

CONSOLIDATION OF FRUSTRATED CONTRACTS ACT
R.S.N.W.T. 1988,c.F-12

(Current to: May 8, 2014)

AS AMENDED BY:

S.Nu. 2011,c.10,s.15

s.15 in force March 10, 2011

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Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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FRUSTRATED CONTRACTS ACT

Definitions

1. In this Act,

"contract" includes a contract to which the Crown or the Government of Nunavut is a party; (*contrat*)

"court" means the court or arbitrator by or before whom a matter is to be determined; (*tribunal*)

"discharged" means relieved from further performance of a contract. (*libéré*)

S.Nu. 2011,c.10,s.15(2).

Application

2. (1) This Act applies to a contract governed by the law of the Nunavut where the parties are discharged because the contract has become impossible to perform or has been otherwise frustrated.

Exception

(2) This Act does not apply to

- (a) a charterparty or a contract for the carriage of goods by sea, other than a time charterparty or a charterparty by way of demise;
- (b) a contract of insurance; or
- (c) a contract for the sale of specific goods where the goods,
 - (i) without the knowledge of the seller, have perished at the time when the contract is made, or
 - (ii) without fault on the part of the seller or buyer, perish before the risk passes to the buyer.

S.Nu. 2011,c.10,s.15(3).

Where money paid before discharge

3. (1) Money paid to a party under a contract before the parties were discharged is recoverable from that party as money received by him or her for the use of the other party.

Where money payable before discharge

(2) Money payable to a party under a contract before the parties were discharged ceases to be payable.

Expenses

4. (1) If, before the parties were discharged, the party to whom money was paid or payable under the contract incurred expenses in connection with the performance of the contract, the court, if it considers it just having regard to all the circumstances, may allow that party to retain or to recover the whole or part of that money, not exceeding the amount of the expenses.

Calculation of expenses

(2) In determining the amount of the expenses referred to in subsection (1), the court may include a reasonable sum in respect of overhead expenses or work or services performed personally by the party incurring the expenses.

Benefits

5. (1) If, before the parties were discharged, a party has obtained a valuable benefit other than a payment of money by reason of anything done by another party in connection with the performance of the contract, the court, if it considers it just having regard to all the circumstances, may allow the other party to recover from the party benefited the whole or part of the value of the benefit.

Assumed obligations

(2) Where a party has assumed an obligation under the contract in consideration of another party conferring a benefit on another person, whether or not a party to the contract, the court, if it considers it just having regard to all the circumstances, may treat the benefit conferred as a benefit obtained by the party who has assumed the obligation, for the purposes of subsection (1).

Insurance

6. In determining whether money ought to be recovered or retained under this Act by a party, the court shall not take into account money that, by reason of the circumstances giving rise to the frustration of the contract, has become payable to that party under a contract of insurance unless an obligation to insure was expressly imposed by the frustrated contract or by or under an enactment.

Special provisions

7. Where a contract contains a provision that is intended to have effect in circumstances that operate, or but for the provision would operate, to frustrate the contract, the court shall, whether or not those circumstances arise, give effect to

- (a) the provision; and
- (b) to the extent that appears to the court to be consistent with the provision, this Act.

S.Nu. 2011,c.10,s.15(4).

Where contract severable

- 8.** Where it appears to the court that part of a contract
- (a) wholly performed before the parties were discharged, or
 - (b) wholly performed except for the payment in respect of that part of money the amount of which is or can be ascertained under the contract,

can be severed from the remainder of the contract, the court shall treat that part of the contract as a separate contract that has not been frustrated and shall apply this Act only to the remainder of the contract.