
The
Uniform Reviewable Transactions Act
with Commentary

**Project on Reform of Fraudulent Conveyances and
Fraudulent Preferences Law
Final Report of the Working Group**

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Reviewable Transactions Act in English

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Reviewable Transactions Act in French

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Amendments to the *Uniform Reviewable Transactions Act* and Commentary as previously circulated to the delegates

7(1) Except as otherwise provided in this Act, an order for relief may be made under this Part

9(6) An order for relief must not be granted against a director who, in proceedings taken under the *Canada Business Corporations Act* or the [*insert name of provincial or territorial business corporations statute*] by the corporation or another person, has been ordered

(a) to restore to the corporation any amount paid or the value of property distributed under the transaction; or

(b) ~~to satisfy an order for contribution in favour of~~ to make a payment to satisfy a right of contribution held by another director who has been ordered to restore to the corporation any amount paid or the value of property distributed under the transaction

Amendments to the *Uniform Reviewable Transactions Act*
and Commentary as previously circulated to the delegates

13(1) Except as otherwise provided in this Act, A an order for relief may be made under this Part in relation to a creditor transaction if

Introduction: the *Reviewable Transactions Act* & Judgment Enforcement Law

- Judgment enforcement law – provides the means by which unsecured claims may be satisfied through liquidation of the debtor's property.
- The *Reviewable Transactions Act*

PART II Transactions at Undervalue & Fraudulent

Transactions: Provides relief to creditors when a debtor transfers away property or value in a manner that diminishes the debtor's estate – i.e. the property available through judgment enforcement law to satisfy creditors' claims is reduced.

PART III Preferential Creditor Transactions: Provides relief to creditors when a debtor pays one creditor leaving others unpaid – i.e. creditors' right to share pro rata in the debtor's property under the creditor-sharing rules of judgment enforcement law is undermined – the paid creditor is preferred.

Structure of the Act - Overview

Part I: General

- Definitions
- Provisions that apply to all transactions – i.e. Part II and Part III

Part II: Transactions at Undervalue & Fraudulent Transactions

- Transactions reducing the asset base available to unsecured creditors
- Includes grounds for relief & rules of standing

Part III: Preferential Creditor Transactions

- A payment or provision of security for payment to a creditor that undermines creditor sharing rights
- Includes grounds for relief & rules of standing

Part IV: Orders & Remedies

- Order for recovery against transferee when grounds for relief are established under Part II or Part III

Part V: Repeals

Part I: Definitions s. 1(1)

“transaction” means the conferral of a benefit and includes

- (a) the conferral of an interest in existing property or property to be acquired in the future, whether or not the property is exempt property in the hands of the transferor, including a settlement on the transferor as a trustee under a trust,
 - (b) the provision of services,
 - (c) the payment of money,
 - (d) the release of an interest or obligation,
 - (e) the conferral of a security interest, charge, lien or encumbrance,
 - (f) the conferral of a licence, quota, right to use or right to payment . . . etc.
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Part I: Definitions

“creditor transaction” means a **transaction** under which a debtor directly or indirectly benefits a creditor by satisfying a claim in whole or in part or by providing security for the satisfaction of a claim in whole or in part but does not include

(a) *[a payment or the conferral of a security interest where the transaction does not diminish the net value of the debtor’s estate available to creditors], or*

(b) a transaction effected

(i) by obtaining or enforcing a court order, or

(ii) by operation of law;

Part I: Definitions

“**spousal transaction**” means **a transaction** in which the parties are or were spouses and that is effected by

(a) a separation agreement, or

(b) a court order for the division of property and financial resources or for support resulting from the breakdown of the parties’ relationship;

[And see definition of “spouse” and “separation agreement”.]

