

1914

c 175 Money-Lenders Act

Ontario

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CHAPTER 175.

An Act respecting Money-Lending.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PART I.

PRELIMINARY.

- Short title. 1. This Act may be cited as *The Ontario Money-Lenders Act*. 2 Geo. V. c. 30, s. 1.
- Interpretation. 2. In this Act:—
- "Cost of the loan." (a) "Cost of the loan" shall mean the whole cost to the debtor of money lent and shall include interest, discount, subscription, premium, dues, bonus, commission, brokerage fees and charges, but not actual lawful and necessary disbursements made to a Registrar of Deeds, a Master or Local Master of Titles, a Clerk of a County or District Court, a Sheriff or a Treasurer of a municipality;
- "Court." (b) "Court" shall mean a Court having jurisdiction in an action for the recovery of a debt or money demand to the amount claimed by a creditor in respect of money lent;
- "Creditor." (c) "Creditor" shall include the person advancing money lent and the assignee of any claim arising or security given in respect of money lent;
- "Debtor." (d) "Debtor" shall mean and include a person to whom or on whose account money lent is advanced, and every surety and endorser or other person liable for the repayment of money lent or upon any agreement or collateral or other security given in respect thereof;
- "Money-lender." (e) "Money-lender" shall mean a person whose business is that of money-lending or who carries on that business in connection with any other business, whether the money lent is his own or that of any other person, or who advertises or holds himself out as or who by any notice or sign indicates that he is a money lender;

(f) "Money lent" shall include money advanced on account of any person in any transaction which, whatever its form may be, is substantially one of money-lending or securing the repayment of money so advanced; ^{"Money lent."}

(g) "Registrar" shall mean the Registrar of Loan Corporations for Ontario. 2 Geo. V. c. 30, s. 2. ^{"Registrar."}

3. Every prosecution under this Act shall be taken before a police magistrate or two justices of the peace under *The Ontario Summary Convictions Act*. 2 Geo. V. c. 30, s. 3. ^{Prosecutions. Rev. Stat. c. 90.}

PART II.

RELIEF AGAINST UNCONSCIONABLE TRANSACTIONS.

4. Where, in respect of money lent, the Court finds that having regard to the risk and to all the circumstances the cost of the loan is excessive and that the transaction is harsh and unconscionable the Court may— ^{Jurisdiction of Courts. Imp. Act, 63-64 Vict. c. 51, s. 1.}

- (a) reopen the transaction and take an account between the creditor and the debtor; ^{Re-opening account.}
- (b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of the principal and the cost of the loan; ^{Re-opening former settlements.}
- (c) order the creditor to repay any such excess if the same has been paid or allowed on account by the debtor; ^{Order for repayment of excess.}
- (d) set aside either wholly or in part or revise or alter any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order him to indemnify the debtor. 2 Geo. V. c. 30, s. 5. ^{Setting aside or revising contract.}

5. The powers conferred by section 4 may be exercised in— ^{How powers of Court may be invoked.}

- (a) an action or proceeding by a creditor for the recovery of money lent; ^{In action by creditor.}
- (b) an action by the debtor notwithstanding any provision or agreement to the contrary, and notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived; ^{In action by debtor.}

In other proceedings.

(c) an action or proceeding in which the amount due or to become due in respect of money lent is in question. 2 Geo. V. c. 30, s. 6.

Application of Part II.

6. This Part shall apply in respect of money lent after the commencement of this Act, and to any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act. 2 Geo. V. c. 30, s. 7.

Saving *bona fide* holder for value, and existing jurisdiction.

7. Nothing in this Part shall affect the rights of a *bona fide* assignee or holder for value without notice, or derogate from the existing powers or jurisdiction of any Court. 2 Geo. V. c. 30, s. 8.

PART III.

MONEY-LENDERS.

Not to affect.

8. Sections 9 to 15 shall not apply to a—

Pawnbrokers.

