

UNIFORM PERSONAL PROPERTY SECURITY ACT

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of _____,
enacts as follows:

DEFINITIONS

1. In this Act,

(a) "accessions" means goods that are installed in or affixed to other goods; "accessions"

(a.1) "account" means any monetary obligation not evidenced by chattel paper, an instrument or a security, whether or not it has been earned by performance; "account"

(b) "building" includes a structure, erection, mine or work built, erected, constructed or opened on or in land; "building"

(b.1) "building materials" includes goods that are or become so incorporated or built into a building that their removal would necessarily involve the removal or destruction of some other part of the building and thereby cause substantial damage to the building, apart from the value of the goods removed, but does not include "building materials"

(i) goods that are severable from the building or land merely by unscrewing, unbelting, unclamping or uncoupling, or by some other method of disconnection; or

(ii) machinery installed in a building for use in the carrying on of an activity where the only substantial damage, apart from the value of the machinery removed, that would necessarily be caused to the building in removing the machinery therefrom is that arising from the removal or destruction of the bed or casing on or in which the machinery is set and the making or enlargement of an opening in the walls of the building sufficient for the removal of the machinery;

(c) "chattel paper" means one or more than one writing that evidences both a monetary obligation and a security interest in or lease of specific goods; "chattel paper"

(c.1) "collateral" means personal property that is subject to a security interest; "collateral"

- "consignment" (d) "consignment" means a transaction under which goods are delivered for sale, resale or lease by a consignor who
- (i) in the ordinary course of his business deals in goods of that description; and
 - (ii) reserves title to the goods;
- to a consignee who in the ordinary course of his business deals in goods of that description, but does not include a transaction under which goods are delivered to a person for sale, resale or lease if the person is generally known in the area in which he carries on business to be selling or leasing goods as a consignee;
- "consumer goods" (d.1) "consumer goods" means goods that are used or acquired by the debtor for use primarily for personal, family or household purposes;
- "Court" (e) "Court" means (*each province to insert its own provision*);
- "creditor" (e.1) "creditor" includes an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver, a receiver-manager, an executor, an administrator or a committee;
- "debtor" (f) "debtor" means
- (i) a person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes one or more of the following:
 - (A) a person who receives goods from another person under a consignment;
 - (B) a lessee under a lease;
 - (C) an assignor of an account or chattel paper;
 - (D) a transferee of or successor to a debtor's interest in collateral; or
 - (ii) where a debtor is not the owner of collateral,
 - (A) an owner of the collateral in any provision of this Act dealing with collateral; or
 - (B) an obligor, in any provision of this Act dealing with the obligation;

- (f.1) "default" means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable; "default"
- (g) "document of title" means any writing "document of title"
- (i) that purports to be issued by or addressed to a bailee,
 - (ii) that purports to cover goods in the bailee's possession that are identified, or fungible portions of an identified mass, and
 - (iii) that in the ordinary course of business is treated as establishing that the person in possession of the writing is entitled to receive, hold and dispose of it and the goods it covers;
- (g.1) "equipment" means goods that are not inventory or consumer goods; "equipment"
- (h) "financing change statement" or "financing statement" means a document, in the prescribed form, that is required or permitted to be registered pursuant to this Act, and financing statement includes a financing change statement unless the context otherwise requires; "financing change statement"
- (h.1) "fungibles" means, with respect to goods or securities, goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement; "fungibles"
- (i) "future advance" means the payment of money, the provision of credit or the giving of other value by the secured party pursuant to the terms of a security agreement, whether or not the secured party is obligated to pay the money, provide the credit or give the value; "future advance"
- (i.1) "goods" means tangible personal property other than money, and includes fixtures, growing crops and the unborn young of animals, but does not include timber until it is cut or minerals or hydrocarbons until they are extracted; "goods"
- (j) "instrument" means a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada), or any "instrument"

other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, but does not include

- (i) chattel paper;
- (ii) a document of title; or
- (iii) a security;

"intangible" (j.1) "intangible" means personal property other than goods, chattel paper, a document of title, an instrument or a security;

"inventory" (k) "inventory" means goods

- (i) that are held by a person for sale or lease, or that have been leased;
- (ii) that are to be furnished or have been furnished under a contract of service; or
- (iii) that are raw materials, works in process or materials used or consumed in a business;

"lease for a term of more than one year" (k.1) "lease for a term of more than one year" includes

- (i) a lease for a term of one year or less that is automatically renewable or that is renewable at the option of one of the parties or by agreement for one or more terms, the total of which may exceed one year;
- (ii) a lease initially for an indefinite term or for a term of less than one year, where the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the goods leased for a period in excess of one year after the date he first acquired possession of the goods, and the lease becomes a lease for more than one year as soon as the lessee's possession extends beyond one year;

but does not include a lease by a lessor who is not engaged in the business of leasing goods;

"money" (1) "money" means a medium of exchange designated by the Parliament of Canada as part of the currency of Canada or designated by a foreign government as part of its currency;

- (1.1) "person" includes a person as defined in the regulations; "person"
- (m) "prescribed" means prescribed by the regulations; "prescribed"
- (n) "proceeds" means identifiable or traceable personal property in any form or fixtures derived directly or indirectly from any dealing with the collateral or proceeds therefrom, and includes "proceeds"
- (i) an insurance payment or any other payment as indemnity or compensation for loss of or damage to the collateral or proceeds therefrom, or any right to that payment, and
 - (ii) any payment made in total or partial discharge or redemption of an intangible, chattel paper, an instrument or a security;
- (o) "purchase" includes taking by sale, lease, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other consensual transaction creating an interest in property; "purchase"
- (p) "purchase-money security interest" means "purchase-money security interest"
- (i) a security interest taken or reserved in collateral to secure payment of all or part of its purchase price;
 - (ii) a security interest taken by a person who gives value for the purpose of enabling the debtor to acquire rights in or to collateral to the extent that the value is applied to acquire the rights;
 - (iii) the interest of a lessor of goods under a lease for a term of more than one year; or
 - (iv) the interest of a consignor of goods delivered under a consignment;
- (q) "purchaser" means a person who takes by purchase; "purchaser"
- (r) "registrar" means the Registrar of Personal Property Security; "registrar"
- (s) "regulations" means the regulations made under this Act; "regulations"
- (t) "secured party" means "secured party"

- (i) a person who has a security interest, and
- (ii) the trustee, if a security agreement is embodied in or evidenced by a trust indenture, equipment trust or similar document

and for the purposes of sections 16, 55 to 59, 61 and 62 includes a receiver and receiver-manager;

"security"

(u) "security" means a share, stock, warrant, bond, debenture or debenture stock or similar document, issued by a person,

(i) that is in a form recognized in the area in which it is issued or dealt with as evidencing a share, participation or other interest in property or an enterprise or that evidences an obligation of the issuer, and

(ii) that is of a type that in the ordinary course of business is transferred by delivery with the necessary endorsement, assignment or registration in the records of the issuer or agent for the issuer, or by compliance with restrictions on transfer;

"security agreement"

(v) "security agreement" means an agreement that creates or provides for a security interest, and includes a writing evidencing a security agreement when the context permits;

"security interest"

(w) "security interest" means an interest in goods, a document of title, an instrument, a security, a chattel paper, an intangible or money that secures payment or performance of an obligation, and includes

(i) the interest of an assignee of an account or chattel paper;

(ii) the interest of a consignor under a consignment; and

(iii) the interest of a lessor under a lease for a term of more than one year;

notwithstanding that the interests described in subclauses (i) to (iii) may not secure payment or performance of an obligation;

"serial numbered goods"

(x) "serial numbered goods" means goods of a type prescribed to be serial numbered goods;

(y) "trust indenture" means a security agreement, under which a body corporate, with or without share capital and wherever or however incorporated,

"trust indenture"

(i) issues or guarantees debt obligations or provides for the issue or guarantee of debt obligations, and

(ii) appoints a person as trustee for the holders of the debt obligations so issued, guaranteed or provided for;

(z) "value" means any consideration sufficient to support a simple contract, and includes an antecedent debt or liability.

"value"

PART I
GENERAL

2 Subject to sections 3 and 53, this Act applies to every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest, including, without limiting the foregoing,

Application of Act

(a) a chattel mortgage, conditional sale, equipment trust, floating charge, pledge, trust indenture, trust receipt, assignment, lease and consignment; and

(b) an assignment of an account, a transfer of chattel paper, a consignment and a lease for a term of more than one year notwithstanding that the assignment, transfer, consignment or lease may not secure payment or performance of an obligation.

3 Except as otherwise provided in this Act, this Act does not apply to

Non-application of Act

(a) a lien, charge, right or other interest created by law;

(b) an assignment of an interest or claim under any contract of annuity or policy of insurance except insofar as the money payable under the policy of insurance is or would be proceeds;

(c) a sale of goods that are shipped by a seller under a bill of lading issued to the order of the seller or his agent;

(d) a creation or assignment of an interest in or lien, charge or mortgage on real property, including a lease;

(e) an assignment of a right to payment or rent that arises in connection with an interest in or lien, charge or mortgage on real property, other than a right to payment evidenced by a security;

(f) an assignment of an unearned right to payment to an assignee who is to perform the assignor's obligations under the contract;

(g) an assignment for the general benefit of creditors made pursuant to a statute.

(No references are made to legislation dealing with pawnbrokers, first, because most provinces do not have a Pawnbrokers Act and secondly, because the Acts that do exist do not deal with other aspects of transactions such as the right of third parties. Part V infra deals with the rights of the parties inter se.)

It may be necessary to have complementary legislation to permit registration of assignments of payments arising out of leases of land. Many provincial land registry Acts do not require or presently permit the registration of leases of land for less than a prescribed period.)

Validity and perfection of foreign security interests in specified collateral

4(1) Except where otherwise provided in this Act, the validity, perfection and effect of perfection or non-perfection of

(a) a security interest in goods, and

(b) a possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper,

shall be governed by the law of the jurisdiction where the collateral is situated at the time the security interest attaches.

