

# KING’S BENCH FOR SASKATCHEWAN

Citation: 2025 SKKB 213

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File No.: KBG-RG-01964-2025  
Judicial Centre: Regina

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BETWEEN:

ROYAL BANK OF CANADA

APPLICANT

- and -

TIMOTHY MICKEL and  
BAILEE GRACE MICKEL

RESPONDENTS

**Counsel:**

James Kroczyński  
John Goby

for the applicant  
for the respondents

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JUDGMENT  
December 23, 2025

ROBERTSON J.

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## INTRODUCTION

[1] This decision addresses an originating application by the applicant, Royal Bank of Canada [Bank], seeking an order under the *Fraudulent Conveyances Act*, 1571 (UK), 13 Eliz 1, c 5 [*Statute of Elizabeth*], declaring the transfer of shares from the respondent, Timothy Mickel [Debtor], to the respondent, Bailee Grace Mickel [Daughter], to be a fraudulent conveyance and directing any payments received by the Daughter to be paid to the Sheriff.

[2] For the following reasons, I do find the share transfer to be a fraudulent conveyance and order the Daughter to remit any payments received to the Sheriff and to surrender the share certificates, if any, to the Sheriff. Any future payments must be made directly to the Sheriff.

## BACKGROUND

### Evidence

- [3] The following evidence was filed for this application:
- (a) Applicant-Bank: Affidavit of James Kroczyński sworn September 2, 2025 [Kroczyński Affidavit]; and
  - (b) Respondents: Affidavit of Bailee Grace Mickel affirmed July 23, 2025 [Daughter Affidavit].

### Facts

- [4] From the filed materials, I find the following facts.

#### 2018

- July 23 Bank obtains Judgment against Debtor for \$31,716.13: *Royal Bank v Mickel* (23 July 2018) Regina, QBG-RG-01370-2018 (Sask QB) [*Judgment*] (Kroczyński Affidavit, Exhibit “A”)
- October 6 Debtor affirms Property Statement showing no assets, apart from \$10,000 in general household goods, vehicle, and \$88 in a Scotiabank account (Kroczyński Affidavit, Exhibit “B”)
- November 23 Bank instructs Sheriff to pursue collection of *Judgment* from G.A.M. Holdings Ltd., a holding company from which the Debtor receives a 25% mineral rights royalty (Kroczyński Affidavit, Exhibits “B” and “C”)

#### 2024

- January 1 G.A.M. Holdings Ltd. pays dividend to Debtor of \$1,208

(Kroczyński Affidavit, Exhibit “F”)

- January 9 Sheriff serves Debtor with Form Q – Notice of Seizure of Account for shares in G.A.M. Holdings Ltd. (Kroczyński Affidavit, Exhibit “F”)
- February 1 G.A.M. Holdings Ltd. pays dividend to Debtor of \$1,145.76 (Kroczyński Affidavit, Exhibit “F”)
- March 1 G.A.M. Holdings Ltd. pays dividend to Debtor of \$846.55.76 [sic] (Kroczyński Affidavit, Exhibit “F”)
- April 1 G.A.M. Holdings Ltd. pays dividend to Debtor of \$1,250.50 (Kroczyński Affidavit, Exhibit “F”)
- May 17 Debtor, as President of G.A.M. Holdings Ltd., issued himself a dividend cheque from G.A.M. Holdings Ltd. for \$183.25 to stay under the exemption, when his actual entitlement was \$903.25 (Kroczyński Affidavit, Exhibit “F”)
- May 24 Balance owing on *Judgment* with addition of Sheriff’s fees: \$40,999.19 (Kroczyński Affidavit, Exhibit “F”)
- June 5 Handwritten note from Debtor to Bank acknowledging *Judgment* debt and dividend income from ownership of G.A.M. Holdings Ltd. account “shares in a trust which is aware that I owe R.B.C. money [sic]” (Kroczyński Affidavit, Exhibit “D”)
- June 14 Unanimous Resolution of the Directors and Shareholders of G.A.M. Holdings Ltd. transferring 50 shares of the corporation from Debtor to his Daughter (Kroczyński Affidavit, Exhibit

“E”; Daughter Affidavit, para. 2)

July 8 Debtor tells Sheriff of share transfer (Kroczyński Affidavit, Exhibit “F”)

July 15 Debtor tells Sheriff Daughter paid \$50 for the transferred shares in G.A.M. Holdings Ltd. (Kroczyński Affidavit, Exhibit “F”)

2025

July 23 Daughter affirms affidavit saying that transfer of shares was in payment of loans made to Debtor over a number of years (2018 to 2025) totalling \$82,935.88 and for payment of student loans incurred by Daughter totalling an additional \$49,666.40 (Daughter Affidavit)

September 2 Originating Application of Bank seeking declaration that transfer of share fraudulent conveyance and an order directing payments received by Daughter be remitted to the Sheriff

November 6 Robertson J. hears Bank’s application with decision reserved

## **ISSUES**

[5] The application raises the following issues:

1. Was the share transfer a fraudulent conveyance?
2. If so, should the requested order be granted?
3. What award of costs, if any, should be made?

