

No. 45

5th Session, 13th Legislature, Alberta
7 Elizabeth II, 1959

BILL 45

A Bill to Provide for the Orderly Payment of Debts by
the Consolidation of Judgments and Other Debts

HON. MR. MANNING

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Edmonton, Alberta, 1959

Explanatory Note

Under this proposed Bill a debtor faced with numerous competing creditors may apply to the clerk of the court for a consolidation order. The order is made only after notice to all known creditors. While the order is in force the creditors are prohibited from proceeding independently against the debtor and all moneys paid into court on account of the debts are divided among the creditors pro rata. Procedure for setting aside or varying the order as circumstances require is provided.

1. Short title.

2. Definitions.

3. Application of Act.

4. Application for consolidation order and accompanying affidavit.

BILL

No. 45 of 1959

An Act to Provide for the Orderly Payment of Debts by
the Consolidation of Judgments and Other Debts

(Assented to _____, 1959)

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 Orderly Payment of Debts Act*".

2. In this Act,

- (a) "clerk" means a clerk of the district court;
- (b) "court" means a judge of the district court;
- (c) "registered creditor" means a creditor who is named in a consolidation order.

3. (1) This Act applies only

- (a) to a judgment for the payment of money where the amount of the judgment does not exceed one thousand dollars,
- (b) to a judgment for the payment of money in excess of one thousand dollars if the creditor consents to come under this Act, and
- (c) to a claim for money, demand for debt, account, covenant or otherwise, not in excess of one thousand dollars.

(2) This Act does not apply to a debt due, owing or payable to the Crown or a municipality or relating to the public revenue or one that may be levied and collected in the form of taxes or, unless the creditor consents to come under this Act,

- (a) to a claim for wages that may be heard before, or a judgment therefor by, a magistrate under *The Masters and Servants Act*, or
- (b) to a claim for a lien or a judgment thereon under *The Mechanics Lien Act*.

4. (1) A debtor may apply to the clerk of the district court of the judicial district in which he resides for a consolidation order.

(2) Upon the application the debtor shall file an affidavit, in the prescribed form, setting forth:

5. Duties of clerk upon filing affidavit and notices required.

6. Issue of consolidation order.

7. Objection by creditor.

- (a) the names and addresses of his creditors and the amount he owes to each creditor and if they are related to him, the relationship,
- (b) a statement of the property he owns or has any interest in and of the value thereof;
- (c) the amount of his income from all sources, naming them, and if he is married the amount of the income of his wife from all sources, naming them;
- (d) his business or occupation and that of his wife, if any, and the name and address of his employer and of his wife's employer, if any;
- (e) the number of persons dependent upon him, the name and relationship of each and particulars of the extent to which each is so dependent;
- (f) the amount payable for board and lodging or for rent or as payment on home property, as the case requires;
- (g) whether any of his creditors' claims are secured and if so, the nature and particulars of the security held by each.

5. (1) The clerk shall

- (a) file the affidavit, giving it a number, and record the particulars it contains in a register provided for that purpose,
- (b) upon reading the affidavit and hearing the debtor settle an amount proposed to be paid by the debtor into court, periodically or otherwise, on account of the claims of his creditors and enter particulars thereof in the register or, if so proposed, enter in the register a statement that the present circumstances of the debtor do not warrant the fixing of any amount, and
- (c) fix a date for hearing objections by creditors.

(2) The clerk shall give notice of the application to each creditor, stating

- (a) particulars of the entries in the register with respect to the debtor, and
- (b) the date on which he will hear objections thereto.

(3) The notice shall be served by double registered mail and the clerk shall enter in the register a memorandum of the mailing and the date of mailing of the notice.

6. Where no objections are received within fourteen days after the mailing of the notices pursuant to section 5, the clerk shall note the fact in the register and shall issue a consolidation order.

7. (1) Any creditor may, within the time limited by section 6, file with the clerk an objection to the amount entered in the register as the amount owing to him or to any other creditor or to the amount fixed to be paid into

8. Additional creditors.

9. Hearing of objections.

10. Contents of consolidation order.

11. Review of consolidation order.

court by the debtor or the times of payment thereof or to the statement fixing no amount.

(2) The clerk shall enter in the register a memorandum of the fact and date of the receipt of any objections filed with him.

(3) Where an objection is filed by a creditor the clerk shall forthwith, by registered mail, give notice of the objection to the debtor and to any creditor whose claim is objected to.

8. At the time appointed for the hearing the clerk may bring in and add to the register the name of any creditor of the debtor of whom he has notice and who is not disclosed in the affidavit of the debtor.

9. (1) At the time appointed for the hearing the clerk shall consider all objections filed with him in accordance with this Act and

- (a) if an objection is to the claim of a creditor and the parties are brought to agreement or if the creditor's claim is a judgment of a court and the only objection is to the amount paid thereon, he may dispose of the objection in a summary manner and determine the amount owing to the creditor,
- (b) if an objection is to the proposed terms or method of payment of the claims by the debtor or that terms of payment are not but should be fixed, he may dispose of the objection summarily and determine as the circumstances require the terms and method of payment of the claims, or that no terms be presently fixed, or
- (c) in any case he may on notice of motion refer any objection to be disposed of by the court or as the court otherwise directs.

(2) The clerk shall enter in the register his decision or the decision of the court, as the case may be, and shall issue a consolidation order.