Reperfection of security interests in Province

(2) A security interest in goods perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into the Province continues perfected in the Province if it is perfected in the Province

(a) within sixty days after the goods are brought into the Province;

(b) within fifteen days after the day the secured party receives notice that the goods have been brought into the Province; or

(c) prior to the date that perfection ceases under the law of the jurisdiction in which the goods are situated at the time the security interest attached,

whichever is the earliest, but if the goods are consumer goods, the security interest is subordinate to the interest of a buyer or lessee of those goods who acquires the goods as consumer goods without knowledge of the security interest and before the security interest is perfected in the Province.

(3) A security interest that is not perfected in the Province as provided in subsection (2) may otherwise be perfected under this Act.

Perfection otherwise

(4) Where a security interest mentioned in subsection (1) is not perfected under the law of the jurisdiction in which the collateral was situated at the time the security interest attached and before being brought into the Province, it may be perfected under this Act.

Perfection in Province

(5) Where goods brought into the Province are subject to an unpaid seller's right to revendicate or to resume possession of the goods under the laws of the Province of Quebec or any other jurisdiction, unless the seller registers a financing statement in the prescribed form or repossesses the goods within twenty days after the day on which the goods were brought into the Province, the right is unenforceable in the Province thereafter.

Unpaid Seller's Rights

5(1) Subject to section 6, if the parties to a security agreement creating a security interest in goods in one jurisdiction understand at the time the security interest attaches that the goods will be kept in another jurisdiction, and the goods are removed to that other jurisdiction, for purposes other than transportation through the other jurisdiction, within thirty days after the security interest attached, the validity, perfection and effect of perfection or non-

Choice of law where parties understand goods are to be taken to another province

perfection of the security interest shall be governed by the law of the other jurisdiction.

Perfection
in Province

(2) If the other jurisdiction mentioned in subsection (1) is not the Province, and the goods are later brought into the Province, the security interest in the goods is deemed to be one to which section 4(2) applies if it was perfected under the law of the jurisdiction to which the goods were removed.

Validity and
perfection of
foreign
security
interests in
intangible and
mobile goods

6(1) The validity, perfection and effect of perfection or non-perfection of

(a) a security interest in

(i) an intangible, or

(ii) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others, and

(b) a non-possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper,

shall be governed by the law of the jurisdiction where the debtor is located at the time the security interest attaches.

Determination
of location
of debtor

(2) For the purposes of this section, a debtor is deemed to be located at his place of business if he has one, at his chief executive office if he has more than one place of business and otherwise at his place of residence.

Continuity
of perfection
where change
in debtor's
locations

(3) If a debtor changes his location to another jurisdiction, a perfected security interest referred to in subsection (1) continues perfected in the Province if it is perfected in the new jurisdiction

(a) within sixty days from the day the debtor changes his location,

(b) within fifteen days from the day the secured party receives notice that the debtor has changed his location, or

(c) prior to the day that perfection ceases under the law of the first jurisdiction,

whichever is the earliest.

(4) If the jurisdiction in which a debtor is located does not provide for public registration or recording of security interests mentioned in subsection (1) and the collateral is not in the possession of the secured party, a security interest in the collateral that is not perfected under this Act is deemed to be an unperfected security interest in relation to an interest in the collateral acquired by a person in the Province.

Perfection in Province where no registry

(5) A security interest that is not perfected as provided in subsection (3) or is deemed to be unperfected in the Province under subsection (4) may be perfected under this Act.

Idem

(6) Notwithstanding section 5 and subsection (1) of this section, the validity, perfection and effect of perfection or non-perfection of a security interest that

Security interests in minerals or hydrocarbons

(a) is created by a debtor who, before extraction, has an interest in minerals or hydrocarbons, and

(b) attaches in respect of the minerals or hydrocarbons upon extraction, or attaches to an account resulting from the sale thereof at the wellhead or minehead,

is governed by the law of the jurisdiction in which the wellhead or minehead is located.

7 Notwithstanding sections 4, 5 and 6,

Choice of law for procedural and substantive issues

(a) procedural matters affecting the enforcement of the right of a secured party in respect of collateral other than intangibles are governed by the law of the jurisdiction in which the collateral is located at the time of the exercise of those rights;

(b) procedural matters affecting the enforcement of the rights of a secured party against intangibles are governed by the law of the forum;

(c) substantive matters affecting the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.

PART II

VALIDITY OF SECURITY AGREEMENTS
AND RIGHTS OF PARTIESEffectiveness
of security
agreement

8 Except as otherwise provided by this or any other Act, a security agreement is effective according to its terms.

Enforceability
of security
interest

9(1) A security interest is not enforceable against a third party unless

- (a) the collateral is in the possession of the secured party; or
- (b) the debtor has signed a security agreement that contains a description of the collateral sufficient to enable it to be identified.

(2) A security interest in proceeds is not unenforceable against a third party by reason only that the security agreement does not contain a description of the proceeds as required by subsection (1)(b).

Delivery
of copy
of security
agreement

10 The secured party shall deliver a copy of the security agreement to the debtor within ten days after the execution of the security agreement and, if he fails to do so after a request by the debtor, the Court may on application by the debtor make an order for the delivery of a copy to the debtor and may make an order as to costs that it considers just.

(Adopting provinces should consider what procedure should be adopted in applications under this section.)

When
security
interest
attaches

11(1) A security interest attaches when

- (a) value is given;
- (b) the debtor has rights in the collateral; and
- (c) except for the purposes of enforcing rights between the parties to the security agreement, it becomes enforceable within the meaning of section 9,

unless the security agreement contains a term that expressly provides that it shall attach at a later time, in which case it attaches at that time.

(2) For the purpose of subsection (1), the debtor has no rights in Idem

- (a) crops until they become growing crops;
- (b) the young of animals until they are conceived;
- (c) minerals or hydrocarbons until they are extracted; and
- (d) timber until it is cut.

12(1) Except as provided in subsection (2), a security agreement may cover after-acquired property. After-acquired property

(2) A security interest does not attach under an after-acquired property provision in a security agreement Exceptions

- (a) to crops that become crops more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of the lease, purchase or mortgage; or
- (b) to consumer goods, other than accessions, unless the debtor acquires rights in them within ten days after the secured party gives value.

13(1) A security agreement may secure future advances whether or not the advances are given pursuant to commitment. Future advances

(2) Unless the agreement expressly provides otherwise, an obligation to make future advances is not binding on the secured party if the collateral has been seized, attached or charged under the circumstances described in section 19(1)(a) of (b). When obligation not binding

14 Where a seller retains a purchase-money security interest in goods, Application of sales law

- (a) the law relating to contracts of sale governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties, and
- (b) the conditions and warranties in a sale agreement shall not be affected by any security agreement.

Provision
to accelerate

15 Where a security agreement provides that the secured party may accelerate payment or performance if he considers that he is insecure or that the collateral is in jeopardy, the agreement shall be construed to mean that he may accelerate payment or performance only if he in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed in jeopardy.

Care of
collateral

16(1) A secured party shall use reasonable care in the custody and preservation of collateral in his possession and, in the case of an instrument, a security or chattel paper, reasonable care includes, unless otherwise agreed, the taking of necessary steps to preserve rights against prior parties.

Idem, rights
& duties of
secured
party re:
collateral

(2) Unless otherwise agreed, where collateral is in the secured party's possession,

(a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in the custody and preservation of the collateral, are chargeable to the debtor and are secured by the collateral;

(b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;

(c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt to reduce the secured obligation;

(d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(e) the secured party may create a security interest in the collateral on terms that do not impair the debtor's right to redeem it.

Liability
for loss

(3) A secured party is liable for any loss or damage caused by his failure to meet any obligations imposed by subsection (1) or (2), but does not lose his security interest.

(4) A secured party may use the collateral

Use of collateral by secured party

- (a) in the manner and to the extent provided in the security agreement;
- (b) for the purpose of preserving the collateral or its value; or
- (c) pursuant to an order of the Court
 - (i) before which a question relating thereto is being heard, or
 - (ii) upon application with notice to all persons concerned.

17(1) A debtor, creditor, sheriff or person with a legal or equitable interest in the collateral may, by a demand in writing, containing an address for reply and sent or delivered to the secured party at the address set forth in the security agreement or the financing statement, or a more recent address if known, require the secured party to send or deliver to him at the address for reply or, if the demand is made by the debtor, to a person at any address specified by the debtor, any one or more of the following:

Information from the secured party

- (a) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness as of the date specified in the demand;
- (b) a written approval or correction as of the date specified in the demand of the itemized list of the collateral attached to the demand;
- (c) a written approval or correction as of the date specified in the demand of the amount of the indebtedness and of the terms of payment of the indebtedness;
- (d) a true copy of the security agreement;
- (e) sufficient information as to the location of the security agreement and any copy thereof to enable a person entitled to receive a true copy of the security agreement, or his authorized representative, to inspect it, if he so desires.

(2) The secured party, on the request of a person entitled to receive a true copy of the security agreement, shall

Inspection of security agreement

permit him, or his authorized representative, to inspect the security agreement or a true copy thereof during normal business hours, at the location disclosed in the information provided pursuant to subsection (1).

Security
interest
in type of
collateral

(3) If the secured party claims a security interest in all of a particular type of collateral owned by the debtor, or the proceeds thereof, he shall so indicate in addition to approving or correcting the itemized list of the collateral contained in the statement of the collateral attached to the demand.

Reply by
secured
party

(4) The secured party shall reply to a demand served under subsection (1) within ten days after it is served and if, without reasonable excuse, he fails to do so, or his reply is incomplete or incorrect, the person who has served the demand is entitled, in addition to any other remedy provided by this Act, to apply, on notice to the secured party, to the Court for an order requiring the secured party to comply with the demand.

Failure to
reply

(5) Where a secured party fails to comply with an order granted under subsection (4), the Court, on application of the party who obtained the order, on notice to the secured party, may

(a) declare the security interest of the secured party to be unperfected and order any registration relating thereto to be removed from the registry; or

(b) make any order that it considers necessary to ensure compliance with the order.