(a) pawnbroker in respect of business carried on by him in accordance with the provisions of *The Pawnbrokers' Act*;

Rev. Stat. c. 176.

Insurance and loan corporations.

(b) corporation registered under *The Ontario Insurance Act* or *The Loan and Trust Corporations Act*;

Rev. Stat. cc. 183, 184.

Banks.

(c) chartered bank of Canada;

Persons lending incidentally in their business.

(d) person carrying on any business, not having for its primary object the lending of money, in the course of which and for the purposes of which he lends money;

Solicitors investing money for clients.

(e) solicitor lending the money of a client and receiving for his services only solicitor's fees and disbursements, and a reasonable commission for procuring the investment, and who is not otherwise a party to the transaction or a sharer in the profits thereof, or liable to bear any loss arising therefrom; or

Trustees, etc.

(f) trustee, executor, guardian, committee or person acting in any other fiduciary capacity and lending money in his hands in that capacity, and receiving therefor only the remuneration fixed by the instrument creating the trust or appointing him, or by the order of a Court, and who is not a sharer in the profits of the investment or liable to bear any loss arising therefrom. 2 Geo. V. c. 30, s. 9.

Impl. Act, 63-64 V. c. 51, s. 6.

Registration of money lenders.

9.—(1) Every money-lender before carrying on the business of money-lending shall register as a money-lender with the Registrar.

(2) The Registrar shall keep in his office a register to be called "The Money-Lenders' Register," in which he shall enter the name of every money-lender, the name under which the business of money-lending is to be carried on and the address, or all the addresses if more than one, at which it is carried on.

(3) The registration shall continue in force for one year from the date thereof. 2 Geo. V. c. 30, s. 10.

10. No corporation shall be registered as a money-lender unless its head office is in Ontario and the directors or the members of the governing body thereof, by whatever name known, reside in Ontario. 2 Geo. V. c. 30, s. 11.

11. Subject to the provisions of subsection 1 of section 9, no person shall,

- (a) carry on business as a money-lender without being registered;
- (b) carry on such business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address;
- (c) enter into any agreement in the course of his business as a money-lender with respect to the advance of money lent, or take any security for money lent in the course of such business otherwise than in his registered name;
- (d) on reasonable request, and tender of a reasonable sum for expenses, fail to furnish a debtor for money lent with a copy of any document relating to the transaction. 2 Geo. V. c. 30, s. 12.

12.—(1) Every person who violates the provisions of section 11 shall incur a penalty not exceeding \$200, and on conviction for a second or any subsequent offence shall be liable to imprisonment for a period not exceeding six months, or, in the case of a corporation, shall incur a penalty not exceeding \$1,000.

(2) No prosecution for an offence under this section shall be commenced without the consent of the Attorney General or the Crown Attorney for the County or District in which the offence is committed. 2 Geo. V. c. 30, s. 13.

13.—(1) Every money-lender and every manager, agent or clerk of a money-lender, and every director, manager or other officer of a corporation carrying on the business of a money-lender, who by any false, misleading or deceptive statement, representation or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to be responsible for

Imp. Act, 63,
64 V. c. 51,
s. 4.

the repayment thereof, or to agree to the terms of any transaction with respect to money lent, shall incur a penalty not exceeding \$500.

Cancellation
or suspension
of registry.

(2) The Lieutenant-Governor in Council may direct the cancellation or suspension of the registration of any person convicted of an offence under subsection 1. 2 Geo. V. c. 30, s. 14.

Burden of
proof of
Registration.

14. In every prosecution under this Part the burden of proof of registration shall be upon the person charged. 2 Geo. V. c. 30, s. 15.

Regulations.

15. The Lieutenant-Governor in Council may make such regulations as he may deem expedient respecting the mode of registration, the fee to be paid thereon, and the inspection of the register and the fees payable therefor, and generally for better carrying out the provisions of this Part. 2 Geo. v. c. 30, s. 16.
