

OFFICE CONSOLIDATION

THE FARMERS' CREDITORS ARRANGEMENT
ACT
CHAPTER 53, 1934

As amended by Chapter 20, 1935

WHEREAS in view of the depressed state of agriculture the present indebtedness of many farmers is beyond their capacity to pay; and whereas it is essential in the interest of the Dominion to retain the farmers on the land as efficient producers and for such purpose it is necessary to provide means whereby compromises or rearrangements may be effected of debts of farmers who are unable to pay: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Farmers' Creditors Arrangement Act, 1934*. Short title

BANKRUPTCY AND INSOLVENCY PROVISIONS.

2. (1) In this Act unless the context otherwise requires or implies, the expression
- (a) "assignment" means an assignment made under the *Bankruptcy Act* by a farmer; Interpretation.
"Assignment,"
"Petition,"
"Composition."
 - (b) "Board" means a board of review established under this Act; "Board."
 - (c) "court" means the court having jurisdiction under this Act; "Court."
 - (d) "creditor" includes a secured creditor; "Creditor."
 - (e) "district" means a judicial district of a province to which this Act applies; "District."
 - (f) "farmer" means a person whose principal occupation consists in farming or the tillage of the soil; "Farmer."
 - (g) "mortgage" includes a hypothec and also a deed of sale with a right of redemption; "Mortgage."
 - (h) "Official Receiver" means an Official Receiver appointed under this Act; "Official Receiver."
 - (i) "petition" means a petition in bankruptcy against a farmer; "Petition."
 - (j) "proposal" means a proposal for a composition, extension of time or scheme of arrangement made by a farmer hereunder. "Proposal."

Application
of *Bank-
ruptcy Act*.
R.S., c. 11.

(2) Unless it is otherwise provided or the context otherwise requires, expressions contained in this Act shall have the same meaning as in the *Bankruptcy Act*, and this Act shall be read and construed as one with the *Bankruptcy Act*, but shall have full force and effect notwithstanding anything contained in the *Bankruptcy Act*, and the provisions of the *Bankruptcy Act* and Bankruptcy Rules shall, except as in this Act otherwise provided, apply *mutatis mutandis* in the case of proceedings hereunder including meetings of creditors.

When
proposal
has been
approved.

(3) In any case where the affairs of a farmer have been arranged by a proposal approved by the court or confirmed by the Board as hereinafter provided, Part I of the *Bankruptcy Act* shall notwithstanding section seven thereof thereafter apply to such farmer but only failure on the part of such farmer to carry out any of the terms of the proposal shall be deemed to be an act of bankruptcy. Provided that such failure shall not be deemed an act of bankruptcy if, in the opinion of the Court, such act was due to causes beyond the control of such farmer.

Official
Receivers.

3. (1) The Governor in Council may appoint an Official Receiver or Receivers in each county or district or for any number of counties or districts of any province to which this Act applies as he may deem necessary or expedient.

In county,
etc., where
farmer
resides.

(2) In the case of an assignment or petition an Official Receiver in the county or district where the farmer resides shall be the Official Receiver for the purposes of this Act and of the *Bankruptcy Act*.

Appointment

(3) The Governor in Council may appoint any person to be an Official Receiver under this Act including the holder of any other office, whether Dominion or provincial, and the holder of any such office shall, notwithstanding anything contained in any other statute or law, be bound to perform the functions and duties of the Official Receiver.

Duties of
Official
Receiver.

(4) The Official Receiver shall, in the case of an assignment or petition by a farmer, perform the functions and duties of the Official Receiver, custodian and trustee under the *Bankruptcy Act* and the meetings of creditors shall be held at his office.

Provisions
relating to
gazetting
not to apply.

4. The provisions of the *Bankruptcy Act* relating to gazetting shall not apply in the case of an assignment or petition, and the provisions of the said Act requiring Official Receivers to keep the *Canada Gazette* on file shall not apply in the case of Official Receivers appointed under this Act.

Jurisdiction.

5. (1) In the case of an assignment, petition or proposal, in the province of Quebec, the Superior Court of the judicial district where the farmer resides, and in other provinces, the county or district court, shall have exclusive jurisdiction in bankruptcy subject to appeal as provided in section one hundred and seventy-four of the *Bankruptcy Act*.

(2) The Superior, county or district court judge shall exercise the powers vested in the registrar by section one hundred and fifty-nine of the *Bankruptcy Act*. Powers of judge.

(3) The prothonotary of the Superior Court and the clerk of the county or district court shall perform all the duties of the registrar, except his judicial duties. Duties of clerk

5A. No proposal under this Act nor the approval or confirmation thereof shall release any person who, under the *Bankruptcy Act*, would not be released by an Order of Discharge if the debtor had been adjudged bankrupt, nor shall the approval or confirmation of a proposal release any security given by any third person. 1935, Ch. 20, Am. Restriction as to release.

