

1979-80

CHAPTER P-6.1

An Act respecting Security Interests in Personal Property

(Assented to June 17, 1980)

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

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SHORT TITLE

Short title

- 1 This Act may be cited as *The Personal Property Security Act*.

INTERPRETATION

Interpretation:

- 2 In this Act:

“accessions”, “accession goods”

- (a) **“accessions”** or **“accession goods”** means goods that are in-stalled in or affixed to other goods in such a manner or under such circumstances as to result in their becoming in law an accession to the other goods and, in relation to accession goods:

- (i) **“other goods”** means goods to which accession goods are affixed or attached; and

- (ii) **“the whole”** means the accession goods and the other goods;

“account”

- (b) **“account”** means any monetary obligation not evidenced by chattel paper, an instrument or a security, whether or not it has been earned by performance;

“building”

- (c) **“building”** includes a structure, erection, mine or work built, erected or constructed on or in land;

“building materials”

(d) **“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;

(i) goods that are severable from the building or land merely by unscrewing, unbolting, 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;

“chattel paper”

(e) **“chattel paper”** means one or more writings that evidence both a monetary obligation and a security interest in or lease of specific goods or a security interest in specific goods and accessions, but does not include a security agreement providing for a security interest in specific goods and after-acquired goods other than accessions;

“collateral”

(f) **“collateral”** means personal property that is subject to a security interest;

“consignment”

(g) **“consignment”** means an agreement under which goods are delivered to a person, who in the ordinary course of his business deals in goods of that description, for sale, resale or lease, by a person who:

(i) in the ordinary course of his business deals in goods of that description; and

(ii) reserves a proprietary interest in the goods after they have been delivered;

but does not include an agreement under which goods are delivered to a person for sale or lease if the person is generally known in the area in which he carries on business to be selling or leasing goods of others;

“consumer goods”

(h) **“consumer goods”** means goods that are used or acquired for use primarily for personal, family or household purposes;

“court”

(i) **“court”** means Her Majesty’s Court of Queen’s Bench;

“creditor”

(j) **“creditor”** includes an assignee for the benefit of creditors, a trustee in bankruptcy and an executor, administrator or committee;

“debtor”

(k) **“debtor”** means 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:

- (i) the person who receives goods from another person under a consignment;
- (ii) the lessee under a lease;
- (iii) the assignor of an account or chattel paper;
- (iv) the transferee of a debtor’s interest in collateral; and
- (v) any one or more of the persons mentioned in subclauses (i) to (iv) where the context so requires;

and, where a debtor is not the owner of the collateral, means the owner of the collateral, in any provision of this Act dealing with collateral, and the obligor, in any provision of this Act dealing with the obligation, and may include both where the context so requires;

“default”

(l) **“default”** means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event or set of circumstances whereupon, under the terms of the security agreement, the security becomes enforceable;

“document of title”

(m) **“document of title”** means any writing that purports to be issued by or addressed to a bailee and purports to cover any goods in the bailee’s possession that are identified, or fungible portions of an identified mass, and that, in the ordinary course of business, is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

“equipment”

(n) **“equipment”** means goods that are not inventory or consumer goods;

“financing change statement”, “financing statement”

(o) **“financing change statement”** or **“financing statement”** means a document, in the prescribed form, that is required or permitted to be registered pursuant to Part IV;

“fixtures”

(p) **“fixtures”** means goods that are installed on or affixed to real property in such a manner or under such circumstances as to result in their becoming in law fixtures to the realty, but does not include building materials;

“fungible”

(q) **“fungible”**, with respect to goods or securities, means goods or securities any unit of which is, by nature or usage of trade, the equivalent of any other like unit, but goods or securities which are not fungible are deemed to be fungible for the purposes of this Act to the extent that, under the security agreement, unlike units are treated as equivalent;

“future advance”

(r) **“future advance”** means the payment of money, the provision of credit or the giving of 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, advance the credit or give the value, and includes all advances and expenditures made by the secured party for the protection, maintenance, preservation or repair of the collateral;

“goods”

(s) **“goods”** means tangible personal property, other than choses in action and money, and includes fixtures, growing crops and the unborn young of animals, but does not include timber until it is cut or minerals until they are extracted;

“indebtedness”

(t) **“indebtedness”** means, when used with respect to a lease, obligation secured;

“instrument”

