

Bill No. 23 of 1934.

A BILL TO FACILITATE THE ORDERLY PAYMENT  
OF DEBTS.

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NOTE.

This Bill provides that a debtor may make provision for the payment of all his unsecured indebtedness by means of periodical payments upon his making an application to the District Court and obtaining an order for that purpose; and in the meantime and so long as the order remains in effect and the debtor complies with the terms of the order, no actions may be brought against him by any creditor.

R. ANDREW SMITH,  
*Legislative Counsel.*

*(This note does not form any part of the Bill and is offered merely as a partial explanation of some of its provisions.)*

# BILL

No. 23 of 1934.

An Act to Facilitate the Orderly Payment of Debts.

(Assented to 1934.)

**H**IS 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.**—(1) This Act shall apply only to—

- (a) claims for money demands for debt, account, covenant or otherwise, whether legal or equitable, for which an action may be maintained in a District Court;
- (b) judgments for the payment of money in any court where the amount of the judgment does not exceed eight hundred dollars and District Court costs; and
- (c) any judgment for the payment of money alone of any amount if the creditor consents to come under this Act.

(2) This Act shall not apply to—

- (a) a covenant in a mortgage or charge on land or in an agreement for sale of land;
- (b) a debt due, owing or payable to the Crown, a municipality or school district, or relating to the public revenue, or one which may be levied or collected in the form of taxes.

(3) Unless the creditor consents to come under this Act, this Act shall not apply to—

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

(4) In this Act, unless the context otherwise requires, the expression—

- (a) "Creditor" means a person whose claim is entered in the register under this Act or who is entitled to have his claim so entered but does not include a person whose consent to be added to the register is required, unless and until such consent is filed with the clerk and entered in the register; and

- (b) "Debtor" means any person indebted other than a corporation or a trader or merchant in respect of a debt incurred by him as such in the usual course of his business.

**3.** Any debtor may upon payment of the prescribed fee file with the Clerk of the District Court of the district in which he resides an affidavit in a prescribed form, to be sworn before the Clerk or a duly authorized commissioner for oaths in his office, setting forth—

- (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; and
- (g) whether any of his creditor's claims are secured, and if so, the nature and particulars of the security held by each.

**4.** 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;
- (c) fix a date for hearing objections by creditors; and
- (d) notify each creditor by registered mail of the filing of the affidavit giving each particulars of the entries in the register with respect to the debtor and the date on which he will hear objections thereto.

**5.** Any creditor may, within ten days of the mailing of the notice by the Clerk, file 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 court by the debtor or the times of payment thereof or to the statement fixing no amount, and the Clerk shall enter in the register a memorandum of the mailing and date of mailing of the notices and the fact and date of the receipt of any objections filed with him.

6. If no objections be received within fourteen days after the mailing of the notices, the fact shall be noted in the register and the amount stated therein as owing to each creditor shall thereupon become and be a judgment of the court in favour of such creditor, and the amount entered therein as payable by the debtor shall become and be an order of the court for the payment thereof for the amounts and at the times so entered, and such order shall have effect as if it were an order made by the court in an action on the return of a judgment summons served on the debtor.

7.—(1) In case any objection be filed by a creditor, the Clerk shall forthwith send notice thereof by registered mail to the debtor and any creditor whose claim is objected to, and all objections shall be considered by the Clerk at the time appointed for the hearing thereof and he may on such hearing—

- (a) bring in and add to the register the name of any creditor of the debtor not disclosed in the affidavit of the debtor of which he has notice;
- (b) if the objection be as to the claim of a creditor and the parties are brought to agreement or if the creditor's claim be a judgment of a court and the only objection be as to the amount paid thereon, dispose of the objection in a summary manner and determine the amount owing to the creditor;
- (c) if the objection be as to the proposed terms or method of payment of the claims by the debtor or that no terms of payment are, but should be fixed for payment of claims, 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
- (d) in any case refer any objection to be disposed of by the court, or as the court otherwise directs, and the court on payment of the prescribed fee may hear and determine the objection—

and the decision of the Clerk or of the Court, as the case may be, shall be entered by the Clerk in the register and shall thereupon be a judgment of the court, and any order for payment shall thereupon have effect as an order made in an action on the return of a judgment summons served on the debtor.

(2) The court may, on application by any of the parties affected thereby, and on payment of the prescribed fee, review any decision of the Clerk and may vary or set aside

the same and make such disposition of the matter as it sees fit, and the Clerk shall enter such decision in the register and it shall take effect in place of the decision of the Clerk; an application to review a decision of the Clerk shall be made to the court not later than the sitting of the court next after the decision or as the court otherwise directs.

(3) 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 creditors and may give such directions for the purpose as the circumstances require.

**8.**—(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, and unless otherwise agreed upon he shall forthwith notify the person owing or about to owe such moneys of the assignment, and all moneys collected thereon shall be applied to the credit of the judgments against the debtor appearing in the register.

(2) If the debtor has or acquires any interest in land the Clerk may at any time on payment of the prescribed fee issue in a form prescribed a certificate of judgment giving particulars of the judgments entered in the register, and the registrar of a registration district or district registrar of a land titles district shall, upon presentation of the certificate and payment of the prescribed registration fee, register the certificate, and such certificate shall take effect and registration thereof may be renewed and discharged in the same manner as a writ of execution; but proceedings to realize thereunder shall, unless the court otherwise orders, be for the benefit of all creditors with judgments in the register.

