

1988 BILL 209

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Third Session, 21st Legislature, 37 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 209

LOAN AND TRUST CORPORATION  
CONFLICT OF INTEREST ACT

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MR. MITCHELL

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 209*  
*Mr. Mitchell*

## **BILL 209**

1988

### **LOAN AND TRUST CORPORATION CONFLICT OF INTEREST ACT**

*(Assented to , 1988)*

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

Definitions

**1** In this Act,

- (a) "corporation" means a loan or trust company whether incorporated in or outside of Alberta;
- (b) "restricted corporation" means a corporation designated by the Superintendent pursuant to this Act;
- (c) "restricted party" means a person who, with respect to a corporation, is
  - (i) an officer or director of the corporation,
  - (ii) an beneficial holder, directly or indirectly, of 10% or more of any class of voting shares of the corporation,
  - (iii) a beneficial holder of 10% or more of any class of non-voting shares of the corporation,
  - (iv) a beneficial holder, directly or indirectly, of 10% or more of any class of voting shares of an affiliate of the corporation,

(v) an affiliate of the corporation other than a subsidiary of the corporation,

(vi) an employee of the corporation,

(vii) an auditor of the corporation, if the auditor is a sole practitioner,

(viii) a partner in the firm who are the corporation's auditors, if the partner is actually engaged in auditing the corporation,

(ix) a director or officer of a body corporate described in subclause (ii) or (iii),

(x) a spouse or child of an individual described in subclause (i), (ii), (iii) or (iv),

(xi) any relative of an individual described in subclause (i), (ii), (iii) or (iv) or of his or her spouse who has the same home as such individual or spouse,

(xii) a body corporate in which a person described in subclause (i) or (ii) is the beneficial holder, directly or indirectly, of 10% or more of any class of voting shares,

(xiii) a body corporate in which a person described in subclause (iii), (vi), (vii), (viii) or (ix) is the beneficial holder, directly or indirectly, of more than 50% of any class of voting shares,

(xiv) a person designated under section 3 as a restricted party;

(d) "Superintendent" means the Superintendent of Trust Companies.

Deemed  
affiliation

2 For the purposes of this Act,

(a) a body corporate shall be deemed to be affiliated with another body corporate if 1 of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person, and

(b) the affiliates of every body corporate shall be deemed to be affiliated with all other bodies corporate with which the body corporate is affiliated.

Power to  
designate person  
as restricted party

3(1) For the purposes of this Act, the Superintendent may designate,

(a) any person to be a restricted party of a registered corporation if the Superintendent is of the opinion that,

(i) the person is acting in concert with a restricted party of the corporation to participate in or enter into an investment or other transaction with the corporation that would be prohibited or restricted if entered into with the corporation by the restricted party, or

(ii) there exists between the person and the corporation such an interest or relationship as might reasonably be expected to affect the exercise of the best judgment of the corporation with respect to an investment or other transaction, or

(b) any shareholder of a registered corporation or of an affiliate of a registered corporation to be a restricted party of the corporation if the Superintendent is of the opinion that the shareholder is acting in concert with 1 or more other shareholders of the corporation or of an affiliate to control directly or indirectly 10% or more of any class of shares of the registered corporation.

(2) On the application of the restricted party or the registered corporation, the Superintendent may revoke a designation made under subsection (1).

(3) Before making a designation or refusing to revoke a designation made under subsection (1), the Superintendent shall give the person whom he proposes to designate or has designated and the registered corporation an opportunity to be heard.

Prohibitions,  
restricted parties

4(1) Except as provided in this Act,

(a) no registered corporation or subsidiary of a registered corporation shall directly or indirectly purchase from or lend to a restricted party of the corporation or enter any other transaction with a restricted party of the corporation, and

(b) no restricted party of a registered corporation shall directly or indirectly purchase from or lend to the corporation or any subsidiary of the corporation or enter any other transaction with the corporation or any subsidiary of the corporation.