(u) **“instrument”** means a bill of exchange, note or cheque within the meaning of the *Bills of Exchange Act* (Canada), or any 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) a writing that is chattel paper;
- (ii) a document of title; or
- (iii) a security other than a security that is a bill of exchange or note within the meaning of the *Bills of Exchange Act* (Canada);

“intangible”

(v) **“intangible”** means all personal property, including choses in action, that is not goods, chattel paper, documents of title, instruments or securities;

“inventory”

- (w) **“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, work in process or materials used or consumed in a business or profession;

“judge”

(x) **“judge”** means a judge of the court;

“lease for a term of more than one year”

- (y) **“lease for a term of more than one year”** includes:
- (i) a lease for an indefinite term even though the lease is determinable by one or both parties within one year of its execution;
 - (ii) 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;

(iii) a lease initially for less than one year, where the lessee retains uninterrupted or substantially uninterrupted possession of the goods leased for a period in excess of one year after the day he first acquired possession of the goods, and the lease is deemed to be a lease for more than one year as soon as the lessee's possession extends beyond one year;

but does not include:

(iv) a lease transaction involving a lessor who is not regularly engaged in the business of leasing goods;

(v) a lease of any prescribed goods, regardless of the length of the term of the lease;

“money”

(z) **“money”** means a medium of exchange authorized by the Parliament of Canada as part of the currency of Canada or adopted by a foreign government as part of its currency;

“obligation secured”

(aa) **“obligation secured”** means, when determining the amount payable under a lease, the amount originally contracted to be paid under the lease, any other amounts payable pursuant to the terms of the lease and any other amount required to be paid by the lessee to obtain full ownership of the collateral;

“pawnbroker”

(bb) **“pawnbroker”** means a person who engages in the business of granting consumer credit and who takes a security interest in the form of a pledge of goods to secure the consumer credit or who purchases goods under an agreement or undertaking, express or implied, that those goods may be afterwards repurchased or redeemed on terms, and “consumer credit” means credit granted to an individual for personal, family or household purposes by a person or organization in the business of granting credit, and, unless the agreement under which credit is granted or the context of the transaction indicates otherwise, a grant of credit is presumed to be a grant of consumer credit;

“person”

(cc) **“person”** includes an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative;

“prescribed”

(dd) **“prescribed”** means prescribed in the regulations;

“proceeds”

(ee) **“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 insurance payments or any other payments as indemnity or compensation for loss of or damage to the collateral or proceeds therefrom, or any right to such payment, and any payment made in total or partial discharge of an intangible, chattel paper, instrument or security; and money, cheques and deposit accounts in banks, credit unions, trust companies or similar institutions are cash proceeds and all other proceeds are non-cash proceeds;

“purchase”

(ff) **“purchase”** includes taking by sale, lease, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in personal property;

“purchase-money security interest”

(gg) **“purchase-money security interest”** means:

- (i) a security interest that is taken or reserved by a seller, lessor or consignor of personal property to secure payment of all or part of its sale or lease price;
- (ii) a security interest that is taken by a person who gives value for the purpose of enabling the debtor to acquire rights in or to the personal property, to the extent that the value is applied to acquire such 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 person who delivers goods to another person under a consignment;

“purchaser”

(hh) **“purchaser”** means a person who takes by purchase;

“registrar”

(ii) **“registrar”** means the Registrar of Personal Property Security appointed under section 42;

“registry”

(jj) **“registry”** means the Personal Property Registry established under section 41;

“secured party”

(kk) **“secured party”** means a person who has a security interest and, where a security agreement is embodied in a trust indenture, means the trustee;

“security”

(ll) **“security”** means a share, stock, warrant, bond, debenture, debenture stock or the like issued by a body corporate or other person that is:

- (i) 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 in an enterprise, or that evidences an obligation of the issuer; and
- (ii) of a type which, in the ordinary course of business, is transferred by delivery with necessary endorsement, assignment, registration in the books of the issuer or agent for the issuer, or compliance with the restrictions on transfers;

“security agreement”

(mm) **“security agreement”** means an agreement that creates or provides for a security interest, and includes a document evidencing a security agreement when the context permits;

“security interest”

(nn) **“security interest”** means an interest in goods, documents of title, securities, chattel paper, instruments, money or intangibles that secures payment or performance of an obligation and is deemed to include:

