworded.

(4) The present section 6 (4).

(5) New. Assignor may demand a certificate of discharge from assignee.

(6) New. Assignee liable for any damages resulting from the failure to deliver certificate.

11. The present section 5 (4).

a copy of the assignment and of the documents accompanying or relating to it or filed on the registration or renewal thereof, certified as copies by the proper officer in whose office the assignment was registered or was last renewed, is registered in the office of the proper officer of the registration district into which such head or registered office has been moved or in which the assignor has established a place of business.

10. (1) An assignment registered under this Act may be discharged in whole or in part by the registration in the office or offices in which it is registered of a certificate of discharge in Form 2 signed by the assignee and accompanied by an affidavit of an attesting witness of the execution thereof.

(2) The proper officer in whose office a certificate of discharge is registered shall note the fact of the discharge against each entry in the books of his office respecting the assignment, and shall make a like notation upon the assignment, duplicate original or copy and upon every renewal statement with respect thereto registered in his office, or upon every renewal statement with respect thereto if the assignment, duplicate original or copy is not registered in his office.

(3) Where the assignment and any renewal statements relating thereto are registered in more than one registration district the registration of a certificate of discharge may be effected either by filing a duplicate original thereof and of the affidavit of execution in the office of the proper officer in each of the registration districts, or by filing the certificate of discharge and affidavit of execution in one of the registration districts and by filing a certificate of the entry of the discharge therein, signed by the proper officer of that registration district, in each of the other registration districts, and each proper officer shall make the like notations of the discharge as are required by subsection (2).

(4) The proper officer in whose office the certificate of discharge is registered shall on request furnish a certificate of the entry of the discharge.

(5) Upon payment of a fee of one dollar, and upon the discharge of the debt cause for which an assignment was made, and upon written demand delivered personally or by registered mail by the assignor or by any other person having an interest in the book debts the assignee shall sign and deliver personally or by registered mail to the person demanding it a certificate of discharge in Form 2 and an affidavit of an attesting witness of the execution thereof.

(6) Where for ten days after receipt of such demand the assignee without reasonable cause fails to deliver the required certificate and affidavit, he is liable to the person demanding it for the damages resulting from the failure.

11. For the purpose of registration of documents under this Act each chattel mortgage registration district in the

12. The present section 5 (3) reworded.

13. (1) The present section 12 (1) reworded.

(2) The present section 12 (2) in simpler wording.

(3) The present section 12 (3) reworded.

14. (1) The present section 8 (1) with the wording simplified.

(2) The present section 8 (2).

(3) The present section 9 clause (a).

(4) The present section 9 clause (b).

(5) The present section 10 slightly reworded.

(6) The present section 11 slightly reworded.

Province is a registration district, and the registration clerk whose office is situated within a registration district is the proper officer for the registration of such documents in that registration district.

12. Where under this Act the time for registration of a document expires on a day on which the office in which the registration is to be made is closed, the registration, so far as regards the time of registration, is valid if made on the next following day on which the office is open.

13. (1) Where the attesting witness to a document to which this Act applies dies or leaves the Province before making the affidavit of execution required by this Act or becomes incapable of making or refuses to make the affidavit, a judge of the district court upon being satisfied as to the execution and attestation of the document may make an order permitting the registration of the document.

(2) The order or a copy thereof shall be filed with the document.

(3) Registration of the document under the order has the like effect as the registration thereof with the affidavit of execution otherwise required by this Act.

14. (1) In addition to any person authorized by law to take affidavits, the proper officer of any registration district may take the affidavit of any person under this Act.

(2) No assignment of book debts or other document to which this Act applies shall be held to be defective or void on the ground that an affidavit required by this Act was taken and made before a solicitor for any of the parties to the assignment of book debts or other documents, or before a partner of such solicitor, or before a clerk in the office of such solicitor.

(3) An affidavit required by this Act to be made by an assignee may in the event of his death be made by his executor or administrator or by any of his next of kin, or by an authorized agent of the executor or administrator.

(4) Where the assignee or his agent is a corporation, any officer, employee or agent of the corporation may make an affidavit or statement under this Act on behalf of the corporation.

(5) Every affidavit made under this Act by an agent of an assignee, or by an executor or administrator or a next of kin or an authorized agent of an executor or administrator, or by an officer, employee or agent of a corporation, shall state that the deponent is aware of all the circumstances connected with the assignment or the renewal statement, as the case may be, and that he has a personal knowledge of the facts deposed to.

(6) Where a document to which this Act applies is executed by a corporation under its corporate seal, no affidavit of an attesting witness is required.

15. (1) The present section 13 (1) reworded.

(2) The present section 13 (2) reworded.

(3) The present section 13 (3) reworded.

16. The present section 14 reworded.

17. (1) The present section 15 subsections (1) and (2).

(2) The present section 15 (3) slightly reworded.

(3) New. Self-explanatory.