COMPOSITIONS.

6. (1) A farmer who is unable to meet his liabilities as they become due may make a proposal for a composition, extension of time or scheme of arrangement either before or after an assignment has been made. If farmer unable to meet his liabilities.

(2) Such proposal shall be filed with the Official Receiver who shall forthwith convene a meeting of the creditors and perform the duties and functions required by the *Bankruptcy Act* to be performed by a trustee in the case of a proposal for a composition, extension of time or scheme of arrangement. Duties of Official Receiver.

7. A proposal may provide for a compromise or an extension of time or a scheme of arrangement in relation to a debt owing to a secured creditor, or in relation to a debt owing to a person who has acquired movable or immovable property subject to a right of redemption, but in that event the concurrence of the secured creditor or such person, shall be required, except in the case of a proposal formulated and confirmed by the Board of Review as hereinafter provided. In case of a debt owing to a secured creditor.

8. Whenever a proposal relates to the rights of a secured creditor or of a person who has acquired movable or immovable property subject to a right of redemption, such creditor or person may value his security and shall be entitled to vote only in respect of the balance of his claim after deducting the amount of his valuation; provided, however, that no proposal shall be approved by the court which provides for the payment to such secured creditor or person on account of such security of any amount in excess of his valuation, or for granting to him any new security for an amount in excess of his valuation. Valuation of security of secured creditor.

9. Subsections three and five of section sixteen of the *Bankruptcy Act* shall not apply in the case of a proposal for a composition, extension of time or scheme of arrangement made by any farmer. Certain provisions of the Bankruptcy Act not to apply.

Farmer to execute necessary instruments.

10. Whenever a proposal has been approved by the court or whenever a proposal has been formulated and confirmed by the Board, as hereinafter provided, the court may order the farmer to execute any mortgage, conveyance or other instrument necessary to give effect to the proposal.

Stay of proceedings.

R.S. c. 11.

11. (1) On the filing with the Official Receiver of a proposal, no creditor whether secured or unsecured, shall have any remedy against the property or person of the debtor, or shall commence or continue any proceedings under the *Bankruptcy Act*, or any action, execution or other proceedings for the recovery of a debt provable in bankruptcy, or the realization of any security unless with leave of the court and on such terms as the court may impose: Provided, however, that the stay of proceedings herein provided shall not be effective for more than ninety days from the date of filing of the proposal with the Official Receiver, unless the court makes one or more orders extending the time for the purpose of any proceedings in connection with the proposal. 1935, Ch. 20, Am.

Preservation of property.

(2) On a proposal being filed the property of the debtor shall be deemed to be under the authority of the court pending the final disposition of any proceedings in connection with the proposal and the court may make such order as it deems necessary for the preservation of such property.

PROVINCIAL BOARDS OF REVIEW.

Board of Review.

12. (1) The Governor in Council may, whenever he considers it expedient, establish in any province a Board of Review which shall exercise in such province the jurisdiction hereinafter provided.

Appointment of Commissioners.

(2) A Board shall consist of a Chief Commissioner and two Commissioners who shall be appointed by the Governor in Council and shall hold office during pleasure and shall receive such remuneration as the Governor in Council may provide.

Chief Commissioner to be a judge.

(3) The Chief Commissioner shall be a judge of the court of the province invested with original or appellate jurisdiction in bankruptcy by the *Bankruptcy Act*, and one Commissioner shall be appointed as a representative of creditors and one Commissioner shall be appointed as a representative of debtors. In the event of any Commissioner other than the Chief Commissioner being unable to hear and deal with any case for any reason considered sufficient by the remaining Commissioners, then the remaining Commissioners shall name an *ad hoc* Commissioner to hear and deal with such case with all the powers of the Commissioner whose place he takes. In the event of the Chief Commissioner being unable to hear and deal with any case on the request of the other Commissioners the Minister shall name an *ad hoc* Chief Commissioner with all the powers of the Chief Commissioner. 1935, Ch. 20, Am.

(4) In any case where the Official Receiver reports that a farmer has made a proposal but that no proposal has been approved by the creditors, the Board shall, on the written request of a creditor or of the debtor, endeavour to formulate an acceptable proposal to be submitted to the creditors and the debtor, and the Board shall consider representations on the part of those interested. Proposal.

(5) If any such proposal formulated by the Board is approved by the creditors and the debtor, it shall be filed in the court and shall be binding on the debtor and all the creditors. If proposal approved.

(6) If the creditors or the debtor decline to approve the proposal so formulated, the Board may nevertheless confirm such proposal, either as formulated or as amended by the Board, in which case it shall be filed in the Court and shall be binding upon all the creditors and the debtor as in the case of a proposal duly accepted by the creditors and approved by the Court. 1935, Ch. 20, Am. Board may confirm proposal.