Disclosure
of successors
in interest

(6) Where the person receiving a demand under subsection (1) no longer has an interest in the obligation or collateral, he shall, within ten days after he receives the demand, disclose the name and address of the latest successor in interest if known to him, and, if without reasonable excuse he fails to do so or his reply is incomplete or incorrect, subsections (4) and (5) apply with all necessary modifications.

Application
to Court

(7) Upon application of the secured party or in an application under subsection (4), the Court may make any order that is reasonable and just, including

(a) an order exempting the secured party in whole or in part from complying with the demand or extending the time for answering the demand; and

(b) an order as to costs.

(8) The secured party may require payment in advance of the charges prescribed for each reply to a demand under subsection (1), but the debtor is entitled to a reply without charge once every six months.

Charges for reply

(9) The secured party is not required to provide a copy of any writing registered in the registry.

Certain writings need not be supplied

PART III

PERFECTION AND PRIORITIES

18 A security interest is perfected when

Time when security interest is perfected

(a) it has attached; and

(b) all steps required for perfection under this Act have been completed;

regardless of the order of occurrence.

19(1) A security interest in collateral is subordinate to the interest of

Where unperfected security interest subordinate

(a) a person who seizes or causes the collateral to be seized under legal process including execution, attachment or garnishment, or who obtains a charging order or equitable execution affecting the collateral;

(b) a representative of creditors, but only for the purposes of enforcing the rights of persons mentioned in clause (a), and a trustee in bankruptcy; and

(c) a transferee of

(i) a document of title, a security, an instrument, chattel paper or goods, where the transferee receives delivery of the collateral; or

(ii) an intangible

who is not a secured party and who acquires his interest for value and without knowledge of the security interest

if that security interest is unperfected at the time the interests of the persons mentioned in clauses (a) to (c) arose.

Where perfected security interest subordinate

(2) A perfected security interest is subordinate to the rights of persons mentioned in subsections (1)(a) and (b), except to the extent that a security interest secures

(a) advances made before the interests of those persons arise;

(b) advances made before the secured party has knowledge of the interest of those persons;

(c) reasonable costs and expenses incurred by the secured party for the protection, maintenance, preservation or repair of the collateral.

Priority of purchase-money security interest

20 A purchase-money security interest in

(a) collateral, other than an intangible, that is registered within ten days after the day the debtor obtains possession of the collateral;

(b) an intangible that is registered within ten days after the day the security interest attaches;

has priority over the interest of persons mentioned in section 19(1)(a) and (b).

Continuity of perfection

21(1) If a security interest is originally perfected in a way permitted under this Act and is again perfected in some other way under this Act without an intermediate period when it is unperfected, the security interest is deemed to be perfected continuously for the purposes of this Act, and is deemed, for the purposes of section 33, to be continuously perfected in the way in which it was originally perfected.

Assignees

(2) An assignee of a security interest has the same priority with respect to perfection of the security interest as the assignor had at the time of the assignment.

Perfection by possession

22 Possession of the collateral by the secured party, or on his behalf by a person other than the debtor or the debtor's agent, perfects a security interest in

(a) chattel paper;

- (b) goods;
- (c) an instrument;
- (d) a security;
- (e) money; or
- (f) a negotiable document of title;

but, subject to section 21, only during its actual holding as collateral.

23 Registration of a financing statement perfects a security interest in any type of collateral. Perfection by registration

24(1) A security interest in an instrument, a security or a negotiable document of title is a perfected security interest for the first ten days after it attaches to the extent that it arises for new value given under a written security agreement. Temporary perfection

(2) A security interest perfected under section 22 Idem

(a) in an instrument or a security that a secured party delivers to the debtor for

- (i) ultimate sale or exchange,
- (ii) presentation, collection or renewal, or
- (iii) registration; or

(b) in a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for

- (i) ultimate sale or exchange,
- (ii) loading, unloading, storing, shipping or transshipping, or
- (iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange,

remains perfected for the first ten days after the collateral comes under the control of the debtor.

(3) Beyond the period of ten days referred to in subsection (1) or (2), a security interest under this section be- Idem

comes subject to the provisions of this Act for perfecting a security interest.

Perfecting
as to
proceeds

25(1) Subject to this Act, where collateral is dealt with or otherwise gives rise to proceeds, the security interest in the collateral

(a) continues as to the collateral, unless the secured party expressly or impliedly authorized those dealings; and

(b) extends to the proceeds.

Continuity of
perfection

(2) A security interest in proceeds is a continuously perfected security interest, if the interest in the original collateral is perfected

(a) by the registration of a financing statement that covers the original collateral and proceeds and contains a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same type or kind;

(b) by the registration of a financing statement that covers the original collateral and proceeds, if the proceeds are of a type or kind that are within the description of the original collateral; or

(c) by the registration of a financing statement that covers the original collateral and proceeds, if the proceeds consist of money, cheques or deposit accounts in banks or similar financial institutions.

Idem

(3) If the interest in the original collateral was perfected other than in a manner mentioned in subsection (2), the security interest in the proceeds is a continuously perfected security interest but becomes unperfected on the expiration of ten days after receipt of the proceeds by the debtor unless the security interest in the proceeds is otherwise perfected by any of the methods and under the circumstances prescribed in this Act for original collateral of the same type or kind.

Perfection
of goods held
by bailee

26(1) A security interest in goods in the possession of a bailee is perfected by

(a) issuing a document of title in the name of the secured party;

- (b) holding the goods on behalf of the secured party pursuant to section 22;
- (c) registering a financing statement with respect to the goods; or
- (d) if the bailee has issued a negotiable document of title covering the goods, perfecting a security interest in the negotiable document of title.

(2) The issuance of a negotiable document of title covering goods does not preclude any other security interest in the goods from arising during the period that the negotiable document of title is outstanding.

Other interest may arise

27(1) Where a debtor sells or leases goods that are subject to a security interest, the security interest in the goods reattaches to the goods, if

Goods returned or repossessed

- (a) the buyer or lessee has taken free of the security interest under section 25(1)(a) or 28(1),
- (b) the goods are returned to or repossessed by the debtor, and
- (c) the obligation secured remains unpaid or unperformed.

(2) Where a security interest in goods reattaches under subsection (1) then any question as to

Idem

- (a) whether or not the security interest in the goods is perfected; and
- (b) the time of its perfection or registration

shall be determined as if the goods had not been sold or leased.

(3) If a sale or lease of goods creates an account or chattel paper, and

Where sale or lease creates an account or chattel paper

- (a) the account or chattel paper is transferred to a secured party, and
- (b) the goods are returned to or repossessed by the seller or lessor,

the transferee has a security interest in the goods.

(4) A security interest in goods arising under subsection (3)

Temporary perfection

is perfected if the security interest in the account or chattel paper was also perfected but becomes unperfected on the expiration of ten days after the return or repossession of the goods unless the transferee registers his security interest in or takes possession of the goods before the expiry of that period.

Transferee
of account

(5) Where a transferee of an account has a perfected security interest in goods under subsections (3) and (4), for the purpose of determining his priority as to the goods, he is deemed to have perfected his security interest in the goods at the time his security interest in the amount was perfected.

Transferee
of chattel
paper

(6) Where a transferee of chattel paper has a perfected security interest in goods under subsections (3) and (4)

(a) as between the transferee and the holder of a perfected security interest that attached under subsection (1), the person who had priority as to the chattel paper also has priority as to the goods; and

(b) as between the transferee and a person other than the holder of a perfected security interest that attached under subsection (1), for the purpose of determining the transferee's priority as to the goods, the transferee is deemed to have perfected his security interest in the goods at the time his security interest in the chattel paper was perfected.

Buyer or
lessee
takes free
of security
interest

28(1) A buyer or lessee of goods sold or leased in the ordinary course of business of the seller or lessor takes free of any perfected or unperfected security interest in the goods given by the seller or lessor or arising under section 27, notwithstanding that the buyer or lessee knew of it, unless the buyer or lessee also knew that the sale or lease constituted a breach of the security agreement.

Idem

(2) A buyer or lessee of goods bought or leased primarily for personal, family, household or farming uses takes free of a perfected security interest in the goods if

(a) he gives new value for his interest;

(b) he bought or leased the goods without notice of the security interest; and

(c) he receives delivery of the goods.

(THIS IS AN OPTIONAL SUBSECTION)

(3) Subsection (2) does not apply to a security interest in Exception

- (a) a motor vehicle as defined in the regulations;
- (b) fixtures; or
- (c) goods whose purchase price exceeds \$750 or, in the case of a lease, whose retail market value exceeds \$750.

(THIS IS AN OPTIONAL SUBSECTION)

(4) Where serial numbered goods are sold or leased other than in the ordinary course of business of the seller or lessor and the goods were equipment of the seller or lessor, the buyer or lessee takes free from any security interest in the goods given by the seller or lessor and perfected under section 23 if Serial numbered equipment

- (a) the buyer or lessee did not know that the goods were subject to the security interest, and
- (b) the goods were not described by serial number in a financing statement.

(5) A buyer or lessee of goods takes free of a security interest that is temporarily perfected under section 24(1), 25(3) or 27(4) or a security interest, the perfection of which is continued under section 47(2) during any of the ten-day periods mentioned in that subsection, if Priority of buyer or lessee

- (a) he gives new value for his interest;
- (b) he bought or leased the goods without notice of the security interest; and
- (c) he receives delivery of the goods.

(6) A sale or lease under subsections (1), (2), (4) and (5) may be Manner of sale or lease

- (a) for cash;
- (b) by exchange for other property; or
- (c) on credit;

and includes delivering goods or documents of title under a

pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a monetary obligation.

Priority of purchaser of chattel paper or instrument

(7) A purchaser of chattel paper or an instrument who takes possession of it in the ordinary course of business and who gives new value for it has priority over

(a) any security interest that, in the case of chattel paper or an instrument claimed as original collateral, was perfected under section 23 or any security interest in it as proceeds other than proceeds of inventory, if the purchaser acquired the chattel paper or instrument without knowledge that it was subject to a security interest, or

(b) any security interest in it as proceeds of inventory whether or not the purchaser has knowledge of the security interest.