**9.** Upon the filing of an affidavit and the entering of the particulars in the register, subject to the provisions of *The Bankruptcy Act*, no process save as provided in this Act or the rules shall be issued in the court or in any court against the debtor at the instance of a creditor.

**10.**—(1) In case—

- (a) the debtor makes default in complying with an order for payment or any other order or direction of the court; or
- (b) any other action or proceeding for the recovery of money is brought against the debtor; or
- (c) any judgment is recovered by a creditor against the debtor for the payment of money for an amount for which an action is not maintainable in a District Court and such creditor refuses to permit his name to be added to the register; or

(d) it is shown that the debtor has property or funds which should be made available for the satisfaction of the judgments entered in the register—

any creditor may, on payment of the prescribed fee, apply to the court and the court may make an order either after hearing the parties or *ex parte*—

(i) where there is default in payment and the Clerk holds an assignment of moneys, for leave to bring an action to recover any moneys owing under the assignment, and upon leave being so granted an action may be brought by the creditor on behalf of himself and all other creditors of the debtor entered in the register to recover such moneys, and the assignment for the purposes of enabling such proceedings to be brought, shall be deemed to be an assignment to such creditor; or

(ii) in any case, for the issue of any process to enforce payment under the order for payment or of the amount of the judgment against the debtor, as the circumstances require—

and all moneys recovered as a result of any such proceedings, after payment of costs incurred thereby, shall be paid to the Clerk and shall be applied to the credit of the judgments against the debtor appearing in the register.

(2) If the court deems it advisable, on notice to all parties concerned it may on such an application make an order permitting the creditors to proceed each independently of the other for the enforcement of his judgment, and any money realized by a creditor thereon shall be the property of such creditor: in such case the debtor shall not, without leave of the court, be entitled to any further relief under this Act during the currency of any judgment against him entered in the register.

**11.** In case at any time before the payment in full of the judgment in the register any creditor of the debtor whose claim is not entered in the register is disclosed, or on the application of such a creditor the Clerk, having been paid the prescribed fee, may upon notice to the debtor and the creditor, unless he be the applicant, 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; or in case of dispute, the claim not being a judgment of a court, may refer the matter to the court, and the decision of the Clerk of the Court, as the case may be, shall be entered in the register and thereupon the claim of the creditor shall become and be a judgment against the debtor and he shall be entitled to share in any further distribution of moneys paid into court by or on account of the debtor.

**12.**—(1) A creditor holding security for his claim may at any time, notwithstanding his judgment in the register, elect to rely upon his security, or if it be on a chattel, take possession thereof to realize his claim or part thereof in which case he shall thereupon place a value on his security and in case of dispute the value may, on the application of the debtor, be determined by the court and the creditor shall be entered in the register as having judgment for the amount of his claim less the amount fixed as the value of the security.

(2) In case the value exceeds the claim the excess less a deduction of five per centum shall be paid by the creditor to the Clerk as soon as he has realized on the security in which he shall be bound to the exercise of ordinary diligence, and the money so paid in shall be distributed by the Clerk as money paid in by the debtor.

(3) For the purposes of realizing on his claim under this section a creditor whose claim arises out of the conditional sale of a chattel shall be deemed to hold security therefor on the chattel.

(4) In case the chattel on which security is held by a creditor be one of a kind which, being owned by the debtor, is exempt from seizure under execution, the debtor may apply to the court for an order and the court may make an order that the chattel be retained by or restored to the debtor, and thereupon no seizure may be made by the creditor or if seizure has been made, the chattel shall be restored to the debtor on demand; and the court may at any time vary or rescind such order.

**13.** The debtor or any creditor, on payment of the prescribed fee, may at any time apply for a further examination and hearing of the debtor in respect of his financial circumstances and the Clerk shall thereupon immediately notify the parties to the proceedings to appear before him on the date appointed for the purpose, and such application shall be dealt with as if it were an original application by a debtor: such further hearing shall only be permitted with the leave of the Clerk or on his refusal, that of the court, but such leave may be granted on an *ex parte* application.

**14.** The Clerk shall distribute the moneys paid into court on account of the debts of the debtor as often as once every three months, and such distribution shall be *pro rata* or as nearly so as is practicable amongst the creditors of the debtor entered in the register, after deducting therefrom as a fee for the collection thereof five per centum of the amount collected.

**15.** A decision of the court under this Act shall be subject to appeal in the same manner as if it were a judgment under *The District Courts Act*.

**16.** The Clerk may for any of the purposes of this Act examine any witness on oath and may administer oaths.

**17.** The Lieutenant Governor in Council may make rules and regulations—

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

and such rules and regulations shall have force and effect as if embodied in this Act as a part thereof.

**18.** This Act shall come into force on a date to be fixed by Proclamation of the Lieutenant Governor in Council.



No. 23.

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FOURTH SESSION  
SEVENTH LEGISLATURE  
24 GEORGE V  
1934

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**BILL**

An Act to Facilitate the Orderly  
Payment of Debts.

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. LYMBURN

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EDMONTON:  
W. D. McLEAN, KING'S PRINTER  
1934