## ANALYSIS

[6] In this part, I will first address the evidence and review the *Statute of Elizabeth*, including the elements required to be proved to establish a fraudulent conveyance and right to remedy. With that in mind, I will then address the first issue and determine whether the facts found from the evidence satisfies the test. Finally, I will address the issue of costs.

### Evidence

#### *“Best evidentiary foot forward”*

[7] This Court has repeatedly stated that, in summary applications such as this one, the parties are obliged to put their best foot forward in terms of evidence. See, for example: *Lanigan v Resort Village of Candle Lake*, 2019 SKQB 167 at para 5, 90 MPLR (5th) 104; *A v Canada (Attorney General)*, 2018 SKQB 103 at para 68; *Casbohm v Winacott Spring Western Star Trucks*, 2018 SKQB 15 at paras 63-64, 30 CPC (8th) 175, affirmed 2021 SKCA 21, [2021] 4 WWR 506, leave to appeal refused 2021 CanLII 66409 (SCC); *Labuick Investments Inc. v Carpet Gallery of Moose Jaw Ltd.*, 2017 SKQB 341 at para 28; *Jardine v Saskatoon Police Service*, 2017 SKQB 217 at para 17; *Surespan Construction Ltd. v Saskatchewan*, 2017 SKQB 55 at paras 37-38, 64 CLR (4th) 60; and *Deren v SaskPower*, 2015 SKQB 366 at para 122, affirmed 2017 SKCA 104 at paras 93-94.

#### *Affidavit evidence*

[8] The only evidence I have is from the two affidavits. I find this evidence sufficient to determine the necessary facts and decide the application.

[9] The Kroczyński Affidavit filed in support of the Bank’s application provides relevant and material evidence, largely in the form of records and documents

attached as exhibits. Some of the exhibits contain hearsay statements from the Debtor. These are admissible as statements against interest. The respondent Debtor and Daughter had the opportunity to counter or qualify these statements. They did not do so. I draw an adverse inference from that failure.

[10] The Debtor did not file any affidavit. In the Daughter Affidavit filed on behalf of the respondents, the Daughter says she received the shares as payment for past loans to the Debtor. I find this claim improbable and incredible for several reasons, which can be described as “badges of fraud”.

[11] First, the timing of the claim of a prior loan to the Daughter is suspect. The Daughter Affidavit was affirmed July 23, 2025. Although the Notice of Application was filed on September 2, 2025, and served on September 4, 2025, the Sheriff had been taking enforcement action since early in 2024. The claim appears to be a pre-emptive move in anticipation of the Bank’s application.

[12] Second, the timing of the share transfer on June 14, 2024, is also suspect, coming after service of the Sheriff’s notice on January 9, 2024, and subsequent attempts to attach dividend payments.

[13] Third, the claim of a loan is not supported by any written agreement. The only support offered is the record of e-transfers of funds attached as Exhibit “A” to the Daughter Affidavit. If these transfers were to the Debtor, they are as consistent with gifts or loans or with some other financial chicanery.

[14] Fourth, the Daughter’s claim that she was regularly transferring thousands of dollars to the Debtor contradicts the Debtor’s prior statements. Exhibit “A” of the Daughter Affidavit at the top of the first page states in handwriting “Total from July 15, 2018 – July 15, 2025 - \$114,381.88”. The Debtor’s lawyer, in an email dated October 24, 2023, to the Bank’s lawyer (Kroczyński Affidavit, Exhibit “B”),

states “4. As noted in my previous correspondence, my client is borrowing from family and friend to meet his shortfalls [*sic*].” But the Property Statement of Timothy Mickel affirmed by the Debtor on October 6, 2023 (Kroczyński Affidavit, Exhibit “B”) does not list any such debt under “Debts and Liabilities”, despite identifying other creditors. The Debtor, in his letter to the Bank dated June 5, 2024, states that he receives CPP Disability and the dividends. He states, “I have no other income.” (Kroczyński Affidavit, Exhibit “D”). The Debtor told the Sheriff on July 3, 2024, that “he has no funds” (Kroczyński Affidavit, Exhibit “F”). But if the Daughter Affidavit is to be believed, he received \$1,000 from her on July 2, 2024 – the day before (Daughter Affidavit, Exhibit “A”).