Rights to be determined without regard to Act

29 The rights of

(a) a holder in due course of a negotiable instrument;

(b) a holder of a negotiable document of title who takes it in good faith for value;

(c) a bona fide transferee of a security; or

(d) a transferee from the debtor of money;

are to be determined without regard to this Act.

Priority of liens for materials and services

30 Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien that he has in respect of those materials or services has priority over a perfected security interest unless an Act in force in the Province provides that the lien does not have priority.

Alienation of rights of debtors

31 The rights of a debtor in collateral may be transferred consensually or by operation of law notwithstanding a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise, including the right to treat a prohibited transfer as an act of default.

Special priorities, purchase-money security interests

32(1) Subject to sections 28 and 29, a purchase-money security interest in inventory or, subject to section 25, its

proceeds, has priority over another security interest in the same collateral given by the same debtor, if

(a) the purchase-money security interest in the inventory was perfected at the time the debtor received possession of it;

(b) the purchase-money secured party gives notice in writing to any other secured party who has registered a financing statement covering the same type or kind of inventory before the date of registration by the purchase-money party;

(c) the other secured party receives the notice mentioned in clause (b) within *(insert period corresponding to minimum registration period of adopting province)* years before the debtor receives possession of the inventory; and

(d) the notice mentioned in clause (b) states that the person giving the notice has or expects to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by type or kind.

(2) Subject to sections 28 and 29 a purchase-money security interest in

Purchase-money security interests other than inventory

(a) collateral or, subject to section 25, its proceeds, other than a purchase-money security interest in intangibles or inventory perfected before or within ten days after the day the debtor obtains possession of the collateral; or

(b) an intangible or, subject to section 25, its proceeds, perfected within ten days after the day the security interest in the intangibles attaches;

has priority over any other security interest in the same collateral or its proceeds given by the same debtor.

(3) A non-proceeds purchase-money security interest has priority over a purchase-money security interest in proceeds under subsections (1) and (2) in the same collateral if the non-proceeds purchase-money security interest is perfected at the time the debtor obtains possession of the collateral or within ten days thereafter.

Priority of non-proceeds purchase-money security interest

Priority of
vendor, lessor,
or consignee
purchase-
money
security
interest in
collateral

(4) A purchase-money security interest in collateral or its proceeds, other than a purchase-money security interest in inventory or its proceeds, held by a seller, lessor or consignee of the collateral and which

(a) in the case of collateral other than an intangible, is perfected within ten days after the day the debtor obtains possession of the collateral; or

(b) in the case of an intangible, is perfected within ten days after the day the security interest in the intangible attaches;

has priority over any other purchase-money security interest in the same collateral.

Special
priority,
crops

(5) A perfected security interest in crops or their proceeds given for value to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise has priority over an earlier perfected security interest to the extent that the earlier interest secures obligations that were contracted more than six months before the crops become growing crops by planting or otherwise, notwithstanding that the person giving the value knew of the earlier security interest.

Priorities,
general rule

33(1) If no other provision of this Act is applicable,

(a) priority between perfected security interests in the same collateral shall be determined by the order of

(i) registration,

(ii) possession of the collateral under section 22, or

(iii) perfection

whichever is the earliest;

(b) a perfected security interest has priority over an unperfected security interest; and

(c) priority between unperfected security interests shall be by the order of attachment.

Continuity
of perfection

(2) For the purposes of subsection (1), a continuously perfected security interest

(a) shall be treated at all times as if perfected by

registration, if it was originally so perfected, and

(b) shall be treated at all times as if perfected otherwise than by registration, if it was originally perfected otherwise than by registration.

(3) If future advances are made at a time during which a security interest is perfected, the security interest has the same priority for the purposes of this section with respect to the future advances as it has with respect to the first advance.

Future advances

(4) For the purposes of subsection (1), a date of registration, possession or perfection as to collateral is also the date of registration, possession or perfection as to its proceeds.

Priority of proceeds

34(1) This section does not apply to building materials.

Fixtures

(2) Subject to subsection (3), a security interest in goods that attached

Priority of security interests in fixtures

(a) before they became fixtures, has priority with respect to the goods over the claim of any person who has an interest in the real property;

(b) after they became fixtures, has priority over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered interest in the real property at the time the security interest in the goods attached and who has not consented in writing to the security interest or disclaimed an interest in the goods as fixtures.

(3) A security interest mentioned in subsection (2)

Interest in fixtures subordinate

(a) is subordinate to the interest of

(i) a creditor with a prior registered encumbrance on the real property with respect to subsequent advances made by the creditor; and

(ii) a subsequent purchaser for value of an interest in the real property;

if the subsequent advance under the prior encumbrance or the subsequent purchase is made or contracted for without fraud (*without knowledge of the*

security interest) and before the security interest is registered in accordance with the _____ Act;

(b) is subordinate to the interest of

- (i) a creditor of the debtor; and
- (ii) a sheriff;

who has acquired through legal process a lien or charge against the real property to enforce a judgment if the lien or charge arises before the security interest is filed in accordance with section 52.

(THE WORDS IN PARENTHESES ARE SUGGESTED AS ALTERNATIVES IN NON-TORRENS TITLE SYSTEM PROVINCES

THE NAME OF THE LAND REGISTRY ACT OF THE PROVINCE SHOULD BE INSERTED.)

Priority
over
purchase-
money
security
interest

(4) A lien or charge mentioned in subsection (3)(b) shall not take priority over a purchase-money security interest in the goods that is filed in accordance with section 52 before or within ten days from the time the debtor received possession of the goods.

Reimburse-
ment for
damage to
interest

(5) Any person, other than the debtor, who has an interest in real property at the time goods subject to a security interest are affixed to the real property is entitled to reimbursement for any damage to his interest in the real property resulting from the removal of the goods, but is not entitled to reimbursement for diminution in the value of the real property caused by the absence of the goods removed or by the necessity for replacement.

Security
for
reimburse-
ment

(6) The persons entitled to reimbursement as provided in subsection (5) may refuse permission to remove the goods until the secured party has given adequate security for the reimbursement.

Notice of
intention to
remove goods

(7) The secured party who has the right to remove goods from real property shall serve, on each person who appears by the records of the _____ office to have an interest in the real property, a notice in writing of his intention to remove the goods containing

- (a) the name and address of the secured party;

(b) a description of the goods to be removed sufficient to enable them to be identified;

(c) the amount required to satisfy the obligations secured by his security interest;

(d) a description of the real property to which the goods are affixed sufficient to enable the real property to be identified; and

(e) a statement of intention to remove the goods unless the amount secured is paid on or before a specified day that is not less than ten days after service of the notice in accordance with subsection (8).

(THE NAME OF THE LAND REGISTRY OFFICE SHOULD BE INSERTED IN SUBSECTION (7).)

(8) The notice mentioned in subsection (7) shall be served in accordance with section 67 at least ten days before the goods are removed.

Service of notice

(9) A person having an interest in real property that is subordinate to a security interest by virtue of subsection (2) may, before the collateral has been removed from the real property by the secured party, retain the collateral upon payment to the secured party of the amount owing under the security interest having priority over this interest.

Retention of collateral

35(1) Subject to subsection (2) of this section and to section 36, a security interest in goods that attached

Priority re: accessions

(a) before they became accessions, has priority with respect to the goods over the claim of any person who has an interest in respect of the whole;

(b) after they became accessions, has priority over the claim of any person who subsequently acquired an interest in the whole, but not over any person who had an interest in the whole at the time the security interest in the whole attached and who has not consented in writing to the security interest or disclaimed an interest in the accessions as part of the whole.

(2) A security interest mentioned in subsection (1)

Interest is accessions subordinate

(a) is subordinate to the interest of

(i) a creditor with a prior perfected security interest

in the whole to the extent that he makes subsequent advances; and

(ii) a subsequent buyer of an interest in the whole;

if the subsequent advance under the prior perfected security interest or subsequent sale is made or contracted for without knowledge of the security interest and before the security interest is perfected;

(b) is subordinate to the interest of a purchaser other than a buyer who acquires his interest before the security interest is perfected; and

(c) is subordinate to the interest of

(i) a creditor of the debtor; and

(ii) a sheriff;

who has caused the whole to be seized under judicial process to enforce a judgment, if the seizure occurs before the security interest is perfected

Priority over
purchase-
money
security
interest

(3) The interest of a creditor or the sheriff mentioned in subsection (2)(c) shall not take priority over a purchase-money security interest in accessions that is perfected before or within ten days after the time the debtor obtains possession of the collateral.

Reimburse-
ment for
damage
to interest

(4) Any person, other than the debtor, who has an interest in the other goods at the time the goods subject to a security interest become accessions is entitled to reimbursement for any damage to his interest in the other goods resulting from the removal of the accessions, but is not entitled to reimbursement for diminution in the value of the other goods resulting from the removal of the accessions caused by the absence of the accessions removed or by the necessity for replacement.

Security for
reimburse-
ment

(5) The persons entitled to reimbursement as provided in subsection (4) may refuse permission to remove accessions until the secured party has given adequate security for the reimbursement.

Notice of
intention to
remove goods

(6) The secured party who has the right to remove accessions from the whole shall serve, on each person known to him as having an interest in the other goods and

on any person who has registered a financing statement indexed in the name of the debtor and referring to the other goods or according to the serial number where such is required, a notice in writing of his intention to remove the accessions containing:

- (a) the name and address of the secured party;
- (b) a description of the accessions to be removed sufficient to enable them to be identified;
- (c) the amount required to satisfy the obligations secured by his security interest;
- (d) a description of the other goods sufficient to enable them to be identified; and
- (e) a statement of intention to remove the accessions from the whole unless the amount secured is paid on or before a specified day that is not less than twelve days after service of the notice in accordance with subsection (7).

(7) The notice mentioned in subsection (6) shall be served in accordance with section 67 at least ten days before the goods are removed.

Service of notice

(8) A person having an interest in goods that is subordinate to a security interest by virtue of subsection (1) may, before the accessions have been removed from the goods, retain the whole upon payment to the secured party of the amount owing with respect to the security interest having priority over his interest.

Retention of accessions

36 A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass, and, if more than one security interest attaches to the product or mass, the security interests rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

Commingled goods

37 A secured party may, in the security agreement or otherwise, subordinate his security interest to any other security interest.