(2) Except as provided in section 5(1)(a), no registered corporation or subsidiary of a registered corporation shall knowingly invest by way of purchase or of loans on the security of real estate that at any time in the period of 36 months preceding the date of the advance of any funds by the corporation or its subsidiary was owned by a director of the spouse or child of the director or any relative of the director or spouse who has the same home as the director.

(3) This Act does not apply so as to prevent the payment of directors' fees of the registered corporation or of a subsidiary of the registered corporation if the fees have been approved by the shareholders of the registered corporation.

Permitted  
transactions,  
board approval

5(1) Subject to the prior approval of the board of directors of the registered corporation, a registered corporation or a subsidiary of a registered corporation may,

(a) make a loan to any director, officer or employee of the corporation, the spouse or any child of a director or officer of the corporation or of the spouse of a director or officer of the corporation on the security of the residence of the person to whom the loan is made if,

(i) the loan qualified as an investment under the regulations,

(ii) the amount of the loan does not exceed 0.5% of the capital base of the corporation, and

- (ii) in the case of a director who is not an employee or officer of the corporation or his or her spouse or child, the terms of the loan or no more favourable than those offered by the corporation in the ordinary course of business,
- (b) make a personal loan to any officer or employee of the corporation, the spouse or any child of an officer of the corporation or any relative of an officer of the corporation or of the spouse of an officer of the corporation, if the loan qualifies as an investment under the regulations,
- (c) enter into written contracts with any restricted party for the provision of management services to or by the corporation or subsidiary if it is reasonable that the corporation or the subsidiary obtain or supply the services, and so long as,
  - (i) the consideration is at or exceeds competitive and fair rates where the services are provided by the corporation or the subsidiary and is otherwise reasonable for the services provided, and
  - (ii) the consideration does not exceed competitive and fair rates where the services are provided to the corporation or the subsidiary and is otherwise not unreasonable for the services provided,
- (d) enter into a written lease of real estate or personal property with any restricted party for the use of the corporation or the subsidiary in carrying out its business, so long as,
  - (i) the rent does not exceed fair rental value,
  - (ii) the term of the lease and all renewals does not exceed 10 years, and
  - (iii) the terms of the lease are otherwise competitive and not unreasonable,
- (e) enter into written contracts with any restricted party for pension and benefit plans and other reasonable commitments incidental to the employment of officers and employees of the corporation or the subsidiary,

- (f) enter into employment contracts with officers or future officers of the corporation or the subsidiary,
  - (g) enter into written contracts with any restricted party for the purchase of goods or services, other than management services, used or required by the corporation or the subsidiary in carrying on its business, so long as the price paid for such goods or services is competitive and at market value or fair rates, supported by appropriate documentation of such value or rates, and
  - (h) enter into such investments or other transactions as may be prescribed.
- (2) Notwithstanding subsection (1)(a) or (b), if permitted by the regulations, a registered corporation may make a loan to an employee of the corporation who is not a director or officer of the corporation or to his or her spouse or child without obtaining the approval of the board of directors if the amount of the loan does not exceed such amount as may be prescribed and there is compliance with subsection (1)(a)(i) and (ii) or (b), as the case may be.
- (3) A registered corporation or a subsidiary of a registered corporation, without the approval of the board of directors of the registered corporation, may enter into,
- (a) employment contracts with persons who are not directors or officers of the corporation or the subsidiary,
  - (b) transactions with a restricted party which involve nominal or immaterial expenditures by the corporation or the subsidiary,
  - (c) transactions with a restricted party for the sale of goods or the provision of services normally provided to the public by the corporation or the subsidiary in the ordinary course of business so long as the prices and rates charged by the corporation or subsidiary are competitive and at fair rates, and
  - (d) such investments or other transactions as may be prescribed.

(4) The board of directors of a registered corporation may delegate its power to approve transactions as required by this section to an approvals committee consisting of not fewer than 5 to be appointed from among their number, a majority of whom shall be outside directors.

(5) An approvals committee shall not approve a transaction unless at least 5 members, a majority of whom are outside directors, are present and voting.