Definitions & Structure

Part III - “creditor transaction” only

Part II - “transaction” that is not a “creditor transaction”

- includes “spousal transaction”, but subject to special rules
- exception: “spousal transaction” that is a “creditor transaction” is subject to Part II, not Part III

Part I and Part IV provisions that apply to a “transaction” apply to all transactions – i.e. those falling within both Part II and Part III – unless specifically limited

Part II: Transactions at Undervalue & Fraudulent Transactions

Overview

- s. 6 standing, i.e. who may apply for relief
- s. 7 grounds for relief generally
- s. 8 grounds for relief in special cases
- s. 9 special rules for transactions involving certain payments by incorporated debtors
- s. 10 creditor transactions excluded from Part II, except for creditor transactions that are spousal transactions
- s. 11 persons against whom an order may be granted

grounds for relief



Part II: Grounds for Relief Generally – s. 7(1)

7(1)(a) insolvency + conspicuously inadequate or no consideration given by transferee

7(1) Except as otherwise provided in this Act, an order for relief may be made under this Part

(a) in relation to a transaction in which the debtor receives no consideration or consideration worth conspicuously less than the value conferred by the debtor under the transaction, if the debtor

(i) is insolvent at the time of the transaction,

(ii) becomes insolvent as a result of the transaction, or

(iii) enters into the transaction in circumstances in which the debtor is demonstrably at risk of insolvency and the debtor becomes insolvent within 6 months after the date of the transaction;

Part II: Grounds for Relief Generally – s. 7(1)

7(1)(b) Debtor intends* to and does defeat creditors + conspicuously inadequate or no consideration given by transferee

7(1) Except as otherwise provided in this Act, an order for relief may be made under this Part

(b) in relation to a transaction in which the debtor's primary intention is to hinder or defeat the right of a creditor or creditors to recover in whole or in part claims that, at the time of the transaction, were existing or were reasonably foreseeable, if

(i) the ability of the creditor or creditors to recover their claims is materially hindered as a result of the transaction, and

(ii) the debtor receives no consideration or consideration worth conspicuously less than the value conferred by the debtor under the transaction; or

* See s. 7(3) re: proof of intention

Part II: Grounds for Relief Generally – s. 7(1)

7(1)(c) Debtor intends* to and does defeat creditors + transferee intends* to facilitate Debtor's plan

7(1) Except as otherwise provided in this Act, an order for relief may be made under this Part

(c) in relation to a transaction in which the debtor's primary intention is to hinder or defeat the right of a creditor or creditors to recover in whole or in part claims that, at the time of the transaction, were existing or were reasonably foreseeable, if

(i) the ability of the creditor or creditors to recover their claims is materially hindered as a result of the transaction, and

(ii) the transferee knew of the debtor's intention and intended to assist the debtor by entering into the transaction.

* See s. 7(3) re: proof of intention

Part II: Relief in Special Cases – s. 8

Transactions that may be challenged only under s. 7(1)(c) – i.e. Debtor intends to and does defeat creditors + transferee intends to facilitate Debtor's plan

8(2) An order for relief may be made in relation to the following transactions only if the grounds for relief mentioned in clause 7(1)(c) are established:

- (a) a spousal transaction;
- (b) a transaction involving the refusal by a debtor to act under a power of appointment to confer an interest in property on the debtor or the disclaimer of an interest in property before the interest has vested; or
- (c) a transaction involving the assumption of a contingent obligation* by the debtor.

* See s. 8(1) re: meaning of “contingent obligation”.

Part II: Relief in Special Cases – s. 8

Transactions effected by order of the court or operation of law may be challenged only under s. 7(1)(b) or (c) – i.e. Debtor intends to defeat creditors + lack of consideration given or shared intention by Transferee

8(3) If a transaction, other than a spousal transaction, is effected by a court order or by operation of law, an order for relief may be made only if the grounds for relief mentioned in clause 7(1)(b) or (c) are established.