Subordination of security interest

Rights
of assignee

38(1) Unless a debtor with respect to an account or chattel paper has made an enforceable agreement not to assert defences or claims arising out of a contract, the rights of an assignee are subject to

(a) the terms of the contract between that debtor and the assignor and any defence or claim arising therefrom; and

(b) any other defence or claim of that debtor against the assignor that accrued before the debtor received notice of the assignment.

Modification
etc. effective
against
assignee

(2) To the extent that the right to payment or part payment under an assigned contract right has not been earned by performance, and notwithstanding notice of the assignment, and modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards and without material adverse effect upon the assignee's right under or the assignor's ability to perform the contract is effective against an assignee unless the debtor with respect to an account or chattel paper has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract.

Exception

(3) Nothing in subsection (2) affects the validity of a term in an assignment agreement which provides that a modification or substitution mentioned in that subsection is a breach of the agreement by the assignor.

Debtor
may pay
assignor

(4) The debtor with respect to an account or chattel paper may pay the assignor until he receives notice that the amount due or to become due under an identified transaction has been assigned and that payment is to be made to the assignee.

Idem

(5) A debtor with respect to an account or chattel paper may pay the assignor, if the assignee, when requested to do so by the debtor, fails to furnish to the debtor proof within a reasonable time that the assignment has been made.

Prohibition
of assign-
ment void

(6) A term in any contract between a debtor with respect to an account or chattel paper and an assignor that prohibits assignment of the whole of an account is ineffective.

PART IV
REGISTRATION

(EACH ADOPTING PROVINCE SHOULD REVIEW THIS PART IN LIGHT OF THE TYPE OF REGISTRY SYSTEM IT INTENDS TO ADOPT, THE NEEDS OF THAT SYSTEM AND LOCAL POLICY REGARDING THE PROPER BALANCE BETWEEN DETERMINING REGISTRY RULES BY STATUTE, BY REGULATION OR BY ADMINISTRATIVE POLICY.)

39 A registration system, to be known as the Personal Property Registry, is hereby established for the purposes of registration under this Act and for registration that is authorized or required under any other Act to be made in the registry.

Registry established

40(1) The *(insert title of responsible Minister)* shall appoint a Registrar of Personal Property Security and any deputy registrars that may be required for the proper operation of the registry.

Appointment of registrar and other staff

(2) The registrar shall, under the direction of the *(insert title of responsible Minister)*, supervise the operation of the registry.

(3) The registrar may designate one or more persons or deputy registrars under his administration to act on his behalf.

41(1) Upon payment of the prescribed fee in the prescribed manner, any person may, in person at the office of the registry in *(city where central registry located)* or by mail,

Requisition of search

(a) requisition a search against the name of any individual or business debtor or according to the serial number of the collateral, if the collateral is required by the regulations to be described by serial number, and obtain the results of the search;

(b) requisition the printed results of the search mentioned in clause (a);

(c) obtain a certified copy of any registered document.

(2) Upon receipt of the prescribed fee in the prescribed manner, a deputy registrar employed at a place other than

Idem

(*city where central registry located*) shall requisition, by telephone, telegraph message or mail,

(a) oral or printed search results of a search against the name of any individual or business debtor or according to the serial number of the collateral, if the collateral is required by the regulations to be described by serial number;

(b) a certified copy of any registered document.

Registrar may substitute printed search

(3) If oral search results are requested and the results of the search are, in the opinion of the registrar, of such length as to preclude oral search results, the registrar may, after informing the person searching of his decision, forward by mail the printed results of the search.

Making of requisition

(4) Requisitions authorized by subsection (2) may be made by persons other than the deputy registrar with the approval of the registrar.

Idem

(5) Where so approved by the (*insert title of Minister responsible*), searches may be requisitioned and provided in a manner other than that provided in subsection (1) or (2).

Contents of search result

(6) The results of any search conducted under this section may contain information actively maintained for inquiries in the registry and may include information corresponding to search criteria similar to those provided by the person requisitioning the search.

Printed search result prima facie proof

(7) A printed search result issued under subsection (1)(b), (2)(a) or (3) and certified by the registrar is receivable in evidence as prima facie proof of its contents without proof of his signature or official position.

Certified copy prima facie proof

(8) A copy of any registered document certified by the registrar is receivable in evidence as prima facie proof for all purposes, without proof of his signature or official position.

Effective time of registration

42(1) A financing statement or financing change statement may be tendered for registration, by personal delivery or by mail, at the office of the registry in (*city where central registry located*), and the registration of the document is effective from the time recorded on the document by the registrar.

(2) Except as otherwise provided in this Act, a financing statement or financing change statement may be registered at any time and may be registered before the security agreement is made or before a security interest attaches.

Registration of statements

43(1) Where a financing statement is registered and the secured party has assigned his interest, a financing change statement in the prescribed form may be registered.

Financing change statements

(2) Where a part of the collateral is assigned, the financing change statement shall so indicate and shall contain a description of the assigned collateral in the prescribed manner.

Where collateral is assigned

(3) Where no financing statement has been registered with respect to a security interest and the secured party has assigned his interest, a financing statement may be registered in which the assignee is disclosed as the secured party.

Assignee disclosed as secured party

(4) After disclosure of an assignment or registration of a financing change statement under this section, the assignee is the secured party.

Assignee is secured party

(5) A financing statement disclosing an assignment may be registered before or after an agreement to assign the security interest has been completed.

Time when registered

44 An amendment, in the prescribed form, to a financing statement or other writing registered under this Act may be registered at any time during the period that the registration of the amended writing is effective, and the amendment is effectively registered as to the change from the time of registration of the amendment.

Amendment to registered document

45 Where a secured party has subordinated his interest to the interest of another person, a financing change statement may be registered at any time during the period that the registration of the subordinated interest is effective.

Subordinated interest

46(1) Where a financing statement has been registered with respect to a security interest, the registration may be renewed by registering a financing change statement at any time before the writing to which it refers expires.

Renewal of registration

(2) Subject to the regulations, registration under this Act of

(a) a financing statement is effective for the length of time indicated on the financing statement;

Effect of registration

(b) a financing change statement renewing the registration is effective for the length of time indicated on the financing change statement;

(c) any other writing is effective for the remainder of the period for which the financing statement or the financing change statement to which the writing relates is effective.

Removal of registration

(3) Financing statements and financing change statements referring to a financing statement, or information provided on a financing statement or financing change statement, as the case may require, may be removed from the records of the registry

(a) when the financing statement is no longer effective;

(b) upon the receipt of a financing change statement discharging or partially discharging the financing statement;

(c) when the secured party fails to register a Court order maintaining the financing statement under section 48(5);

(d) upon receipt of a Court order compelling the discharge or partial discharge of a financing statement or a financing change statement.

Where debtor transfers interest in collateral

47(1) Where a security interest has been perfected by registration and the debtor transfers his interest in collateral or part of the collateral, with the consent of the secured party, the transferee is deemed to be a debtor with respect to the transferred collateral, for the purpose of registration, and the security interest is unperfected as against any interest in the transferred collateral unless the secured party registers a financing change statement amending the original financing statement within ten days after the date of the transfer.

When security interest becomes unperfected

(2) Where a security interest has been perfected by registration, the security interest becomes unperfected,

(a) where the debtor has transferred his interest in all or part of the collateral, with respect to the transferred collateral, or

(b) where the debtor has changed his name, with respect to all of the collateral,

ten days after the secured party has notice that the debtor has transferred his interest in collateral or part of the collateral, or changed his name, as the case may be, unless the secured party registers a financing change statement amending the original financing statement within fifteen days after the date of notice of the transfer or change of name.

(3) This section does not have the effect of unperfecting

Effect of section

(a) a security interest in collateral that is described by serial number in accordance with the regulations and is described by its serial number in a registered financing statement; or

(b) a prior security interest registered under a prior registration law deemed to be registered under section 72.

(4) A security interest that becomes unperfected under this section may thereafter be perfected by registering a financing statement or as may otherwise be provided in this Act.

Re-perfecting security interest

48(1) Where a financing statement relating to a security interest in consumer goods is registered, the secured party shall register, within one month after all obligations under the security agreement creating the security interest are performed, a financing change statement discharging the financing statement unless prior to the expiry of one month the registration of the financing statement ceases to be effective.

Financing change statement re: consumer goods

(2) Where a financing statement is registered under this Act and

Demand for financing change statement

(a) all the obligations under the security agreement to which it relates are performed;

(b) it is agreed to release all or part of the collateral in which a security interest is taken; or

(c) it contains a claim to a security interest in property of the debtor which the secured party does not have, or is not entitled to claim;

any person having an interest in the collateral that is the subject of the security agreement, financing statement or

financing change statement may serve a written demand on the secured party demanding a financing change statement mentioned in subsection (1), and the secured party shall, within fifteen days after service of the demand, sign and deliver or send to the registry the financing change statement together with financing change statements in respect of all assignments by the secured party or transfers by the debtor in respect of which financing change statements have not been registered.

Notice of discharge

(3) Where the secured party fails to deliver the required financing change statements within the time provided by subsection (2), the person who has made the demand may require the registrar to serve a notice in writing on the secured party stating that registration of the financing statement will be discharged or that a part of the collateral will be released, as the case may be, upon the expiration of forty days after the day the registrar serves notice on the secured party, unless in the meantime the secured party registers with the registrar a Court order accompanied by a financing change statement maintaining the registration of the interest of the secured party.

Service of notice

(4) The notice mentioned in subsection (2) and the demand mentioned in subsection (3) may be served in accordance with section 67 or by registered mail addressed to the post office address of the secured party as it appears on the security agreement or financing statement.

Application to Court

(5) Upon application to the Court by a secured party, the Court may order that the registration of a financing statement

(a) be maintained on any conditions and, subject to section 46, for any period of time that it considers just;

(b) be discharged or that a financing change statement releasing the collateral or part of the collateral be registered, as the case may be.

