

1980

c 94 Corporation Securities Registration Act

Ontario

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CHAPTER 94

Corporation Securities Registration Act

1. In this Act,

Interpre-
tation

- (a) "assignment of book debts" includes every legal or equitable assignment by way of security of book debts and every mortgage or other charge upon book debts;
- (b) "assignor" means a corporation that makes an assignment of book debts;
- (c) "book debts" means all such accounts and debts, whether existing or future, as in the ordinary course of business would be entered in books, whether actually entered or not, and includes any part or class thereof;
- (d) "chattels" means goods and chattels capable of complete transfer by delivery, and includes, when separately assigned or charged, fixtures and growing crops, but does not include chattel interests in real property or fixtures when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, or growing crops when assigned with any interest in the land on which they grow, or a ship or vessel registered under the laws of Canada or any share in such ship or vessel, or shares or interests in the stock, funds or securities of a government, or in the capital of a corporation, or book debts or other choses in action;
- (e) "corporation" means a corporation wherever or however incorporated;
- (f) "creditors" means creditors of the mortgagor or assignor, whether execution creditors or not, who become creditors before the registration of the mortgage, charge or assignment, 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

R.S.C. 1970,
cc. B-3, W-10

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) "Minister" means the member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant Governor in Council;
- (h) "mortgagor" includes a corporation that executes a charge, and "mortgagee" includes a person in whose favour a charge is created;
- (i) "subsequent purchasers or mortgagees" includes a person who obtains, whether by way of purchase, mortgage, charge or assignment, an interest in chattels or book debts that have already been mortgaged, charged or assigned. R.S.O. 1970, c. 88, s. 1.

Instruments
to be
registered

2.—(1) Every mortgage and every charge, whether specific or floating, of chattels in Ontario created by a corporation, and every assignment of book debts, whether by way of specific or floating charge, made by a corporation engaged in a trade or business in Ontario and contained,

- (a) in a trust deed or other instrument to secure bonds, debentures or debenture stock of the corporation or of any other corporation; or
- (b) 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 the bonds, debentures or debenture stock of any other corporation; or
- (c) in any bonds, debentures or debenture stock or any series of bonds or debentures of the corporation not secured by a separate instrument,

is void as against creditors of the mortgagor or assignor, and as against subsequent purchasers or mortgagees from or under the mortgagor or assignor, in good faith, for valuable consideration and without notice, unless it is duly registered, and unless, if contained in a trust deed or other instrument to secure bonds, debentures or debenture stock, it complies with subsection (2).

(2) If the mortgage, charge or assignment is contained in a trust deed or other instrument to secure bonds, debentures or debenture stock, the instrument containing it shall be accompanied by an affidavit of the mortgagee, trustee, or grantee or one of the mortgagees, trustees or grantees, his or their agent, or, if the mortgagee, trustee or grantee is a corporation, of any officer or agent of the corporation, stating that the instrument containing the mortgage, charge or assignment was executed in good faith and for the purpose of securing payment of the bonds, debentures or debenture stock referred to therein and not for the mere purpose of protecting the chattels or book debts therein mentioned against the creditors of the mortgagor or assignor or preventing such creditors from obtaining payment of any claim against the mortgagor or assignor. ^{Affidavit of bona fides}

(3) A mortgage, charge or assignment required to be registered under this Act shall, as against creditors and the subsequent purchasers or mortgagees referred to in subsection (1), take effect only from the time of its registration. ^{When charge to take effect}
R.S.O. 1970, c. 88, s. 2.

3.—(1) Registration of every mortgage, charge or assignment shall, except as provided by subsection (2), be effected by filing with the Minister a duplicate original of the instrument containing the mortgage, charge or assignment, together with the affidavit required by subsection 2 (2), and an affidavit made by an officer or agent of the mortgagor or assignor stating the date of the execution of the instrument by the mortgagor or assignor, within thirty days from the date of the execution of the instrument. ^{Registration, mode}

(2) Registration of every mortgage, charge or assignment, contained in bonds, debentures or any series thereof, or in debenture stock, not secured by a separate instrument, shall be effected by filing with the Minister, within thirty days after the execution of the bonds, debentures or debenture stock, an affidavit made by an officer or agent of the mortgagor or assignor, setting forth, ^{Registration when charge in bond, etc.}

(a) the total amount secured by the bonds, debentures or series thereof, or debenture stock;

(b) a true copy of the bond or debenture or of one bond or debenture of the series or of the debenture stock certificate; and

(c) the date of execution. R.S.O. 1970, c. 88, s. 3.

Affidavit of
corporation
officer

4. Any affidavit made for the purposes of this Act by an officer or agent of a corporation shall state that the deponent is aware of the circumstances connected with the transaction and has a personal knowledge of the facts deposed to. R.S.O. 1970, c. 88, s. 4.

Time
expiring on
holiday

5. When the time for filing an instrument containing a mortgage, charge or assignment, or an affidavit, expires on a Sunday or other day on which the office of the Minister is closed, the filing is, so far as regards the time of filing, valid if made on the next following day on which the office is open. R.S.O. 1970, c. 88, s. 5.

Minutes of
registration

6. The Minister shall cause every instrument containing a mortgage, charge or assignment, and every affidavit filed in his office under this Act to be numbered, to be endorsed with a memorandum of the day, hour and minute of its filing and to be indexed by entering in alphabetical order in a register kept by him the names of the parties to the mortgage, charge or assignment, the date of execution of the instrument containing the same or of the bonds, debentures or debenture stock not secured by separate instrument, as shown by the affidavit filed, and the date of filing and the amount secured as shown by the instrument or by the affidavit. R.S.O. 1970, c. 88, s. 6.