Part II: Transactions involving Corporate Payments – s. 9

Debtor corporation makes a payment to shareholders through declaration of a dividend or through redemption or repurchase of the corporation's shares

1. Payment to shareholder is a “transaction” subject to s. 7(1) general grounds for relief – i.e. an order may be made against the shareholder.
 2. Director who authorizes payment may be subject to an order in favour of creditors under s. 9(2) if an order against the shareholder is not satisfied within 6 months.
 3. Director is not liable if he/she would not be liable to the corporation under corporations law or if he/she reasonably believed actions were legal under that law.
 4. Shareholders and directors sheltered from double liability under corporations legislation and *Reviewable Transactions Act*.
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Part II: Who may Apply for Relief – s. 6

In any case – a person who holds a claim at the date of the transaction

6(1) An application for an order for relief under this Part may be made by

(a) a person who holds a claim* that existed at the date of the transaction that is the subject of the application for relief; and

And where Debtor intends to defeat an existing or reasonably foreseeable claim – a person who holds a claim that arose after the date of the transaction (but subject to limitations rules so claim must ordinarily arise within 1 year of transaction)

(b) in the case of relief claimed on the grounds of relief mentioned in clause 7(1)(b) or (c), a person who holds a claim* that arose after the date of the transaction that is the subject of the application for relief.

* See s. 1(1) definition of “claim” and see s. 6(2) re: a person who has commenced legal proceedings against a debtor

Part II: Persons against whom Relief may be Granted – s. 11

The transferee

11(1) If grounds for relief mentioned in section 7 are established, the court may make an order for relief against either or both of the following:

(a) a transferee* who received a benefit from the debtor under the transaction;

* See definition of “transferee” in s. 1(1)

A subsequent transferee, but not a person who gave more than conspicuously inadequate consideration and who does not know the circumstances of the original transaction

(b) subject to subsection (2), a person who has received all or part of the benefit conferred under the transaction from a person described in clause (a) or a subsequent transferee.

Part III: Preferential Creditor Transactions

Overview

- s. 12 standing, i.e. who may apply for relief = Part II s. 6
 - s. 13 grounds for relief = Part II ss. 7, 8 & 9
 - s. 14 spousal transactions excluded from this Part = Part II s. 10
 - s. 15 who is subject to an order for relief = Part II s. 11
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Part III: Grounds for Relief – s. 13

Debtor is or is nearly insolvent + not at arm's length with transferee creditor

13(1) Except as otherwise provided in this Act, an order for relief may be made under this Part in relation to a creditor transaction if

(a) the creditor receiving the benefit conferred under the creditor transaction is not dealing at arm's length with the debtor; and

(b) the debtor

(i) is insolvent at the time of the creditor transaction,

(ii) becomes insolvent as a result of the creditor transaction, or

(iii) enters into the creditor transaction in circumstances in which the debtor is demonstrably at risk of insolvency and the debtor becomes insolvent within 6 months after the date of the creditor transaction.

Part III: Grounds for Relief – s. 13

ss. 13(2) – (5) incorporate or parallel corresponding BIA provisions

(2) Persons who are related to each other are presumed not to deal with each other at arm's length while so related but the presumption may be rebutted by proof that they are dealing at arm's length.

(3) It is a question of fact whether persons not related to one another were at a particular time dealing with each other at arm's length.

(4) Persons are related to each other when they are related to each other for the purposes of the *Bankruptcy and Insolvency Act* (Canada).

(5) Persons are deemed to be dealing with each other at arm's length with respect to the following:

(a) a margin deposit

(6) *[BIA definitions]*

Transfer to any Creditor that Exceeds Debt is a “transaction” under Part II – s. 10(1)

Ajax owes Buildco \$1000 but pays Buildco \$2000.

The \$1000 overpayment may be challenged under Part II whether or not Ajax and Buildco are at arm's length.

10(1) Subject to subsection (2), if a transaction is a creditor transaction, an order for relief may be made under this Part only to the extent that the value of the benefit conferred on the creditor exceeds the claim satisfied or secured by the creditor transaction.

Part III: Who may Apply for Relief – s. 12

A person who holds a claim at the date of the transaction

12(1) Subject to subsection (2), an application for an order for relief under this Part may be made by a person who holds a claim* that existed at the date of the creditor transaction that is the subject of the application for relief.

Special rule for a person whose claim is contingent (e.g. has a potential right of recovery against Debtor by virtue of payment under a guarantee)

(2) If a claim* is a right to satisfaction of an obligation that is contingent on a future uncertain event, the person who holds the claim may apply for relief only if, at the date of the creditor transaction that is the subject of the application for relief, it was reasonably foreseeable that the event would occur.