No discharge of certain documents

(6) Subsection (3) does not apply to an agreement registered under the (*insert name of appropriate legislation*) Act or to a financing change statement registered with respect to a security interest taken under a trust indenture if the financing statement indicates that the security agreement with respect to which the financing statement was registered is a trust indenture.

(7) Where the secured party under a registration to which the (*insert name of appropriate legislation*) Act applies or under a trust indenture fails to deliver the financing change statement demanded under subsection (2), the person making the demand may apply to the Court, upon notice to all persons concerned, for an order directing that the financing statement or financing change statements be removed from the registry.

Application to Court

49 Registration of a writing in the registry does not constitute constructive notice or knowledge of its contents to third parties.

No constructive notice

50(1) Where, in the opinion of the registrar or deputy registrar, a writing tendered for registration in the registry does not comply with this Act or the regulations or with any other Act under which registration of the writing in the registry is authorized, he may refuse to register it, and shall give the reason why he is of the opinion that it does not comply.

Registrar may refuse registration

(2) Any writing that is required or permitted to be registered under this Act must be the original.

Writing to be original

(3) For the purpose of this Act a writing is deemed to be signed by a person when it is signed by the person or his agent.

(4) A certificate of the registrar is receivable in evidence as prima facie proof of the time of the registration of a writing, without proof of his signature or official position.

Certificate of registrar

(5) When directed to do so by the (*insert title of appropriate Minister*), the registrar shall cause any writing registered in the registry to be photographed on microfilm and the microfilm, for the purposes of this Act or an Act authorizing registration in the registry, is deemed to be the writing that was registered.

Microfilm

(6) When directed to do so by the (*insert title of appropriate Minister*), the registrar shall authorize the destruction of any books, writings, records, cards, papers or forms that have been preserved in the registry for so long that it appears that they need not be preserved any longer.

Destruction of records

51(1) Subject to this section, any person who suffers loss or damage as a result of his reliance on a registered writing or

Action against registrar

printed search result that is incorrect because of an error in the operation of the registry may bring an action against the registrar in the Court for recovery of damages, but no award of damages to any single claimant shall exceed the prescribed amount.

Limitation
of actions

(2) No action for damages under this section lies against the registrar unless it is commenced within one year after the time of the loss or damage.

Class
actions

(3) Any action for recovery of damages under this section brought by a person shall be brought as an action on behalf of all other persons who relied on the same registered writing or printed search result, and the judgment in the action, except to the extent that it relates to the finding of the fact of reliance by each person and provides for subsequent determination of the amount of damages suffered by each person, constitutes a judgment between each person and the registrar in respect of an error or omission in the operation of the registry.

Idem

(4) An action for recovery of damages under this section brought by a trustee under a trust indenture or any person with an interest in a trust indenture shall be brought as an action on behalf of all persons with interests in the same trust indenture, and the judgment in the action, except to the extent that it provides for subsequent determination of the amount of damages suffered by each person, constitutes a judgment between each person and the registrar in respect of the error or omission.

Proof of
reliance

(5) In an action brought by a trustee under a trust indenture or by any person with an interest in a trust indenture, proof that each person relied on the registered writing or printed search results is not necessary if it is established that the trustee relied on the registered writing or printed search results, but no person is entitled to recover damages under this section if he knew at the time he acquired his interest that the registered writing or printed search results relied on by the trustee were incorrect.

Total
claims

(6) The total of all claims for compensation paid under subsections (3) and (4) in any single action shall not exceed the prescribed amount.

Powers
of court

(7) In proceedings under subsections (3) and (4), the Court

may make any order that it consider appropriate in order to give notice to members of the class.

(8) Subject to subsection (6), the Court may order payment of all or a portion of the damages awarded to identified members of the class at any time after judgment, and the obligation of the registrar to satisfy the judgment is satisfied to the extent that payment is made.

Payment of damages

(9) The *(insert appropriate name of Minister)* may, without action brought, pay the amount of a claim against the registrar when authorized to do so by the *(insert appropriate name of Minister)* on the report of the registrar setting forth the facts and receipt of a certificate of the registrar that in his opinion the claim is just and reasonable.

Payment of claim

(10) When an award of damages has been made in favour of the claimant and the time for appeal has expired or when an appeal is taken and it is disposed of in favour of the plaintiff, the *(insert title of appropriate Minister)* shall authorize payment out of the *(insert title of appropriate Fund)* in the manner and in the amount specified in the judgment, including any costs awarded to the claimant.

Payment of award of damages

(11) Notwithstanding the *(insert name of appropriate legislation)* Act, no action shall be brought against the Crown in right of the Province, the registrar or any officer or employee of the registry for any act or omission of the registrar or an officer or employee of the registry in respect of the discharge or purported discharge of any duty or function under this or any other Act or under the regulations, other than as provided in this section.

Immunity from action

52(1) In order to take priority over interest in real property according to section 34, a notice in the prescribed form shall be filed in the appropriate *(insert name of land registry office)* office upon payment of the prescribed fee, and upon the notice being so filed the registrar of the *(insert name of land registry office)* office shall make a memorandum of the notice on the certificate of title to the parcel of land to which the notice relates and the condominium plan or replacement plan as the case requires.

Notice filed in land registry office

(2) Where a notice has been filed in the *(insert name of land registry office)* office under subsection (1) and the filing of the notice has not expired, notice of a document

Renewal of notice

renewing, amending, assigning or discharging the security interest to which the original notice relates, or of a document subordinating the security interest to another security interest, may be filed in the (*insert name of land registry office*) office in the prescribed form, and, upon the notice being so filed the registrar of the (*insert name of land registry office*) office shall make a memorandum thereof on the proper certificate or title.

Application
of section 46

(3) Section 46 applies, with all the necessary modifications, to any notice filed under this section.

Fixtures

(4) A security interest in fixtures may be perfected as a security interest in goods without a notice being filed under subsection (1).

Registrar
may vacate
notice

(5) Where the filing of a notice of a security interest in fixtures expires, the registrar of the (*insert name of land registry office*) office may vacate the filing of the notice and any other notice that relates to the same security interest and may strike out any memorandum of the notice that is made on the certificate of title.

Discharge
of notice

(6) A notice filed under subsection (1) or (2) may be discharged by filing a certificate in the prescribed form in the appropriate (*insert name of land registry office*) office.

Contesting
filing of
notice

(7) Where a notice is filed under subsection (1) and

(a) all the obligations under the security agreement are performed;

(b) it is agreed to release part of the collateral in which a security interest is taken upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of those obligations; or

(c) the notice purports to give the secured party a security interest in property of the debtor in which the secured party does not have, or is not entitled to claim, a security interest;

any person having an interest in the collateral, the registered owner of the real property or any other person claiming an interest in the real property may contest the

registration of the notice according to the procedure established in the (*insert the name of the appropriate legislation*) Act for contesting the filing of a caveat.

(RE: SECTIONS 48-52)

EACH ADOPTING PROVINCE SHOULD EXAMINE THESE SECTIONS AND TAILOR THEM TO THEIR OWN PARTICULAR REGISTRATION REQUIREMENTS.

IN PARTICULAR, IT SHOULD BE NOTED THAT SECTION 52(2) CONTEMPLATES EXPIRY AND RENEWAL OF A NOTICE FILED IN THE LAND REGISTRY OFFICE. MANY LAND REGISTRY SYSTEMS DO NOT MAKE ANY PROVISION FOR EXPIRY AND RENEWAL OF NOTICES. NOTICES ARE EFFECTIVE UNTIL WITHDRAWN. IN SUCH A CASE, SECTION 52(2) SHOULD BE AMENDED.)

PART V

DEFAULT – RIGHTS AND REMEDIES

53(1) Except as provided in this section, this Part applies only to a security interest that secures payment of performance of an obligation.

Application of Part

(2) Notwithstanding subsection (1), this Part does not apply to a transaction between a pledgor and a pawnbroker.

Pawn-brokers

(3) The rights and remedies mentioned in this Part are cumulative.

Rights and remedies cumulative

54(1) A security agreement may provide for the appointment of a receiver or a receiver-manager and, except as provided in this or any other Act, prescribe his rights and duties.

Appointment of receiver or receiver-manager

(2) Upon application of the secured party, the debtor or any interested person, and after notice to any other person that the Court directs, the Court may

Application to court

- (a) appoint a receiver or receiver-manager;
- (b) remove, replace or discharge a receiver or receiver-

manager whether appointed by the Court of pursuant to a security agreement;

(c) give directions on any matter relating to the duties of a receiver or receiver-manager;

(d) approve the accounts and fix the remuneration of receiver or a receiver-manager;

(e) make any order with respect to a receiver or receiver-manager that it thinks fit in the exercise of its general jurisdiction over receivers or receiver-managers.

Rights and remedies of secured party

55(1) Where the debtor is in default under a security agreement, the secured party has, in addition to any other rights and remedies,

(a) subject to subsections (3) and (4), the rights and remedies provided in the security agreement;

(b) the rights and remedies provided in this Part; and

(c) when in possession of the collateral, the rights, remedies and duties provided in section 16.

Application of Act to receivers and receiver-managers

(2) Unless the Court otherwise orders,

(a) sections 16 and 56 to 59 do not apply to a receiver-manager if he disposes of collateral in the course of carrying on the business of the debtor;

(b) section 60 does not apply to a receiver or receiver-manager.

Waiver and variation prohibited

(3) Subject to subsection (4), the parties to a security agreement may determine the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as those standards are not manifestly unreasonable having regard to the nature of the rights and duties.

(4) To the extent that they give rights to the debtor and impose duties upon the secured party, the provisions of section 16 and sections 58 to 62 shall not be waived or varied, except in accordance with the provisions of sections 16, 60 and 61.

Remedies of secured party

(5) Where a security agreement covers both real and personal property, the secured party may proceed under this

Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case this Part does not apply.

(6) A security interest does not merge only because a party has reduced his claim to judgment.

Interest does not merge

56(1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled

Collection rights of secured party

(a) to give notice to any debtor in respect of an account or chattel paper or any obligor in respect of an instrument to make payment to him whether or not the assignor was making collections on the collateral; and

(b) to take control of any proceeds to which he is entitled under section 25.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise is entitled to full or limited recourse against the debtor and who undertakes to collect from the debtor in respect of accounts or chattel paper or an obligor in respect of an instrument shall proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections.