[15] Fifth, the Daughter affirmed that the share transfer was for repayment of loans of \$82,935.88 from the Daughter to the Debtor and \$49,666.40 for student loans incurred by the Daughter which the Debtor had promised to pay (Daughter Affidavit, paras. 4-7). The total of these supposed debts would be \$123,602.28. How are these figures reconciled with what the Debtor told the Sheriff about what the Daughter paid for the shares – \$50.00? (Kroczyński Affidavit, Exhibit “F”, page 4):

July 15th, 2024	Emailed Larry asking what Bailee Mickel Paid for Shares	Larry advised it was \$50.00 Provided Documentation to Jim Kroczyński for Transfer of shares and what Bailee Mickel had paid.
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[16] Sixth, if the Daughter was providing the Debtor with these regular payments, what was the source of her income? If she had enough income to support the Debtor financially, why was she also incurring student debt and able to secure provincial grants over part of the same period? The Daughter Affidavit at Exhibit “B” records student loans and provincial grants from June 30, 2023, to March 26, 2024. The

student loan then enters repayment on November 1, 2024, with a principal balance of \$48,978. The statement shows monthly payments of \$493.42 beginning November 30, 2024, and concluding June 30, 2025, with an outstanding balance of \$46,432.38.

[17] Seventh, even if the e-transfer payments were intended as a loan, why should the share transfer to the Daughter be allowed in preference to payment of the other creditors? Even if I accepted the Daughter's claim, which I do not, the transfer of a valuable asset to a family member, in preference to other debts, would itself be a fraudulent conveyance to defeat the other creditors. In this regard, I note the caution of Lamont J.A. in his concurring judgment in *Imperial Bank of Canada v Esakin*, [1924] 2 DLR 675 (Sask CA) at 678:

In *Wagner v. Hartows*, [1923] 1 DLR 186, at p. 194, 16 S.L.R. 177, my brother Martin, after reviewing the authorities, sums up their effect, at p. 186, as follows: -

It appears to me that the rule to be deduced from all these cases is, that in a transaction between relatives, which has the effect of defeating the claims of creditors, if the circumstances are suspicious the onus is upon the person endeavouring to uphold the transaction to show that it is *bona fide*, and it is the practice of the Courts in such cases not as a rule to accept the uncorroborated statement of the parties to the transaction. If, however, it is established by the party upholding the transaction that the agreement was a *bona fide* one and that the consideration stated thereon was actually paid, the onus is again upon the party attacking the transaction to prove that there was in reality an intent to defraud and to this intent the purchaser or other person upholding the transaction must be a party.

[18] For all of these reasons, I reject the claim that the share transfer was repayment of a valid loan. The argument simply does not pass the smell test.

### ***Statute of Elizabeth***

[19] The *Statute of Elizabeth* in its preamble and in ss. 1(a) explains the

purpose of the law to make invalid fraudulent conveyances intended to defeat claims of lawful creditors. The *Statute of Elizabeth* may be applied to void any transfer of property with intent to hinder, delay, or defraud creditors, except for a *bona fide* purchase for good consideration and without notice of the debtor's fraudulent intent:

For the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, as well of lands and tenements, as of goods and chattels, more commonly used and practiced in these days than hath been seen or heard of heretofore: which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, have been and are devised and contrived of malice, fraud, covin, collusion, or guile, to the end, purpose, and intent, to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries, and reliefs, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining, and chevisance between man and man, without the which no commonwealth or civil society can be maintained or continued: Be it therefore declared, ordained, and enacted by the authority of this present Parliament, that all and every feoffment, gift, grant, alienation, bargain, and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common, or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels or any of them, by writing or otherwise, and all and every bond, suit, judgment and execution at any time had or made sithence the beginning of the queen's majesty's reign that now is, or at any time hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every of them, whose, actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, by such guileful, covinous, or fraudulent devices and practices as is aforesaid, are, shall or might be in anywise disturbed, hindered, delayed or defrauded to be clearly and utterly void, frustrate, and of none effect; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