* See definition of “claim” s. 1(1)

Part III: Spousal Transactions Excluded from this Part – s. 14

14 This Part does not apply to a spousal transaction, notwithstanding that the spousal transaction may be a creditor transaction in whole or in part.

But a spousal transaction that is a creditor transaction may be challenged under Part II grounds for spousal transactions

10(2) This Part applies to a spousal transaction, whether or not the spousal transaction is a creditor transaction in whole or in part.

Part III: Persons against whom Relief may be Granted – s. 15

The transferee creditor

15 If grounds for relief under this Part are established, the court may make an order for relief against either or both of the following:

- (a) the creditor receiving the benefit conferred under the creditor transaction;

A subsequent transferee

- (b) *[a subsequent transferee who received the benefit where each transaction under which the benefit is transferred is not at arm's length]*

e.g. Debtor → A → B → C

C is liable if each → is not at arm's length

Part I: Rules of General Application – ss. 3 & 4

Effect

1. **Limit relief:** Grounds for relief in relation to a “transaction” exist under Part II or III but provisions in ss. 3 and 4 may preclude or restrict relief in certain cases.
 2. **Clarify availability of relief:** Provisions in ss. 3 or 4 counter an argument that relief is precluded by a feature of the transaction or by the character of the applicant’s claim.
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Part I: Rules of General Application – ss. 3 & 4

Section 3 defines the rights of secured creditors in relation to any transaction entered into by their debtor

1. LIMITATION: secured creditor may seek relief only to the extent the claim is unsecured

3(1) A creditor whose claim is secured by a security interest in property of the debtor may apply for an order for relief under this Act but only with respect to the amount of the claim, if any, that exceeds the value of the property against which the security interest may be enforced.

Debtor owes SC \$5,000. SC holds a security interest in collateral worth \$3,000. Debtor transfers property (other than the collateral) to transferee.

SC may seek relief under the Act to the extent of \$2,000.

If debt owed to SC were \$3,000 or less, SC is fully secured and would have no right to relief under the Act

Part I: Rules of General Application – ss. 3 & 4

Section 3 defines the rights of secured creditors ...

2. CLARIFICATION: If property transferred is collateral and the transaction subordinates the security interest, secured creditor is treated as unsecured

3(2) If a debtor transfers property that is subject to a security interest and another Act provides that the security interest is subordinated to the interest of the transferee or that the transferee takes the property free of the security interest,

(a) the property is not to be considered property against which the security interest may be enforced for the purposes of subsection (1) in proceedings relating to that transfer or to another transaction; and

(b) if an order for relief is made under this Act in relation to the property transferred, whether in proceedings by the creditor or by another person, the creditor may not assert a claim to the property on the basis of the security interest.

Part I: Rules of General Application – ss. 3 & 4

Section 4 defines the rights of ANY creditor when transaction involves transfer of property that is subject to a security interest or a judgment enforcement device

1. CLARIFICATION: If grounds for relief exist, relief may be granted whether or not the security interest or judgment enforcement device is subordinated or cut off as a result of the transfer.

4(1) An application for an order for relief may be made in relation to a transaction that involves property that is subject to a security interest or a [writ, enforcement charge or judgment, depending on the legislation of the enacting jurisdiction] even if under another Act

(a) the security interest or the [writ, enforcement charge or judgment] is subordinated to the interest of the transferee; or

(b) the transferee takes the property free of the security interest or [writ, enforcement charge or judgment].

Part I: Rules of General Application – ss. 3 & 4

Section 4 defines the rights of ANY creditor when transaction involves transfer of property that is subject to a security interest or a judgment enforcement device

2. LIMITATION: If transaction involves transfer of property subject to a security interest, no right to relief if the rights of unsecured creditors are unaffected – i.e. property could not have been reached if transfer had not occurred.

4(2) If a transaction involves property that is subject to a security interest at the date of the transaction, an order for relief may be made only if the transaction reduces the amount or value of property that would have been available to unsecured creditors under judgment enforcement measures if the transaction had not occurred.