- (i) an interest arising from an assignment of accounts or transfer of chattel paper;
- (ii) the interest of a person who delivers goods to another person 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 subclause (i) to

(iii) may not secure payment or performance of an obligation, but does not include the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading to his own order or to the order of his agent, unless the parties have otherwise evidenced an intention to create or provide for a security interest;

“specific goods”

(oo) **“specific goods”** means good identified and agreed upon at the time a security agreement in respect to those goods is made;

“trust indenture”

(pp) **“trust indenture”** means any deed, indenture or document, however designated, including any supplement or amendment thereto, by the terms of which a body corporate issues or guarantees, or provides for the issue or guarantee of, debt obligations and in which a person is appointed as trustee for the holder of the debt obligations issued, guaranteed or provided for thereunder and secured by a security interest;

“value”

(qq) **“value”** means any consideration sufficient to support a simple contract and includes an antecedent debt or liability.

PART I

GENERAL

Application of Act

3 Subject to sections 4 and 55, this Act applies to every security agreement, without regard to its form and without regard to the person who has title to the collateral, that creates a security interest including, but without limiting the generality of the foregoing:

(a) a chattel mortgage, conditional sale, floating charge, pledge, debenture, trust indenture or trust receipt, lease, assignment, consignment or transfer of chattel paper; and

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

Non-application of Act

4 Except as specifically otherwise provided, this Act does not apply to:

(a) a lien, charge or other interest given by statute or a lien given by rule of law for the furnishing of goods, services or materials;

(b) an assignment of an interest or claim in or under any contract of annuity or policy of insurance, except insofar as the money payable under a policy of insurance is or would be indemnity or compensation for loss of or damage to collateral, or any right to any such moneys payable;

(c) an assignment of present or future wages, salary, pay, commission or any other compensation for labour or personal services;

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

- (e) the creation or assignment of an interest in or a lien on real property, including chattels real;
- (f) the assignment of any right to payment that arises in connection with an interest in or a lease on real property other than:
 - (i) an assignment of rental payments payable under a lease of real property; or
 - (ii) a right to payment evidenced by a security;
- (g) a sale of accounts or chattel paper as part of a sale of the business out of which they arose, unless the vendor remains in apparent control of the business after the sale;
- (h) an assignment of accounts made solely to facilitate the collection of accounts for the assignor;
- (i) an assignment of a claim for damages or a judgment representing a right to damages;
- (j) an assignment for the general benefit of creditors made pursuant to an Act of the Parliament of Canada relating to insolvency.

Validity of security interest in collateral

5(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 securities, instruments, negotiable documents of title, money and chattel paper;

is determined by the law of the jurisdiction where the collateral is situated when the security interest attaches.

(2) A security interest in goods perfected, under the law of the jurisdiction in which the goods are situated when the security interest attaches, before the goods are brought into the province, continues perfected in the province:

- (a) as against a buyer in good faith who acquires an interest in the goods after they are brought into the province, if the security interest is perfected in the province prior to the acquisition; and
- (b) as against all other persons, if the security interest is perfected in the province:
 - (i) within sixty days after the day the goods are brought into the province;
 - (ii) within fifteen days after the day the secured party receives notice that the goods have been brought into the province; or
 - (iii) prior to the day that perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached;

whichever is earliest

Perfection otherwise

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

Perfection in province

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

Conflict of laws rules where goods brought in province

6(1) Subject to section 7, 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 the other jurisdiction within thirty days after the security interest attached for purposes other than transportation through the other jurisdiction, the validity, perfection and effect of perfection or non-perfection of the security interest are determined by the law of the other jurisdiction.

Perfection in province

(2) Where the jurisdiction to which the goods are removed is other than this province and the goods are later brought into this province, the security interest in the goods is deemed to be one to which subsection 5(2) applies if it had been perfected under the law of the jurisdiction to which the goods were removed.

Conflict of laws

7(1) The validity, perfection and effect of perfection or non-perfection of:

- (a) a security interest in intangibles or in goods which are of a type that are normally used in more than one jurisdiction, if such goods are classified as equipment or as inventory leased or held for lease by a debtor to others; and
- (b) a non-possessory security interest in securities, instruments, negotiable documents of title, money and chattel paper;

are governed by the law of the jurisdiction where the debtor is located when 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 location

(3) When a debtor changes his location to another jurisdiction, a perfected security interest mentioned in subsection (1) continues perfected in this jurisdiction if it is perfected in the new jurisdiction;

- (a) within sixty days after the day the debtor changes his location;
- (b) within fifteen days after 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 earliest.