[20] Saskatchewan courts have over many years recognized the application of the *Statute of Elizabeth* in Saskatchewan, including in: *Bank of Montreal v Reis*, [1925] 3 DLR 125 (Sask SC); *Bludoff v Osachoff*, [1928] 3 DLR 179 (CanLII) (Sask CA) at para 22; *Stewart v Zacharuk*, [1949] 1 WWR 213 (Sask KB) at 219; *Scott v Scott* (1965), 52 DLR (2d) 666 (Sask QB); *Petryshyn v Kochan*, [1940] 3 DLR 796 (Sask KB); *Moody v Ashton*, 2004 SKQB 488 at para 125, 248 DLR (4th) 690 [*Moody*]; *Johnson v Johnson*, 2012 SKCA 87 at paras 80-81, 356 DLR (4th) 459; *Stecyk v Smysniuk*, 2013 SKQB 227 at paras 54-56, [2013] 11 WWR 813, reversed on other grounds 2015 SKCA 54 at para 18, [2015] 8 WWR 717; *BTA Real Estate Group Inc. v Family Fitness Inc.*, 2021 SKQB 107, 88 CBR (6th) 161 [*BTA*]; and *Meng v Wang*, 2025 SKKB 184 [*Meng*].

[21] In *Moody* at paras 125-126, Baynton J. recognized the application of the *Statute of Elizabeth* remains in force in Saskatchewan:

[125] The Saskatchewan case law recognizes that the *Statute of Elizabeth* is in force in the province and that the insolvency of the transferor need not be proven as an element of a fraudulent conveyance under that Act. *Petryshyn v. Kochan*, [1940] 2 W.W.R. 353 (Sask. Q.B.) and *Stewart v. Zacharuk*, [1949] 1 W.W.R. 213 (Sask. K.B.), and the many decisions that followed them. These cases also establish that the intent of the transferee is immaterial. Only the intent of the transferor is relevant.

[126] One principle established by the early case law is that the *Statute of Elizabeth* should be interpreted purposively. Lord Mansfield in *Cadogan v. Kennett* (1776), 98 E.R. 1171 at 1172 observes that it should be construed liberally as reflecting the aversion of the common law to fraud. In a more recent decision that dealt with inter-family transactions, Furlong, C.J. in *Lewisporte Wholesalers Ltd. v. Hynes* (1980), 24 Nfld. & P.E.I.R. 252 (Nfld. S.C.) indicated at para. 13 that he would be prepared to give a liberal construction to it if he could be satisfied on which side that liberality was to be exercised.

[22] In *BTA* at para 35, Elson J. recognized that the *Statute of Elizabeth* continues to apply in Saskatchewan:

A. Fraudulent Conveyance – Statute of Elizabeth

*Law*

[35] There remains some controversy whether the *Statute of Elizabeth* is in force in all common law provinces. The view has been expressed that, in some jurisdictions, application of the statute has been overtaken by provincial fraudulent conveyance legislation. See *Royal Bank of Canada v North American Life Assurance Co.*, [1996] 1 SCR 325 at para 84 (WL) [*Ramgotra*]. In Saskatchewan, however, it seems doubtful that this controversy ever existed. If it did, it was largely put to rest in *Moody v Ashton*, 2004 SKQB 488, 258 Sask R 1 [*Moody*], where, at para. 125, Baynton J. acknowledged the case law that recognized the statute's application. As I will note later in this decision, Baynton J. also observed a substantive difference between the *Statute of Elizabeth* and the provincial fraudulent conveyance legislation that exists in this province, namely, *The Fraudulent Preferences Act*, RSS 1978, c F-21.

[23] In *BTA* at para 41, Elson J. adopted the following analytical framework from *Palechuk v Fahrlander*, 2006 ABCA 242, 273 DLR (4th) 332 [*Palechuk*], on the necessary elements to obtain a remedy under the *Statute of Elizabeth*. *Palechuk* at para 31 reads as follows:

[31] To obtain a remedy under the *Statute of Elizabeth*, the plaintiff must establish the following:

- (1) there must be a conveyance of real or personal property;
- (2) for no or nominal consideration;
- (3) with intent to defraud, delay, or hinder creditors;
- (4) the party challenging the conveyance must be someone who was a creditor at the time of the conveyance or someone with a legal or equitable right to claim against the transferor; and
- (5) the conveyance must have had the intended effect.

[Emphasis in original]

[24] In *Meng* at para 34, Smith J. applied this test for his analysis.

### **Was the Share Transfer a Fraudulent Conveyance?**

[25] I will employ the analytical framework from *Palechuk* to answer this question. As stated by Smith J. in *Meng* at para 35, this case ticks all the boxes.

#### *(1) Conveyance of personal property*

[26] The 50 shares of G.A.M. Holdings Ltd. is personal property.

#### *(2) For no or nominal consideration*

[27] The Debtor says the share transfer was for \$50, far below the real value of the shares, which produce continuing dividend income from mineral royalties.