Part II: Rules of General Application – s. 5

Ajax owes \$10,000 to Buildco. Buildco has a “claim” against Ajax [see definition s. 1(1)] but does not have judgment against Ajax. Ajax transfers property to Construx. Can Buildco commence proceedings under the Act? Can Buildco obtain relief against Construx?

Claimant may apply for relief without judgment on claim against Debtor

5(1) An application for an order for relief under this Act may be made whether or not the person who applies for relief has commenced proceedings or obtained a judgment against the debtor in relation to a claim.

But Claimant must obtain judgment before recovering relief against Transferee

(2) A person who applies for an order for relief under this Act is entitled to a benefit under an order for relief only if a judgment has been granted against the debtor on the person’s claim.

Part IV: Orders and Remedies

1. Provides a general statement of principle describing the result to be achieved – ss. 16 and 17

Relief under Part II – restoration of value lost to creditors

16 In granting relief under Part II, the court shall make any orders that it considers necessary to make available to the person who applies for relief the value conferred on the transferee under the transaction to the extent of that person's claim against the debtor, taking into account the provisions of section 18.

Relief under Part III – reversal of payment (or provision of security)

17(1) In granting relief under Part III, the court shall make any orders that it considers necessary to set aside the creditor transaction, taking into account the provisions of section 18.

Part IV: Orders and Remedies

2. Provides a non-exclusive but comprehensive list of types of order that may be made to achieve the prescribed result – s. 18(2)

18(2) In making an order for relief, the court may make an order or orders that may be required to achieve the result indicated in sections 16 and 17, including

- (a) an order vesting in the debtor, or in another person, property that is the subject of the transaction or the proceeds of the property;
 - (b) an order declaring that property that is the subject of the transaction or the proceeds of that property be subject to judgment enforcement measures in the hands of the transferee;
 - (c) an order directing that property that is the subject of the transaction or the proceeds of the property be sold and the money realized on the sale distributed as the court may direct; etc.
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Part IV: Orders and Remedies

- 3. Directs the court to take certain factors into account in framing the order for relief – s. 18(4) – (6).**
- 18(4) In granting relief under Part II, court to consider value given by the transferee, investments made by the transferee in property transferred under a transaction or in generation of income, actions taken in reasonable reliance on finality of the transaction.
 - 18(6) In granting relief under Part III, court to consider investments made by the transferee in property transferred under a transaction.
 - If court orders property revested in Debtor, court may grant security interest to transferee to secure right to recover consideration given or investments made. See s. 19 for priority rules.
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Part IV: Orders and Remedies

4. Ensures that the creditor sharing rules of judgment enforcement law are engaged regardless of the form of order - s. 18(3)

18(3) An order for relief must be made in those terms or subject to those conditions that the court considers necessary to make money payable or the value of property to be transferred under the order available for distribution to the persons qualified under [insert name of province's or territory's creditors' relief statute] to share in the proceeds of judgment enforcement measures taken against the debtor.

Part IV: Orders and Remedies

5. Provides limitation of action rules – s. 24

1 year from date of the transaction

24(1) Subject to subsections (2) and (3), no application for an order for relief is to be commenced more than 1 year after the date of a transaction.*

Unless transferee conceals or assists in concealment of the transaction or material facts – 1 year from time transaction is known but not more than 5 years after date of the transaction

(2) If the transferee conceals or assists in the concealment of the transaction that is the subject of the application for relief or of facts material to the grounds for relief, the 1-year period mentioned in subsection (1) commences at the time that the person making the application knew of the transaction or the material facts, but no application for relief is to be commenced more than 5 years from the date of the transaction.*

* See s. 1(3) for date of the transaction.

Part IV: Orders and Remedies

Also

- s. 20 Special terms where an order for relief affects a transfer of exempt property, if the debtor continues to use the property in the manner attracting the exemption
 - s. 21 Provisions of Part IV to be adapted as required where order is made against a subsequent transferee
 - s. 22 Special provision for orders relating to corporate payments – i.e. declaration of dividends or redemption or repurchase of the corporation's shares
 - s. 23 Provides generally for injunctive relief
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Questions?