Perfection in province

(4) If the jurisdiction in which a debtor is deemed to be located under this section 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, any security interest in the collateral which is not perfected under this Act is deemed to be an unperfected security interest in relation to any interests in the collateral acquired by a person in this province.

Same

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

Conflict of laws rules re minerals

(6) Notwithstanding section 6 and subsection (1) of this section, the validity, perfection and effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like, including oil and gas, before extraction and which attaches thereto 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.

Conflict in priority rules

8(1) Except as otherwise provided in this Act, when goods, other than those mentioned in subsection (2), securities, instruments, negotiable documents of title, money and chattel paper are dealt with in two or more jurisdictions and a conflict exists between the priority rules of the jurisdictions:

- (a) the priority rules of the last jurisdiction, in which the collateral was dealt with in such a way as to give rise to an interest in conflict, prevail, if all interests in conflict were perfected by registration;
- (b) the priority rules of the last jurisdiction, in which a conflicting possessory security interest in the collateral was taken, prevail.

Same

(2) Subject to subsection 7(4), when intangibles or goods which are of a type that are normally used in more than one jurisdiction, if such goods are equipment or inventory leased or held for lease by a debtor to others, are dealt with in two or more jurisdictions and a conflict exists between the priority rules of the jurisdictions, the priority rules of the jurisdiction, in which the debtor is located when the last dealing occurred which gave rise to the conflict, prevail.

Dealing with collateral

- (3) For the purposes of this section, collateral is dealt with when it is:
- (a) purchased;
 - (b) seized under judicial process; or
 - (c) becomes subject to a non-consensual lien or charge.

Conflict of laws rules re procedural and substantive issues

- (4) Notwithstanding sections 5, 6 and 7 and subsections (1) and (2) of this section:
- (a) all procedural issues involved in the enforcement of the rights of a secured party against 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 such rights;
 - (b) all procedural issues involved in the enforcement of the rights of a secured party against intangibles are governed by the law of the forum;
 - (c) all substantive issues involved in 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 PARTIES

Effectiveness of security agreement

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

Enforceability of security interest

10(1) No security interest is 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 which enables the type or kind of collateral taken under the security agreement to be distinguished from types or kinds of collateral which are not collateral under the security agreement, and, in the case of a security interest taken in all of the debtor's present and after-acquired property, a statement indicating that a security interest has been taken in all of the debtor's present and after-acquired property is sufficient.
- (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 clause (1)(b).

Delivery of copy of security agreement

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

When security interest attaches

12(1) A security interest attaches when:

- (a) value is given;
- (b) the debtor has rights in the collateral; and
- (c) except for the purpose of enforcing inter partes rights of the parties to the security agreement, it becomes enforceable within the meaning of section 10;

unless the parties intend it to attach at a later time, in which case it attaches in accordance with the intentions of the parties.

When debtor has rights

(2) For the purposes of subsection (1), a debtor has rights:

- (a) in goods purchased by him under an agreement to sell, when he obtains possession of them pursuant to the sales contract;
- (b) in goods leased to him, hired by him or delivered to him under a consignment, when he obtains possession of them pursuant to the lease, hiring agreement or consignment.

Same

(3) For the purposes of subsection (1), a debtor has no rights in:

- (a) crops until they become growing crops;
- (b) the young of animals until they are conceived;

- (c) oil, gas or other minerals until they are extracted; or
- (d) timber until it is cut.

After acquired property

13(1) When a security agreement provides for a security interest in after-acquired property, the security interest attaches in accordance with section 12 without specific appropriation by the debtor.

Crops

(2) No security interest in crops attaches under an after-acquired property clause in a security agreement unless the crops are grown within 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 the parties so agree, attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage.

Future advances

14(1) A security interest may secure future advances whether or not the advances are given pursuant to an obligation in the security agreement.

When obligation not binding

(2) No obligation to make future advances is binding on a secured party if the collateral has been seized, attached or charged under circumstances described in clause 20(1)(b) or (c), and the secured party receives notice of this fact.