#### *(3) Intent to defraud or hinder creditor*

[28] The share transfer was intended to defeat the Sheriff's collection efforts on behalf of the Bank as Judgment-creditor.

#### *(4) Applicant was creditor at time of conveyance*

[29] The Bank was a creditor at the time of the share transfer.

#### *(5) Conveyance had the intended effect*

[30] The share transfer has had the effect of delaying collection efforts and would defeat the Sheriff's collection efforts if not reversed.

### **Shifting Onus of Proof**

[31] If the applicant establishes the required elements, as has occurred here, then the onus shifts to the person seeking to uphold the transaction. In *Moody* at paras 139-142, Baynton J. explained the shifting onus:

[139] Although determining the intent of a person is usually a difficult task, judges and juries are routinely required to do it. The difficulty of the task does not relieve the court from making the determination. Nor do the criminal law principles of presumption of innocence and proof beyond a reasonable doubt apply to this determination. A civil court should not hesitate to conclude, on a balance of probabilities, that fraudulent intent has been proved in circumstances where there is no credible and cogent evidence to counter the strong inferences of fraudulent intent that are raised by the factual circumstances of the case. Sometimes there is direct evidence of intent, but most often there is only indirect or circumstantial evidence of intent. The intent or motive of a person usually has to be inferred from the time-tested common sense presumption that he or she intended the natural consequences of his or her actions considered in the light of the circumstances of the particular case before the court.

[140] I make these observations to demonstrate that this is what the evidentiary aids developed by the case law were designed to do. Although they are given different terms, they all achieve the same purpose. Once the creditor establishes a factual basis to demonstrate that the necessary consequence of the voluntary conveyance in the circumstances of the case was to defeat creditors, the fraudulent intent to defeat creditors on the part of the transferor is presumed and the creditor has established a *prima facie* case. Absent cogent and credible evidence from the transferor or from any other source tending to show that the conveyance was *bona fide* and not indicative of a fraudulent intent, the *prima facie* case becomes proof that the conveyance constitutes a fraudulent conveyance that is void pursuant to the *Statute of Elizabeth*.

[141] In other words, although proof of fraudulent intent to defeat creditors is required in all cases where the necessary consequence of the impugned transaction is to defeat creditors, proof of fraudulent intent will be presumed absent cogent and credible evidence to the contrary. Where there is such cogent and credible evidence to the contrary, the presumption of fraud no longer applies, the evidentiary burden of proving fraud shifts back to the creditor and the court must determine, on a consideration of all of the evidence available to it, whether the creditor has established on a balance of probabilities that the transferor had the fraudulent intent to defeat his or her creditors.

[142] Many cases observe that upon proof of a voluntary conveyance in suspicious circumstances or where the parties did

not deal at arm's length, the evidentiary burden of proof respecting the *bona fides* of the conveyance shifts to the transferor. In my view, this is simply a different way of describing an evidentiary presumption of fraud that arises once certain suspicious facts are established by the creditor. These suspicious facts are often termed "badges of fraud". Where suspicious circumstances call for an explanation, such as where at least one or more "badges of fraud" are established, an inference of fraudulent intent arises that is sufficient to shift the evidentiary burden to the transferor to prove that the conveyance was *bona fide*.

[32] The respondents claim that the share transfer was made in repayment of a debt owed by the Debtor to the Daughter. For the reasons already stated, I reject that claim.

### **Costs**

[33] The Bank has been successful in its application. I exercise my discretion to award the requested costs of \$1,500, payable forthwith by both or either of the respondents.

### **Remedy**

[34] The Bank has established that the share transfer was a fraudulent conveyance, which the respondents have not rebutted, and is therefore entitled to a remedy. I make the following order as remedy:

- (a) The share transfer of 50 Class A shares in G.A.M. Holdings Ltd. from Timothy Mickel to Bailee Grace Mickel is declared to be a fraudulent conveyance contrary to the *Fraudulent Conveyances Act*, 1571 (UK), 13 Eliz 1, c 5, and is void;
- (b) Bailee Grace Mickel shall surrender the shares to the Sheriff forthwith;

- (c) Bailee Grace Mickel and Timothy Mickel shall execute any further documents to transfer legal and beneficial interest in the shares back to Timothy Mickel and to give effect to this Order;
- (d) Bailee Grace Mickel shall remit forthwith any dividend income received from the shares in G.A.M. Holding Ltd. to the Sheriff; and
- (e) Timothy Mickel and Bailee Grace Mickel shall pay costs to the Royal Bank of Canada in the amount of \$1,500, payable forthwith.

\_\_\_\_\_  
J.  
D.N. ROBERTSON