

**NEGOTIABLE INSTRUMENTS (DISHONoured
CHEQUES) ACT**

CHAPTER 79:52

**Act
9 of 1998**

Amended by
19 of 2005

Current Authorised Pages

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

CHAPTER 79:52

**NEGOTIABLE INSTRUMENTS (DISHONoured
CHEQUES) ACT**

ARRANGEMENT OF SECTIONS

SECTION

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 2. Interpretation.
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- (c) an amount of funds less than that needed to cover the cheque; or
- (d) no credit facilities to cover the cheque.

(3) A person “passes” a cheque when, as a payee, holder or bearer of a cheque which has been or purports to have been drawn and uttered by another person, he endorses and delivers it, for a purpose other than collection, to a third person who thereby acquires a right with respect to the cheque.

(4) A person “utters” a cheque when, as a drawer or representative drawer, he delivers it or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to the cheque, and anyone who draws a cheque with the intention that it shall be delivered, is deemed to have uttered it, if it is delivered.

(5) The provisions of this Act, apply also to a post-dated cheque at the date of its dishonour.

(6) Where a drawer knowingly obtains or causes another person to obtain property or services by use of a dishonoured cheque and that cheque is lost, stolen, destroyed or cannot be found for any reason and he issues or utters a second cheque in relation to the same transaction and the second cheque is also dishonoured, the second cheque is deemed to be the dishonoured cheque for the purpose of this Act.

3. (1) Notwithstanding any other written law, a person commits an offence when he obtains property or services by use of or in contemplation of a dishonoured cheque.

Obtaining property or services by use of dishonoured cheque. [19 of 2005].

(2) A person obtains property or services by use of a dishonoured cheque when—

- (a) as a drawer or representative drawer—
 - (i) he obtains or knowingly causes another person to obtain property or services by uttering a cheque knowing that he or his principal, as the case may be, has insufficient funds with the drawee to cover it and other outstanding cheques;

- (ii) he believes that at the time of utterance payment will be refused by the drawee upon presentation; and
 - (iii) payment is refused by the drawee upon presentation;
- (b) as a payee, holder or bearer—
- (i) he passes a cheque knowing that the drawer has insufficient funds with the drawee to cover that cheque and other outstanding cheques;
 - (ii) he believes that at the time the cheque is passed payment will be refused by the drawee upon presentation; and
 - (iii) payment is refused by the drawee upon presentation;
- (c) as a drawer or representative drawer, he obtains property or services by uttering a cheque knowing that he or his principal, as the case may be, at the time of the utterance, intends, without the written consent of the payee, to stop or countermand the payment of the cheque, or otherwise to cause the drawee to disregard or dishonour the cheque, and payment is refused by the drawee upon presentation; or
- (d) he obtains property or services by passing a cheque knowing that payment of the cheque has been stopped or countermanded, or the drawee of the cheque may disregard or dishonour the cheque, and payment is refused by the drawee upon presentation.

(3) For the avoidance of doubt, an offence under this Act is committed at the time when a cheque is presented for payment and it is dishonoured.

4. (1) Where the drawer of a dishonoured cheque is charged with an offence under this Act, the following provisions shall apply:

Presumptions
and *prima facie*
evidence.
[19 of 2005].

- (a) when the drawer or representative drawer of a cheque has insufficient funds with the drawee to cover it and other outstanding cheques at the time of its utterance, the drawer or representative drawer, as the case may be, is presumed to know of the insufficiency;
- (b) a drawer or representative drawer, as the case may be, of a dishonoured cheque is presumed to have intended or believed the cheque would be dishonoured upon presentation by a person if—
 - (i) the drawer or representative drawer had insufficient funds with the drawee at the time of its utterance or any other time before it is presented for payment to cover it and other outstanding cheques; and
 - (ii) the drawer or representative drawer had insufficient funds with the drawee at the time of presentation.

(2) Where a cheque is dishonoured because the drawer has insufficient funds, a notice of protest shall be issued and duly served by the drawee to the drawer of the cheque with a certified copy to the person who presented the cheque through his drawee.

(3) Where the drawer of a dishonoured cheque is charged with an offence under this Act, the prosecution may seek to prove the dishonour by the production in evidence—

- (a) of the notice or protest of the certified copy of the dishonoured cheque; or
- (b) of an affidavit of the drawee or the authorised representative of the drawee together with a certified copy of the notice or protest declaring the dishonour,

and this shall constitute *prima facie* evidence that the cheque is a dishonoured cheque.

(4) Where a drawer or representative drawer, without the consent of the payee, stopped or countermanded the payment of a cheque, or otherwise caused the drawee to disregard or dishonour the cheque, and failed without reasonable cause to return or tender the return of the property obtained or the value of services rendered within a period of three working days from the date the cheque was stopped or countermanded, or otherwise caused to be disregarded or dishonoured, this shall constitute *prima facie* evidence that the drawer or representative drawer had the intention to stop or countermand payment or otherwise to cause the drawee to disregard or dishonour the cheque at the time of its utterance.

(5) A copy of every dishonoured cheque together with a certified copy of the notice or protest issued by the drawee shall be retained by the drawee for one year.

(6) Without prejudice to subsection (3), where the drawee fails to issue a notice or protest, the payee may, by written notice in any form, notify the drawer that the cheque has been dishonoured and enclose a copy of the dishonoured cheque, and the written notice shall constitute *prima facie* evidence that the cheque is a dishonoured cheque.

(7) Without prejudice to subsection (3) or (6), where a person makes a written confession admitting that he committed an offence under this Act, subsection (3) or (6) shall not apply.

Penalties.

5. (1) A person who commits an offence under section 3 is liable on summary conviction to a fine in an amount equivalent to ten times the value of the cheque and to imprisonment for five years.

(2) A drawee who recklessly—

(a) issues a notice or protest under section 4(2); or

(b) swears to an affidavit under section 4(3)(b),

commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

6. (1) In addition to the penalties referred to in section 5, Restitution.
the Court may—

- (a) order the restitution of any property which may have been obtained by the dishonoured cheque and has been recovered from the defendant or another, or which is in the defendant's possession or control; or
- (b) order the restitution of the value of any property or services which may have been obtained by the dishonoured cheque.

(2) Where the Court makes an order under subsection (1), payment may be made—

- (a) to any person having an interest in the property or to the person who provided the services; and
- (b) to the extent that—
 - (i) the property is not fully restored; or
 - (ii) full compensation has not been provided for the services.

7. (1) Where a person obtains property or services by uttering or passing a cheque and the uttering or passing is not accompanied by the *bona fide* belief that there are sufficient funds to his credit with the drawee to cover the cheque and the cheque is dishonoured, he shall not be liable to be prosecuted if— Prosecution.

- (a) he pays to the payee in cash the amount of the cheque; or
- (b) he makes arrangements with and satisfactory to the drawee or payee to satisfy the amount represented by the cheque,

within a period of ten days after he receives notice or protest of the dishonour from the drawee, and no prosecution under this Act shall be commenced until the expiration of that period.

(2) Subsection (1) does not apply to a person who obtains property or services by uttering a dishonoured cheque if at the date of the utterance he—

- (a) knew he did not have sufficient funds in his account and was incapable of funding the account within ten days from the date of the utterance; or

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(b) did not have an account with the drawee.

Limitation of
time for
prosecution in
summary cases.
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8. Notwithstanding any law to the contrary, an offence committed under this Act and charged summarily may be prosecuted at any time within one year after the commission of the offence.

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