Application of sales law

15 Where a seller retains a purchase-money security interest in goods, all sales law including, but without limiting the generality of the foregoing, *The Sale of Goods Act*, *The Consumer Products Warranties Act* and *The Agricultural Implements Act*, where applicable, governs the sale, including any disclaimer, limitation or modification of express or implied conditions and warranties.

Provision to accelerate

16 Where a security agreement provides that the secured party may accelerate payment or performance by the debtor when the secured party deems himself insecure or decides that the collateral is in jeopardy, that provision is to be construed to mean that the secured party has the right to do so only if he 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

17(1) A secured party shall use reasonable care in the custody and preservation of collateral in his possession, and, unless otherwise agreed, in the case of an instrument, a security or chattel paper, reasonable care includes taking necessary steps to preserve rights against other persons.

Rights and 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 shall apply any money so received, unless remitted to the debtor, immediately upon its receipt in reduction of the obligation secured;

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

Secured party may create security interest

(3) The secured party may create a security interest in the collateral upon terms that do not impair the debtor's rights under Part V.

Security interest not lost

(4) A secured party does not lose his security interest for failing to meet any obligations imposed by subsection (1) or (2).

Use of collateral by secured party

(5) A secured party may use the collateral:

- (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:
 - (i) the court before which a question relating to the collateral is being heard; or
 - (ii) a judge upon application with notice to all persons concerned.

Debtor, etc., may request statement from secured party

18(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 served on the secured party, require the secured party to send or deliver to him at the address for reply:

- (a) a statement in writing of the amount of the indebtedness and the terms of payment thereof as of the date specified in the demand;
- (b) a written approval or correction of the itemized list of the collateral attached to the demand as of the date specified in the demand;
- (c) a written approval or correction of the amount of indebtedness and of the terms of payment thereof as of the date specified in the demand;
- (d) a copy of the security agreement and amendments thereto.

Service of demand

(2) The demand mentioned in subsection (1) may be served in accordance with subsection 67(1) or by registered mail addressed to the post office address of the secured party as it appears on the security agreement or financing statement.

Security interest in type of collateral

(3) Where a demand is served in accordance with clause (1)(b) and where the secured party claims a security interest in all of a particular type of collateral in which the debtor has rights, he may so indicate in lieu of approving or correcting the itemized list of such collateral.

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 answer 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 to a judge 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), a judge, on application of the party who obtained the order, may:

- (a) declare the security interest of the secured party void and order registration of the security interest removed from the registry; or
- (b) make any order that he considers necessary to ensure compliance with the order granted under subsection (4).

Disclosure of successors in interest

(6) Where the person served with a demand under subsection (1) no longer has an interest in the obligation or collateral, he shall, within ten days after it is served, disclose the name and address of any successor in interest known to him, 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 to the same remedies as provided in subsections (4) and (5).

Successor in interest deemed secured party

(7) A successor in interest is deemed to be the secured party for the purposes of this section when he is served with a demand under subsection (1).

Application to judge

(8) Upon application of the secured party or in an application under subsection (4), a judge may:

- (a) make any order that is reasonable and just, including an order exempting the secured party in whole or in part from complying with the demand, if the judge is satisfied that the person giving the demand, not being the debtor, is acting in bad faith and is seeking the information for other than ordinary commercial purposes; and
- (b) make any order as to costs that he considers fair and reasonable.

Charges for reply

(9) 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.

Certain document need not be supplied

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

PART III

PERFECTION AND PRIORITIES

Time when security interest perfected

19 A security interest is perfected when:

- (a) it has attached; and
- (b) all steps required for perfection under this Act have been completed; regardless of the order of occurrence.

Where unperfected security interest subordinate

20(1) An unperfected security interest is subordinate to the interest of:

- (a) a person who has perfected security or who is otherwise entitled to priority under this Act;
- (b) a person who causes the collateral to be seized under legal process, including execution, attachment or garnishment, or that obtains a charging order or equitable execution affecting the collateral;
- (c) a sheriff who has seized or has obtained a right to the collateral under *The Creditors' Relief Act*;
- (d) a representative of creditors, but only for the purposes of enforcing the rights of persons mentioned in clause (b), and a trustee in bankruptcy;
- (e) a transferee who is not a secured party and who acquires his interest for value without notice of the security interest and before it is perfected:
 - (i) in documents of title, securities, instruments or goods, where the transferee receives delivery of the collateral;
 - (ii) in intangibles other than accounts;
 - (iii) in accounts acquired through a transaction not otherwise governed by this Act;
 - (iv) in chattel paper acquired through a transaction not otherwise governed by this Act, where the transferee receives possession of the chattel paper.