Rectifica-
tion of
omissions
and mis-
statements

7.—(1) Subject to the rights of other persons accrued by reason of any omission or misstatement referred to in this section, a judge of the Supreme Court, on being satisfied that the omission to file an instrument or affidavit within the time prescribed by this Act or any omission or misstatement in any document filed under this Act was accidental or due to inadvertence or impossibility or other sufficient cause, may, in his discretion, extend the time for registration, or order the omission or misstatement to be rectified on such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter or thing, as he thinks fit to direct.

Idem

(2) The order or a copy thereof shall be annexed to the instrument or affidavit or document or copy thereof on file or tendered for filing, and appropriate entries shall be made in the register. R.S.O. 1970, c. 88, s. 7.

Defects
and irregu-
larities

8. No defect or irregularity in the execution of an instrument containing a mortgage, charge or assignment, and no defect, irregularity or omission in an affidavit, and no error of a clerical nature or in an immaterial or non-essential part invalidates or destroys the effect of the mortgage, charge or assignment or the registration thereof, unless, in the opinion

of the court or judge before whom a question relating thereto is tried, such defect, irregularity, omission or error has actually misled a person whose interests are affected by the mortgage, charge or assignment. R.S.O. 1970, c. 88, s. 8.

9.—(1) An assignment of a mortgage or of a charge of ^{Assignments} chattels or of an assignment of book debts within this Act need not, but may, be filed with the Minister.

(2) A mortgage or charge or assignment of book debts ^{Discharges and partial discharges} registered under this Act may be discharged in whole or in part by filing with the Minister a certificate of discharge signed by the mortgagee, trustee, or assignee, his or its executors, administrators, successors or assigns, and, except in the case of a certificate of discharge executed by a corporation under its corporate seal, the certificate shall be accompanied by the affidavit of an attesting witness of the execution thereof, but, in case a mortgage, charge or assignment of book debts has been assigned, no certificate of discharge by an assignee shall be filed until the assignment has been filed.

(3) In the case of a mortgage, charge or assignment contained in bonds, debentures or any series thereof, or in debenture stock, not secured by a separate instrument, the Minister may, on evidence being given to his satisfaction that the debt for which the mortgage, charge or assignment was given as security has been paid or satisfied, enter a memorandum of discharge in the register, and shall, if required, furnish the corporation with a copy thereof. ^{Discharge when charge on face of securities}

(4) The Minister shall note the fact of such assignment or discharge against each entry in the books of his office respecting the filing of the instrument or affidavit, and shall make a like notation upon that instrument or upon the affidavit filed under subsection 3 (2). R.S.O. 1970, c. 88, s. 9. ^{Entry of assignment or discharge}

10.—(1) Upon payment of the prescribed fees, the Minister shall give a certificate of the filing of any instrument or affidavit under this Act, and of the day and hour of the filing, and a certificate as to prior registrations, if any, of mortgages, charges or assignments created or made by the mortgagor or assignor. R.S.O. 1970, c. 88, s. 10 (1); 1971 (2nd sess.), c. 8, s. 1 (1). ^{Certificate of filing}

(2) Every copy of a document filed under this Act, certified by the Minister to be a true copy, shall be received in evidence in any action, prosecution or other proceeding 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 such copy. ^{Certifying copies of documents}

Execution
of certifi-
cates

(3) A certificate issued under this section shall be under the seal of the Minister and shall be signed by him or by such officer of the Ministry as is designated by the Lieutenant Governor in Council by regulation.

Certificate
as evidence

(4) A certificate purporting to be under the seal of the Minister and signed by a person authorized by or under subsection (3) shall be received in evidence in any action, prosecution or other proceeding as *prima facie* proof of the facts so certified without proof of the seal or of the signature or the official position of the person appearing to have signed the certificate. 1971 (2nd sess.), c. 8, s. 1 (2); 1972, c. 1, s. 1.

Searches

11. Upon payment of the prescribed fees, every person shall have access to and is entitled to inspect the books of the Minister containing records or entries of mortgages, charges or assignments or documents registered or filed under this Act, and no person shall be required as a condition of his right thereto to disclose the name of the person in respect of whom such access or inspection is sought, and the Minister shall, upon request, accompanied by payment of the prescribed fees, produce for inspection any mortgage, charge, assignment or document so registered or filed. R.S.O. 1970, c. 88, s. 11.

Fees

12. For services under this Act, the Minister is entitled to receive such fees as the Lieutenant Governor in Council may prescribe. R.S.O. 1970, c. 88, s. 12.

Application
of Act

13. This Act applies only to mortgages or charges of chattels or assignments of book debts executed on or after the 30th day of May, 1932. R.S.O. 1970, c. 88, s. 13.

Charges
created
before
passing
of Act

14. A mortgage or charge of chattels or an assignment of book debts made before the 30th day of May, 1932, which if it had been executed on or after the 30th day of May, 1932, would be within this Act and which was properly registered or filed under any Act respecting the same, shall, notwithstanding anything contained in that Act or any other Act, not be required to be renewed. R.S.O. 1970, c. 88, s. 14.

R.S.O. 1980,
c. 375
not to apply

15. The *Personal Property Security Act* does not apply to a mortgage, charge or assignment whose registration is provided for in this Act. R.S.O. 1970, c. 88, s. 15.