Onus of proof

6 The onus is upon the restricted party and the registered corporation or its subsidiary to demonstrate,

(a) for the purpose of section 5(1)(a)(iii), that the terms of the loan are no more favourable than those offered by the corporation in the ordinary course of business,

(b) for the purpose of section 5(1)(c), that it is reasonable that the services be obtained or supplied,

(c) for the purpose of section 5(1)(c)(i), that the consideration is at or exceeds competitive and fair rates,

(d) for the purpose of section 5(1)(c)(ii), that the consideration does not exceed competitive and fair rates,

(e) for the purpose of section 5(1)(d), that the rent does not exceed fair rental value and the terms of the lease are otherwise competitive and not unreasonable,

(f) for the purpose of section 5(1)(g), that the price paid is competitive and at market value or fair rates,

(g) for the purpose of section 5(3)(b), that expenditures are nominal or immaterial, and

(h) for the purpose of section 5(3)(c), that services are normally provided to the public in the ordinary course of business and that the prices and rates are competitive and at fair rates.

7(1) A registered trust corporation shall not participate in, or enter into, any investment or other transaction with its subsidiaries or restricted parties using funds, except deposits, held by the corporation as a fiduciary.

(2) Except as provided in this section, a registered trust corporation shall not invest funds held by the registered corporation as a fiduciary in securities of the corporation or its subsidiaries or restricted parties.

(3) A registered trust corporation may act as a fiduciary of 1 or more trusts or estates that owns securities of the corporation or its subsidiaries or restricted parties of the securities were acquired before the corporation assumed responsibility as a fiduciary.

(4) Where a registered trust corporation acts as a fiduciary of 1 or more trusts or estates holding securities of the corporation, the securities shall not be sold or voted or an offer for the securities refused except with the approval of the board of directors and the reasons for such actions shall be entered in the minutes of the board of directors.

(5) Each year, the board of directors shall approve a report on the securities of the registered corporation and its subsidiaries and restricted parties held by the corporation as fiduciary and the reasons for their retention or sale.

(6) Nothing in this section authorizes a registered trust corporation to perform any act as a fiduciary which is otherwise prohibited.

(7) Nothing in this section prevents a registered trust corporation from,

(a) fulfilling a specific direction or permission of a court or of an instrument creating a fiduciary duty that the corporation should or may purchase or sell securities of the corporation or its subsidiaries or restricted parties or participate in, or enter into, any investment or other transaction with its subsidiaries or restricted parties but a general power to invest in the discretion of the fiduciary shall not be considered to be a specific direction or permission for the purposes of this clause;

(b) investing funds held by its as a fiduciary in the securities of its restricted parties that a publicly traded;

(c) participating in or entering into an investment that a co-fiduciary or the co-fiduciaries of the corporation can direct to be made without the agreement of the corporation and that the co-fiduciary or co-fiduciaries have directed to be made.

**Exemption**

**8(1)** Upon the application of a registered corporation filed with the Superintendent, the Lieutenant Governor in Council may consent to the registered corporation making or entering into any investment or other transaction set out in this Act, with a restricted party if, in the opinion of the Lieutenant Governor in Council, the consent is necessary to the well-being of the registered corporation and the consent may be subject to such terms and conditions as are set out in the consent.

(2) Subsection (1) does not apply so as to permit the giving of consent for an investment or other transaction that is prohibited by section 7.

**Disclosure of interest**

**9(1)** A restricted party who is a party to an investment or other transaction with a registered corporation or a subsidiary of a registered corporation or to a proposed investment or other transaction with the corporation or the subsidiary for which the approval of the board of directors of the corporation is required, whether under this Act or otherwise, shall disclose in writing to the corporation the nature of the restricted party's interest.

(2) A director or officer of a registered corporation, with respect to an investment or other transaction with the corporation or a subsidiary of the corporation or with respect to a proposed investment or other transaction with the corporation or the subsidiary, shall disclose the nature of the interest if,

(a) he is a director or an officer of a body corporate that is a party to any investment or other transaction of the corporation or the subsidiary or a proposed investment or other transaction of the corporation or subsidiary, or

(b) he holds 10% or more of the shares of a body corporate described in clause (a).