Where perfected security interest subordinate

(2) A perfected security interest is subordinate to the rights of persons mentioned in clauses (1)(b) to (d), except to the extent that the security interest secures:

- (a) advances made before the interests of such persons arise;
- (b) advances made before the secured party receives notice of the interest of such persons;
- (c) reasonable costs incurred and expenses made by the secured party for the protection, maintenance, preservation or repair of the collateral.

Priority of purchase-money security interest

21 A purchase-money security interest in:

- (a) collateral, other than intangibles, that is registered within fifteen days after the day the debtor obtains possession of the collateral;

(b) intangibles that is registered within fifteen days after the day the security interest attaches;

has priority over the interest of a person mentioned in clauses 20(1)(b) to (d).

Security interest in rental payments subordinate

22 A security interest in rental payments is subordinate to the interest of a person who acquires, without fraud under a transaction to which *The Land Titles Act* applies, an interest in the lease providing for the rental payments.

Continuity of perfection

23(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 35, to be continuously perfected in the way in which it was originally perfected.

Assignees

(2) An assignee of a security interest succeeds insofar as its perfection is concerned to the position of the assignor at the time of the assignment.

Perfection by possession

24(1) Subject to section 19, 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) instruments;
- (d) securities;
- (e) negotiable documents of title;
- (f) money;

but, subject to section 23, only while it is actually held as collateral.

Possession

(2) For the purposes of subsection (1), a secured party is deemed not to have taken or retained possession of collateral which is in the apparent possession or control of the debtor or the debtor's agent.

Perfection by registration

25 Subject to section 19, registration of a financing statement perfects a security interest in any collateral but only during the period in which the registration of the financing statement or a financing change statement renewing the registration relating thereto is effective.

Temporary perfection

26(1) A security interest in instruments, securities or negotiable documents of title is a perfected security interest for the first fifteen days after it attaches to the extent that it arises for new value given under a written security agreement.

Same

(2) A security interest perfected under section 24 in:

(a) an instrument or securities that a secured party delivers to the debtor for the purpose of:

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

(b) 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 the purpose of:

- (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.

Perfection subject to Act

(3) After the expiration of the periods of time mentioned in subsection (1) or (2), a security interest under this section is subject to the provisions of this Act for perfecting a security interest.

Perfection of goods held by bailee

27(1) A security interest in goods in the possession of a bailee is perfected by:

- (a) issuance of a document of title in the name of the secured party;
- (b) a holding on behalf of the secured party pursuant to section 24;
- (c) registration as to the goods; or
- (d) perfection of a security interest in the negotiable document of title in cases where the bailee has issued a negotiable document of title covering the goods.

Other security interest may arise

(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.

Priority of interests

(3) A security interest in the negotiable document of title covering goods takes priority over a security interest in the goods otherwise perfected after the goods become covered by a negotiable document of title.

Same

(4) Notwithstanding subsection (3), a perfected security interest in goods takes priority over the security interest in a negotiable document of title covering goods, where the security interest in the goods was registered at the time the security interest in the negotiable document of title was perfected.

Perfection re proceeds

28(1) Subject to the other provisions of this Act, where collateral is dealt with or otherwise gives rise to proceeds, the security interest therein:

- (a) continues as to the collateral unless the secured party expressly or impliedly authorizes such dealing; 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 which covers the original collateral and proceeds therefrom and contains a prescribed description;
- (b) by the registration of a financing statement which covers the original collateral and proceeds, where the proceeds are of a type or kind which fall within the description of the original collateral;
- (c) by the registration of a financing statement which covers the original collateral and proceeds therefrom, where the proceeds are cash proceeds.

Same

(3) In a case other than one mentioned in subsection (2), a security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, and the security interest in the proceeds remains perfected for a period of fifteen days after receipt of the proceeds by the debtor but becomes unperfected thereafter, 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.