(7) Every request to formulate a proposal shall be dealt with by the full Board, but a determination of the majority shall be deemed to be the determination of the Board: Provided that the Board may direct any one or more of its members on its behalf to inspect and investigate any or all circumstances of any request for review and report to the Board. 1935, Ch. 20, Am. Requests dealt with by the full board. Proviso.

(8) The Board shall base its proposal upon the present and prospective capability of the debtor to perform the obligations prescribed and the productive value of the farm. How Board to base its proposal.

(9) The Board may decline to formulate a proposal in any case where it does not consider that it can do so in fairness and justice to the debtor or the creditors. Board may decline to formulate a proposal.

(10) For the purposes of the performance of its duties and functions hereunder a Board shall have the powers of a Commissioner appointed under the *Inquiries Act*. Powers under Inquiries Act.

(11) Notwithstanding anything contained in the *Bankruptcy Act*, an insolvent debtor resident in the Province of Quebec, engaged solely in farming or the tilling of the soil, whose liabilities to creditors provable as debts under the *Bankruptcy Act* exceed five hundred dollars, may make an assignment for the general benefit of his creditors in any case where the Board declines to formulate a proposal and certifies that in its opinion the debtors' affairs can best be administered under the *Bankruptcy Act*. 1935, Ch. 20, Am. Assignments by insolvent farmers in Quebec.

13. The Governor in Council may also appoint a registrar and any other necessary officers to assist the Board and such officers shall hold office during pleasure and receive such remuneration as the Governor in Council may provide. Appointment and remuneration of Registrar and other officers.

Official Receiver, etc., may appear in person.

14. The Official Receiver, custodian or trustee may appear in person and be heard by the court or the Board in any proceedings hereunder.

RULES AND REGULATIONS.

Governor in Council may make rules and regulations.

15. (1) The Governor in Council may make rules and regulations governing the procedure in the case of an assignment, petition or proposal including the advertising to be done in each case and the procedure in relation to the exercise of jurisdiction of the Board and to give effect to the provisions of this Act, and may establish a tariff of fees to be paid in any such case including the remuneration of the trustee.

Supervision of trustees.

(2) Every trustee acting as such under this Act shall be subject to such supervision by the Superintendent of Bankruptcy as the Governor in Council may determine.

Administration and expenses.

16. (1) The Minister of Finance shall be charged with the administration of this Act, and the expenses necessary for such administration shall be payable out of any unappropriated moneys of the Consolidated Revenue Fund.

Annual report.

(2) The Minister shall at the end of the fiscal year prepare a report of expenditure incurred and of proceedings taken under this Act and shall lay the same before Parliament forthwith, or if Parliament be not then sitting, within fifteen days after the commencement of the next ensuing session.

INTEREST ON FARM LOANS.

Rate of interest.

17. (1) Notwithstanding the provisions of any other statute or law, whenever any rate of interest exceeding seven per centum is stipulated for in any mortgage of farm real estate, if any person liable to pay the mortgage tenders or pays to the person entitled to receive the money, the amount owing on such mortgage and interest to the time of payment, together with three months' further interest in lieu of notice, no interest shall after the expiry of three months period aforesaid be chargeable, payable or recoverable in respect of the said mortgage at any rate in excess of five per centum per annum.

Application of this section.

(2) The provisions of this section shall apply in the case of any mortgage heretofore or hereafter made and whether or not the principal sum is due and owing at the time such tender or payment is made.

Act to come into force upon proclamation.

18. This Act except section seventeen shall not come into force in any province until proclaimed by the Governor in Council to be in force in such province, but section seventeen shall come into force when this Act is assented to.

When Act shall not apply.

19. The said Act shall not, without the concurrence of the creditor, apply in the case of any debt incurred after the first day of May, 1935. 1935, Ch. 20, Am.

IN THE PRIVY COUNCIL

No 104 of 1936

ON APPEAL FROM THE SUPREME COURT OF CANADA

IN THE MATTER of a Reference as to whether the
Parliament of Canada had legislative jurisdiction
to enact The Farmers' Creditors Arrangement
Act, being Chapter 53 of the Statutes of Canada,
1934, as amended by The Farmers' Creditors
Arrangement Act Amendment Act 1935

Between

THE ATTORNEY-GENERAL OF BRITISH COLUMBIA
and
THE ATTORNEY-GENERAL OF CANADA & others

The Farmers' Creditors Arrangement
Act
Chapter 53, 1934
As amended by Chapter 20, 1935

GARD, LYELL & CO.,
47, GRESHAM STREET,
LONDON, E.C. 2.