18. The present section 7 (1) slightly reworded.

19. Replaces the present section 16 which fixes fees for various services.

20. New. Inserted because of the rule of law that the Crown is not ordinarily bound by a statute unless it is specifically mentioned.

15. (1) A judge of the district court upon being satisfied that an omission to register or file a document within the time prescribed by this Act, or that an omission or misstatement in a document registered or filed under this Act, was accidental or due to inadvertence or impossibility or other sufficient cause, may, subject to the rights of other persons accrued by reason of the omission or misstatement extend the time for registration or filing or order the omission or misstatement to be rectified, on any terms and conditions he directs.

(2) An order under this section, or a copy thereof, shall be filed with the proper officer who shall attach it to the document registered or tendered for registration and shall make the appropriate entries in the register.

(3) The rights of other persons accrued up to the time of the filing of the order or a copy thereof with the proper officer, by reason of the omission or misstatement referred to in subsection (1), are not affected by the order.

16. A document to which this Act applies shall not be invalidated or its effect destroyed by reason only of a defect, irregularity, omission or error therein or in the execution or attestation thereof unless, in the opinion of the court or judge before whom a question relating thereto is tried, the defect, irregularity, omission or error has actually misled some person whose interests are affected by the document.

17. (1) A copy of a document registered or filed under this Act, certified as such by the proper officer, is receivable in evidence as *prima facie* proof for all purposes as if the original document were produced, and also as *prima facie* proof of the execution of the original document, according to the purport of the copy.

(2) The proper officer's certificate is receivable in evidence as *prima facie* proof of the date, hour and minute of the registration of the document.

(3) No proof is required of the signature or official position of a proper officer in respect of any certificate produced as evidence under this section.

18. During the regular office hours of the proper officer and upon payment of the prescribed fees, any person may inspect the books containing records or entries of documents registered or filed under this Act and may inspect any document registered or filed under this Act.

19. For services under this Act the proper officer is entitled to receive such fees as may be fixed by the Lieutenant Governor in Council.

20. The Crown is bound by this Act.

21. The present section 17.

22. Transitional provisions.

23. Repealing provision.

24. Coming into force.

21. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of the provinces that enact it.

22. (1) An assignment registered two years and six months or more prior to the date this Act comes into force does not cease to be valid as provided by subsection (1) of section 7 if a renewal statement is registered within six months of the date this Act comes into force.

(2) Where an assignment is registered at the date this Act comes into force and

- (a) the assignor is a corporation that has moved prior to the said date its head or registered office within the Province to a registration district other than that in which the assignment is registered, or
- (b) the assignor is not a corporation and prior to said date ceased to carry on business in the district in which the assignment is registered and commenced to carry on business in some other registration district,

the time for the registration required by section 9 shall be within sixty days after this Act comes into force if the assignee had notice of such removal or of commencing to carry on business prior to this Act coming into force.

23. *The Assignment of Book Debts Act*, being chapter 18 of The Revised Statutes of Alberta, 1955, is hereby repealed.

24. This Act comes into force on the day upon which it is assented to.

FORM 1
(Section 7)

RENEWAL STATEMENT

Statement respecting an assignment of book debts dated the day of, 19....., made between of of the one part and of of the other part and registered in the office of the proper officer of the registration district of on the day of, 19....., as No..... and in respect of which a renewal statement was last registered in the office(s) of the proper officer(s) of the registration district(s) as follows:

Registration District	Date of Registration	Registration Number

The said (name of assignee) has not further assigned the book debts mentioned in the said assignment of book debts.

or

Alternative to paragraph immediately above { The said (name of assignee) did by an assignment dated the day of 19..... further assign to me of the book debts mentioned in the said first mentioned assignment of book debts.

The said assignment of book debts is valid and subsisting. Signature of assignee.

AFFIDAVIT

I,, of the of in the of, make oath and say:

- 1. I am the assignee (or as the case may be) named in the foregoing (or annexed) statement.
2. The said statement is true.
3. The assignment of book debts mentioned in the said statement is not being kept in force for a fraudulent purpose or to defeat, delay or prejudice creditors of the assignor named therein.

Sworn before me at }
..... in the Province of }
Alberta, this day }
of A.D. }
(A Commissioner for Oaths) }

FORM 2
(Section 10)

CERTIFICATE OF DISCHARGE

I, of the of in the of certify that the assignment of book debts made by to me, which assignment is dated the day of, 19....., and was registered (or in case the assignment has been renewed was last renewed) in the office of proper officer of the registration district of on the day of, 19..... as No., has not been further assigned by me; and that such assignment is wholly discharged (or as the case may be).

Witness my hand this day of, 19..... Signature of assignee, etc.

Witness:

NOTE: An affidavit of execution is required by section 10.

FOURTH SESSION

THIRTEENTH LEGISLATURE

6 ELIZABETH II

1958

BILL

An Act Respecting Assignments of
Book Debts

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