Expenses of collection

57 Upon default under a security agreement,

Secured party's right to take possession upon default

(a) the secured party has, unless otherwise agreed, the right to take possession of the collateral by any method permitted by law;

(b) if the collateral is equipment and the security interest has been perfected by registration, the secured party may render the equipment unusable without removal of the equipment from the debtor's premises, and the secured party shall thereupon be deemed to have taken possession of such equipment; and

(c) the secured party may dispose of collateral on the debtor's premises in accordance with section 58.

58(1) Upon default under a security agreement, the secured party may dispose of any of the collateral either before or after any repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied in the following order:

Secured party's right to dispose of collateral upon default

(a) the reasonable expenses of seizing, holding, repairing, processing, preparing for disposition and disposing of the collateral and any other reasonable expenses incurred by the secured party;

(b) the satisfaction of the obligation secured by the security interest of the party making the disposition;

(c) the satisfaction of the obligation secured to any subordinate security interest in the collateral if written demand therefor is received by the party making the disposition before the distribution of the proceeds is completed.

Request
for proof
of interest

(2) Where a written demand under subsection (1)(c) is received by the secured party, he may request the holder of the subordinate security interest to furnish him with reasonable proof of the holder's interest, and, unless the holder furnishes the proof within a reasonable time, the secured party is not required to comply with the demand.

Methods of
disposition

(3) Collateral may be disposed of in whole or in part, and the disposition may be by public sale, private sale, lease or otherwise and, subject to subsection (5), may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable.

Secured
party's
right to
defer
disposition
of collateral

(4) The secured party may retain the collateral in whole or in part for a period of time that is commercially reasonable.

Secured
party to
give notice
of disposition
of collateral

(5) Unless the collateral is perishable or the secured party believes on reasonable grounds that the collateral will decline speedily in value, the secured party shall give not less than fifteen days' notice in the prescribed form of his intention to dispose of the collateral to

(a) the debtor; and

(b) any other person who has a subordinate security interest in the collateral who has registered a financing statement indexed in the name of the debtor or according to the serial number of the collateral, prior to disposition of the collateral.

Secured
party's
right of
purchase
collateral

(6) Unless the Court otherwise permits, the secured party may not purchase the collateral or any part of the collateral except at a public sale.

(7) Where collateral is disposed of in accordance with this section, the disposition

Effect of disposition of collateral

- (a) discharges the security interest of the secured party making the disposition, and
- (b) if the disposition is made to a bona fide purchaser for value, also discharges any subordinate security interest and terminates the debtor's interest in the collateral.

(8) Where collateral is disposed of by a secured party after default otherwise than in accordance with this section, then,

Idem

- (a) in the case of a public sale, if the purchaser has no knowledge of any defect in the sale and if he does not purchase in collusion with the secured party, other bidders or the person conducting the sale, or

(b) in any other case, if the purchaser acts in good faith, the disposition discharges the security interest of the secured party making the disposition and, where the disposition is made to a purchaser for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

(9) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral.

Certain transfers of collateral

59(1) Where a security agreement secures an indebtedness and the secured party has dealt with the collateral under section 56 or 57 or has disposed of it in accordance with section 58 or otherwise, he shall account for and pay over any surplus in the following order:

Application of surplus

- (a) to any person who has a subordinate security interest in the collateral who has registered a financing statement indexed in the name of the debtor or according to the serial number of the collateral prior to the distribution of the proceeds;

(b) to any other person who has an interest in the surplus, if that person has delivered a written demand therefor on the secured party prior to distribution of the proceeds;

(c) to the debtor;

and upon payment being made as aforesaid the secured party shall be relieved from liability in respect of the sums so paid.

Proof of
interest

(2) The secured party may request a person who has a subordinate security interest or a person who has delivered a written demand to furnish him with proof of that person's interest, and, unless the person furnishes the proof within ten days after the secured party's demand, the secured party is not required to pay over any portion of the surplus to him.

Debtor
liable for
deficiency

(3) Unless otherwise agreed to in the security agreement, or unless otherwise provided in this or any other Act, the debtor is liable for any deficiency.

Statement
of results
of dealing

(4) If the security interest secures an indebtedness, the secured party shall, if requested in writing by the debtor or any other person with an interest in the collateral, provide a statement of the results of any dealing with the collateral under section 56 or 57 or a disposition of the collateral under section 58 or otherwise.

Advance
payment
of prescribed
charges

(5) The secured party may require payment in advance of charges prescribed for each statement under subsection (4), but the debtor is entitled to a statement without charge.

Retention of
collateral in
satisfaction
of obligation

60(1) After default, the secured party in possession of the collateral may propose to retain the collateral in satisfaction of the obligation secured, and shall serve a notice of the proposal on

(a) the debtor or any other person who is known by the secured party to be an owner of the collateral;

(b) a person who has a security interest in the collateral

(i) whose interest is subordinate to that of the secured party, and

(ii) who has registered a financing statement that is

indexed in the name of the debtor or according to the serial number of the collateral; and

(c) any other person with an interest in the collateral who has delivered a written notice of his interest in the collateral to the secured party prior to the date that notice is served on the debtor.

(2) If any person who is entitled to notice under subsection (1), and whose interest in the collateral would be adversely affected by the secured party's proposal, delivers to the secured party a written objection within fifteen days after service of the notice, the secured party shall dispose of the collateral in accordance with section 58.

Objection

(3) If no objection is made by any person mentioned in subsection (1), the secured party in possession is deemed to have irrevocably elected to retain the collateral in full satisfaction if the obligation secured and thereafter is entitled to hold or dispose of the collateral free from all rights and interests in the collateral

Irrevocable election to retain collateral

(a) of any person entitled to notice under subsection (1)(b), and

(b) of any person entitled to notice under subsections (1)(a) and (c) whose interest is subordinate to that of the secured party

who has been served with the notice.

(4) The secured party may require any person who has made an objection to his proposal to furnish him with proof of that person's interest in the collateral and, unless the person furnishes proof within ten days of the secured party's demand, the secured party may proceed as if he had received no objection from that person.

Proof of interest

(5) Upon application by a secured party, and after notice to all persons affected, the Court may determine that an objection to the proposal of a secured party is ineffective on the ground that

Application to court

(a) the person made the objection for a purpose other than the protection of his interest in the collateral or the proceeds of a disposition of the collateral; or

(b) the market value of the collateral is less than the

total amount owing to the secured party and the costs of disposition.

Disposal of collateral to bona fide purchaser

(6) When a secured party in possession disposes of the collateral to a bona fide purchaser for value who takes possession of it, the purchaser acquires the collateral free from any interest subordinate to that of the secured party, whether or not the requirements of this section have been complied with by the secured party, and all obligations secured by those subordinate interests are deemed to be performed for the purposes of section 48.

Redemption of collateral

61(1) At any time before the secured party has disposed of the collateral or contracted to dispose of the collateral under section 58, or before the secured party is deemed to have irrevocably elected to retain the collateral in satisfaction of the obligation under section 60, the debtor, or any person other than the debtor who is the owner of the collateral, or any secured party other than the secured party in possession, may, unless he has otherwise agreed in writing after default,

(a) redeem the collateral by tendering fulfilment of all obligations secured by the collateral, or

(b) subject to subsection (2), reinstate the security agreement by paying the sums actually in arrear, exclusive of the operation of any acceleration clause, or by curing any other default by reason whereof the secured party is entitled to dispose of the collateral,

together with a sum equal to the reasonable expenses of seizing, holding, repairing, processing, preparing the collateral for disposition and arranging for its disposition, and any other reasonable expenses incurred by the secured party.

Right of debtor to reinstate security agreement

(2) The right to reinstate under subsection (1)(b) may be exercised,

(a) if the collateral is consumer goods, once during the term of the agreement, unless the Court orders otherwise;

(b) in all other cases, pursuant to a Court order.

Application to Court

62 Upon application by a debtor, a creditor of a debtor,

a secured party of any other person who has an interest in collateral which may be affected by an order under this section, and after notice has been given to any person that the Court directs, the Court may

- (a) make any order, including binding declarations of right and injunctive relief, that is necessary to ensure compliance with this Part or section 16;
- (b) give directions to any party regarding the exercise of his rights or discharge of his obligations under this Part or section 16;
- (c) relieve any party from compliance with the requirements of this Part or section 16, but only on terms that are just and reasonable for all parties concerned;
- (d) stay enforcement of rights provided in this Part, section 16 on such terms that the Court considers just and reasonable;
- (e) make any order necessary to ensure protection of the interests of any person in the collateral;
- (f) make an order requiring a receiver or receiver-manager, or a secured party or other person by or on whose behalf he is appointed, to make good any default in connection with the receiver's or receiver-manager's custody, management or disposition of the collateral or to relieve from liability for such default on such terms as the Court thinks fit, and to confirm any act of the receiver or receiver-manager.

PART VI

MISCELLANEOUS AND TRANSITIONAL

Common
law etc.
applies

63 The principles of law and equity, including the law merchant, the law relating to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake and other validating or invalidating rules of law, shall supplement this Act and shall continue to apply.

Rights,
etc. to be
exercised in
commercially
reasonable
manner

64(1) All rights, duties or obligations arising under a security agreement, under this Act or under any other applicable law shall be exercised or discharged in a commercially reasonable manner.

Right to
recover
loss or
damage

(2) Where a person fails to discharge any duties or obligations imposed upon him by this Act, the person to whom the duty or obligation is owed has a right to recover compensation for loss or damage that he suffered and that was reasonably foreseeable as liable to result from the failure.

Agreement
to limit
liability
void

(3) Except as otherwise provided in this Act, any provision in any security agreement which purports to exclude any duty imposed on a person under this Act or to exclude or limit the liability of a person for failure to discharge duties imposed by this Act is void.

Assessment
of damages

(4) In assessing damages under this Act, the Court may consider as a mitigating factor evidence that the defendant employed reasonable diligence and took all reasonable precautions to discharge the duties and obligations imposed upon him by this Act.

