

The Frustrated Contracts Act

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Chapter F-22.2 of the *Statutes of Saskatchewan, 1994*
(effective March 28, 1994).

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NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

CHAPTER F-22.2

An Act respecting Frustrated Contracts

Short title

- 1 This Act may be cited as *The Frustrated Contracts Act*.

Interpretation

- 2 In this Act:

- (a) “**court**” means a court that has jurisdiction to hear and determine matters involving the frustration and avoidance of contracts;
- (b) “**expenses**” means the reasonable expenses incurred by a party in the performance of a contract or in necessary preparation for the performance that cannot be applied against another contract;
- (c) “**party**” means a party to a contract to which this Act applies.

1994, c.F-22.2, s.2.

Application

- 3(1) This Act applies to the following contracts to the extent that the contract does not contain any provisions for the consequences of frustration or avoidance of the contract:

- (a) contracts from which the parties are discharged by reason of the application of the doctrine of frustration;
- (b) contracts that are avoided pursuant to section 9 of *The Sale of Goods Act*.

- (2) Notwithstanding subsection (1), this Act does not apply to:

- (a) a charter party or contract for the carriage of goods by sea, except a time charter party or a charter party by demise;
- (b) a contract of insurance; or
- (c) a contract entered into before the date of the coming into force of this Act.

- (3) This Act applies to benefits conferred and expenses incurred by a party after the event giving rise to the frustration or avoidance in the mistaken belief that the contract was not frustrated or avoided.

1994, c.F-22.2, s.3.

Parties relieved from accrued obligations

4(1) Every party is relieved from fulfilling obligations pursuant to the contract that were required to be performed prior to the frustration or avoidance but were not performed.

(2) Notwithstanding subsection (1), a party that is relieved from fulfilling those obligations remains liable for any consequential loss resulting from not performing the obligations prior to the frustration or avoidance.

1994, c.F-22.2, s.4.

Restitution of benefits

5(1) Every party is entitled to a restitution of benefits conferred by that party's performance or part performance under the contract on another party prior to the frustration or avoidance.

(2) In determining the value of the benefits conferred, the court shall consider:

- (a) the contract price; and
- (b) any diminished value of performance caused by the failure to complete the contract.

(3) Where performance of the contract consists, in whole or in part, of the delivery of property, the value of the benefits conferred is to be reduced by the value of any property returned within a reasonable time to the party who delivered the property.

1994, c.F-22.2, s.5.

Apportionment of lost expenses

6(1) In determining the value of the expenses lost due to frustration or avoidance, the court shall consider the contract price.

(2) The court may apportion the value of expenses lost due to frustration or avoidance:

- (a) equally between the parties; or
- (b) in any manner that the court considers appropriate.

(3) In apportioning the value of expenses lost, the court shall consider:

- (a) a course of dealing between the parties;
- (b) a custom or common understanding in the trade practice relating to insurance; and
- (c) any other relevant circumstance that suggests that:
 - (i) one of the parties should bear the risk of expenses lost due to frustration or avoidance; or
 - (ii) each party should bear the risk of its own lost expenses.

1994, c.F-22.2, s.6.

General considerations

7 In determining the amount to which a party is entitled pursuant to this Act:

- (a) the court shall not consider:
 - (i) loss of profits; or
 - (ii) insurance moneys that become payable by reason of the circumstances that gave rise to the frustration or avoidance; and
- (b) the court shall consider any benefits that remain in the hands of the party claiming restitution.

1994, c.F-22.2, s.7.

Arbitration clause survives frustration

8 A provision in a contract providing for the arbitration of disputes applies notwithstanding the frustration or avoidance of the contract.

1994, c.F-22.2, s.8.

Limitation period

9 A claim pursuant to this Act is deemed to be a claim for a breach of the contract arising at the time of the event giving rise to the frustration or avoidance, and the limitation period applicable to that contract applies.

1994, c.F-22.2, s.9.

Act binds the Crown

10 This Act binds the Crown.

1994, c.F-22.2, s.10.