10. (1) A consolidation order shall state

- (a) the name of and the amount owing to each creditor named in the register, and
- (b) the amount to be paid into court by the debtor and the times of payment.

(2) A consolidation order

- (a) is a judgment of the court in favour of each creditor named in the register for the amount stated therein, and
- (b) is an order of the court for the payment by the debtor of the amounts stated therein and at the time stated therein.

11. (1) The court may, on application on notice of motion by any of the parties affected thereby, review a consolidation

12. Terms of consolidation order.

13. Garnishee proceedings.

14. Assignments.

15. Dispute re claims.

order of the clerk and may vary it or set it aside and make such disposition of the matter as the court sees fit.

(2) The clerk shall enter the decision of the court in the register and it shall take effect in place of the order of the clerk.

(3) An application to review a consolidation order of the clerk shall be made by notice of motion within fourteen days of the making of the order.

12. The court may, in deciding any matter brought before it, impose such terms on a debtor with respect to the custody of his property or any disposition thereof or of the proceeds thereof as it deems proper to protect the registered creditors and may give such directions for the purpose as the circumstances require.

13. Except as provided by this Act, no garnishee proceedings prior to judgment and no proceedings subsequent to judgment shall be taken or continued, against the debtor named in a consolidation order, in the district court in which the consolidation order is made.

14. (1) The clerk may at any time require of, and take from, the debtor an assignment to himself as clerk of the court of any moneys due, owing or payable or to become due, owing or payable to the debtor or earned or to be earned by the debtor.

(2) Unless otherwise agreed upon the clerk shall forthwith notify the person owing or about to owe the moneys of the assignment and all moneys collected thereon shall be applied to the credit of the claims against the debtor under the consolidation order.

15. (1) Where at any time before the payment in full of the claims under a consolidation order a creditor whose claim is not entered in the consolidation order makes his claim known to the clerk, the clerk may upon notice to the debtor and upon settling the amount owing to the creditor cause the name of the creditor to be entered in the register together with an entry of the amount of his claim.

(2) Where the debtor disputes the claim of a creditor under subsection (1), the clerk may on notice of motion refer the matter to the court and the decision of the court shall be entered in the register.

(3) Upon the entry of a claim in the register pursuant to this section, the claim becomes part of the judgment against the debtor and the creditor shall share in any further distribution of moneys paid into court by or on account of the debtor.

(4) The clerk shall add to the consolidation order the name of any creditor entered in the register pursuant to this section.

16. Security for claim.

17. Enforcement of judgment.

18. Ex parte application.

16. (1) Notwithstanding his claim under the consolidation order a registered creditor holding security for his claim may, at any time, elect to rely upon his security.

(2) Where the proceeds from the disposal of the security are in excess of the registered creditor's claim the excess shall be paid into the clerk and applied in payment of other judgments against the debtor.

(3) Subsection (2) does not apply where the security is in the form of chattels exempt from seizure under *The Seizures Act*.

(4) Where the proceeds from the disposal of the security are less than the registered creditor's claim the creditor's claim shall be reduced by the amount realized.

(5) Subsection (4) does not apply to a lien for all or part of the purchase price of goods to which section 19 of *The Conditional Sales Act* applies.

17. (1) A registered creditor may apply by notice of motion to the court where

- (a) a debtor defaults in complying with an order for payment or any other order or direction of the court,
- (b) any other proceeding for the recovery of money is brought against the debtor,
- (c) a judgment is recovered against the debtor for the payment of money in excess of one thousand dollars and the judgment creditor refuses to permit his name to be added to the register, or
- (d) the debtor has property or funds that should be made available for the satisfaction of the consolidation order.

(2) Upon the application the court may authorize the registered creditor to take on behalf of all registered creditors such proceedings to enforce the consolidation order as the court deems advisable.

(3) Upon the application the court where it deems it advisable may, on notice to all parties, make an order permitting the registered creditors to proceed each independently of the others for the enforcement of their claims under the consolidation order.

(4) Where an order is made under subsection (3) the debtor is not, without the leave of the court, entitled to any further relief under this Act during the currency of any claim against him entered in the register.

18. (1) A debtor or any registered creditor may at any time apply *ex parte* to the clerk for a further examination and hearing of the debtor in respect of his financial circumstances.

(2) A further hearing may only be held with the leave of the clerk or on his refusal leave of the court.

(3) The clerk shall notify all parties of the time appointed for the hearing and the application shall be dealt with in the same manner as the original application by the debtor.

19. Distribution of moneys paid into court.

20. Oaths.

21. Regulations.

19. (1) The clerk shall distribute the moneys paid into court on account of the debts of a debtor at least once every three months.

(2) The clerk shall distribute the money *pro rata*, or as nearly so as is practicable among the registered creditors.

20. (1) The clerk may for the purposes of this Act examine any person under oath and may administer oaths.

(2) The clerk shall make a written record in summary form of all evidence given at a hearing.

21. The Lieutenant Governor in Council may make regulations

- (a) prescribing the forms to be used and the fees to be paid in carrying out this Act, and
- (b) generally for the proper administration of and respecting the procedure required to be taken under this Act.

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FIFTH SESSION

THIRTEENTH LEGISLATURE

7 ELIZABETH II

1959

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Received and read the

First time.....

Second time.....

Third time.....

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