Extension
of time

65 Where in this Act, other than in sections 4, 5, 6 and 12, Parts III and IV and this Part, a time is prescribed within which or before which any act or thing must be done, the Court, on application, may extend or abridge the time for compliance on any term that it considers just and reasonable.

Remedial
provision re
errors,
omissions,
etc.

66(1) The validity or effectiveness of a document to which this Act applies is not affected by reason of a defect, irregularity, omission or error in the document or in the execution or registration of the document unless the defect, irregularity, omission or error is seriously misleading.

(2) Failure to provide a description in a document required by this Act in relation to any type or kind of collateral in a document does not affect the validity or effectiveness of the document with respect to any other collateral.

Failure to provide description

67(1) Where under this Act a notice or any writing may be or is required to be served, it may be served on

Service of notices or writings

(a) an individual, by personal service or by registered mail addressed to him at his residence or place of business and, if he has more than one residence or place of business, at any one his residences or places of business;

(b) a partnership,

(i) by personal service upon

(A) any one or more of the partners;

(B) any person having, at the time of service, control or management of the partnership business at the principal place of business of the partnership within the Province;

(ii) by registered mail addressed to

(A) the partnership;

(B) any one or more of the partners;

(C) any person having, at the time of service, control or management of the partnership business, at the principal place of business of the partnership within the Province;

at the post office address of the principal place of business of the partnership within the Province;

(c) a body corporate, by delivery to the registered office of the body corporate or by registered mail addressed to the body corporate at its registered office;

(d) an extra-provincial body corporate, by delivery to . . .

(ADOPTING PROVINCES WITH DIFFERENT SERVICE PROVISIONS FOR EXTRA-PROVINCIAL CORPORATIONS SHOULD AMEND THE ABOVE SUBSECTION ACCORDINGLY.)

Service by
registered
mail

(2) Service by registered mail is affected when the addressee actually receives the notice or writing, or upon the expiry of four days after the day of registration, whichever is earlier.

Service by
registered
mail

(3) Where a notice or writing may be served by registered mail to the post office address as it appears on a registered financing statement or security agreement and

(a) no financing statement was required to be registered and no sufficient address appears on the security agreement; or

(b) no document is registered and the security interest is deemed to be perfected under section 72(3);

the notice or writing shall be served in accordance with subsection (1).

(ADOPTING PROVINCES SHOULD CONSIDER THIS SECTION IN THE LIGHT OF THEIR INTERPRETATION ACTS AND OTHER LEGISLATION.)

Notice or
knowledge

68 For the purposes of this Act, a person knows or has notice or is notified when

(a) in the case of an individual, information comes to his attention under circumstances in which a reasonable person would take cognizance of it;

(b) in the case of a partnership, information has come to the attention of one or more of the general partners or of a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;

(c) in the case of a body corporate, information has come to the attention of

(i) a managing director or officer of the corporation;
or

(ii) a senior employee of the corporation with responsibility for matters to which the information relates;

under circumstances in which a reasonable person would take cognizance of it, or the information in

writing has been delivered to the registered office of the body corporate or in the case of an extra-provincial body corporate has been delivered to . . .

(ADOPTING PROVINCES WITH DIFFERENT NOTICE PROVISIONS FOR EXTRA-PROVINCIAL CORPORATIONS SHOULD AMEND THE ABOVE SUBSECTION ACCORDINGLY.)

69(1) Where there is a conflict between a provision of this Act and a provision of any Act for the protection of consumers, the provision of that Act prevails.

Conflict between Act and other legislation

(2) Except as otherwise provided in this or any other Act, where there is a conflict between a provision of this Act and a provision of any general or special Act other than those mentioned in subsection (1), the provision of this Act prevails.

Idem

(THIS SECTION SHOULD BE ADAPTED TO MEET THE POLICY REQUIREMENTS OF EACH ADOPTING PROVINCE.)

70(1) A reference to . . . *(adopting provinces should insert references to the relevant Acts of their jurisdiction.)* or any provision of those Acts, in any general or special Act that relates to a security interest in personal property or fixtures to which the Act applies, shall be deemed to refer to this Act or to the corresponding provision of this Act.

References

(2) A reference in any Act to a chattel mortgage, lien note, conditional sales contract, floating charge, pledge, assignment of book debts, or any derivative of the terms, or to any transaction which under this Act is a security agreement, is deemed to be a reference to the corresponding type of security agreement under this Act.

Idem

(3) A reference in this Act to . . . *(adopting provinces should insert references to the relevant Acts of their jurisdiction.)*

Idem

is deemed to be a reference to that Act as it existed on the day before the coming into force of this Act.

71(1) This Act applies

Transitional application of Act

(a) to every security agreement made after this Act comes into force;

(b) subject to subsections (2) and (3), to every prior security interest as defined in section 72 that is not validly terminated, completed, consummated or enforced in accordance with the prior law before this section comes into force;

(c) a security interest created under

(i) a renewal, extension, refinancing or consolidation of a security agreement made or taking place after this Act comes into force, or

(ii) revolving credit transactions entered into before and continuing after this Act comes into force.

Validity
of prior
security
interest

(2) The validity of a prior security interest as defined in section 72 is governed by the prior law.

Priorities

(3) The order of priorities

(a) between security interests is determined by the prior law, if all of the competing security interests arose under security agreements entered into before this Act comes into force; and

(b) between a security interest and the interests of a third party is determined by the prior law, if the third party interest arose before this Act comes into force and the security interest arose under a security agreement entered into before this Act comes into force.

Interpretation

72(1) In this section,

"prior
security
interest"

(a) "prior security interest" means an interest created, reserved or provided for by a security agreement or other transaction validly created or entered into, before this section comes into force, that is a security interest within the meaning of this Act and to which this Act would have applied if it had been in force at the time the security agreement or other transaction was created or entered into;

"Prior
registration
law"

(b) "prior registration law" means an Act referred to in section 70(3).

(ADOPTING PROVINCES SHOULD SUBSTITUTE REFERENCES TO THE RELEVANT ACTS OF THEIR JURISDICTION.)

(2) A prior security interest that, when this section comes into force,

Prior security interest deemed to be registered and perfected

(a) is covered by

(i) an unexpired filing or registration under a prior registration law is, subject to subclause (ii), deemed to have been registered and perfected under this Act and, subject to this Act, such filing or registration continues for the unexpired portion of the filing or registration period; and

(ii) an unexpired registration under *(insert names of relevant Acts)* is deemed to have been registered and perfected under this Act, and such registration continues for a period of three years from the day this section comes into force;

and the filing or registration, as the case may be, may be further continued by registration of a renewal statement under this Act where the security interest could be perfected by registration if it were to arise after this Act comes into force; and

(b) is covered by a registration under . . . *(adopting provinces should insert references to the relevant Act of their jurisdiction)* is deemed to have been registered and perfected under this Act, and the registration continues from the day this section comes into force until discharged under section 48.

(SUBSECTION (2)(a)(i) RELATES TO REGISTRATION ACTS WITH LIMITED REGISTRATION PERIODS: SUBSECTIONS (2)(a)(ii) AND (b) RELATE TO ACTS WITH PERPETUAL REGISTRATION PERIODS. ADOPTING PROVINCES SHOULD ADAPT THESE PROVISIONS IN ACCORDANCE WITH THEIR OWN LEGISLATION. SECTION (2)(b) RELATES SPECIFICALLY TO LEGISLATION DEALING WITH CORPORATE SECURITIES.)

Idem

(3) A prior security interest validly created, reversed or provided for under any prior law that gave that interest the status of a perfected security interest without filing or registration under any prior registration law and without the secured party taking possession of the collateral is perfected within the meaning of this Act as of the date the security interest attached, and, subject to subsection (4), that perfection continues for two years from the day this section comes into force, after which it becomes unperfected unless otherwise perfected under this Act.

Exception

(4) The time limit in subsection (3) does not apply to trust indentures.

Perfection of prior security interest

(5) A prior interest security interest that, when this section comes into force, could have been but was not

(a) covered by a filing or registration under a prior registration law;

(b) perfected under prior law through possession of the collateral by the secured party;

may, if permitted by this Act, be perfected by registration or possession in accordance with this Act.

Perfection by possession

(6) A prior security interest that, under this Act, may be perfected by the secured party's taking possession of the collateral is perfected for the purposes of this Act by the possession, whether the possession occurred before or after this section comes into force and notwithstanding that the prior law did not permit the perfection of the security interest by the possession.

Perfection continues

(7) The perfection of a prior security interest that, when this section comes into force, was covered by an unexpired filing or registration under a prior registration law, and for the perfection of which under this Act no registration of a financing statement is required, continues under this Act.

Perfection or prior security interest

(8) A prior security interest that, when this section comes into force, could have been, but was not, covered by a filing or registration under a prior registration law and that, under this Act, may be perfected without registration of a financing statement and without possession of the collateral by the secured party is perfected under this Act provided

that all other conditions for the perfection of the security interest are satisfied.

73 This Act binds the Crown.

Act binds
the Crown

74 The Lieutenant Governor in Council may make regulations

Regulations

- (a) designating office branches;
- (b) approving the form of the seal of the registrar and each branch registrar;
- (c) prescribing the duties of the registrar and branch registrars;
- (d) prescribing business hours for the offices of the registration system of any of them;
- (e) respecting the registration system;
- (f) requiring the payment of fees and prescribing the amounts thereof;
- (g) governing practice and procedure applicable to proceedings under this Act;
- (h) prescribing forms and providing for their use;
- (i) prescribing the information referred to in section 43;
- (j) governing the right of a secured party to indicate the length of time during which a financing statement or a financing change statement renewing the financing statement shall be effective;
- (k) defining any word or expression used in this Act that is required to be defined in the regulations;
- (l) prescribing any matter required or authorized by this Act to be prescribed by regulation;
- (m) increasing or decreasing the amounts referred to in section 28(3);

(THIS CLAUSE IS NECESSARY IF SECTION 28(3) IS ADOPTED.)

(n) respecting any matter necessary or advisable to carry out effectively the intent and purposes of this Act.

75 The *(insert relevant legislation)* are repealed.

Repeal