Goods returned or repossessed; attachment of security interest

29(1) Where a debtor sells or leases goods that are subject to a security interest and the goods are returned to or repossessed by:

- (a) the debtor;
- (b) a transferee of chattel paper or a person having a security interest in an intangible resulting from the sale or lease of the goods;
- (c) a secured party who had a security interest in the goods at the time they were sold or leased or anyone claiming from or under him;

the security interest mentioned in clause (c) attaches again if the obligation secured remains unfulfilled, and, if the security interest was perfected by registration at the time of the sale or lease and the registration is effective at the time of return or repossession of the goods, nothing further is required to continue the perfected status, but, in any other case, the secured party must take possession of the returned or repossessed goods or must register his security interest in them.

(2) A security interest in goods that attaches while the goods are in possession of a buyer or a lessee of the debtor and that is perfected before the goods are returned or repossessed has priority over the security interest mentioned in clause (1)(c).

Where sale or lease creates chattel paper

(3) Where a sale or lease creates chattel paper and the goods are returned or repossessed, the unpaid transferee of the chattel paper has a security interest in the goods, and, if the unpaid transferee took possession of the chattel paper in the ordinary course of business and for new value, the transferee's security interest has priority over the security interest mentioned in clause (1)(c) and has priority over a security interest in the returned or repossessed goods as after-acquired property which first attaches on return or repossession.

Where sale or lease creates intangibles

(4) Where a sale or lease creates an intangible and the goods are returned or repossessed, the secured party who had the security interest in the intangible has a security interest in the goods, but the security interest mentioned in clause (1)(c) has priority over such interest.

Interest unperfected after return or repossession of goods

(5) A security interest asserted under subsections (3) and (4) is a perfected security interest in the goods when the security interest in the chattel paper or intangible was perfected, but it becomes unperfected fifteen days after the day of return or repossession of the goods, unless the secured party perfects his interest in the goods by taking possession of them or registering his security interest in them before the expiry of that fifteen day period.

Buyer or lessee takes free of security interest

30(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 therein given by or reserved against the seller or lessor or arising under section 29, whether or not the buyer or lessee knows of it, unless the secured party proves that the buyer or lessee also knows that the sale or lease constitutes a breach of the security agreement.

Same

(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.

Exception

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

- (a) a motor vehicle as defined in the regulations;
- (b) fixtures; or
- (c) goods whose purchase price exceeds \$500 or, in the case of a lease, whose retail market value exceeds \$500.

Sale

(4) For the purposes of subsections (1) and (2), a sale may be for cash, by exchange for other property or on credit, and includes delivering goods or documents of title under a pre-existing contract for sale, but does not include:

- (a) a transfer in bulk;
- (b) a transfer as security for, or in total or partial satisfaction of, a money debt; or
- (c) any past liability.

Priority of buyer or lessee

(5) A buyer or lessee of goods takes free of a security interest that is temporarily perfected under subsection 26(2), 28(3) or 29(5), or a security interest, the perfection of which is continued under subsection 49(2) during any of the fifteen- day periods mentioned in that subsection, 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.

Priority of holder of money

31(1) A holder of money has priority over any security interest in it perfected under section 25 or temporarily perfected under subsection 28(3) if the holder:

- (a) acquired the money without notice that it was subject to a security interest; or
- (b) was a holder for value, whether or not he acquired the money without notice that it was subject to a security interest.

Priority of creditor

(2) Notwithstanding subsections (1) and (3), a creditor who receives money or an instrument drawn or made by a debtor and delivered in payment of a debt owing to him by that debtor takes free from a security interest in the money or instrument drawn or made by the debtor whether or not the creditor has notice of the security interest.

Priority of purchaser of instrument or security

(3) A purchaser of an instrument or a security has priority over any security interest in the instrument or security perfected under section 25 or temporarily perfected under section 26 or subsection 28(3) if the purchaser:

- (a) gave value for his interest;
- (b) acquired the instrument or security without notice that it was subject to a security interest; and
- (c) took possession of the instrument or security.

Priority of holder of negotiable document of title

(4) A holder to whom a negotiable document of title has been negotiated has priority over any interest in the negotiable document of title that is perfected under section 25 or temporarily perfected under section 26 or subsection 28(3) if the holder:

- (a) gave value for the document of title; and
- (b) took the negotiable document of the title without notice that it was subject to a security interest.

Priority of purchaser of chattel paper

(5) A purchaser of chattel paper who took possession of it in the ordinary course of business and who gave new value for it has priority over;

- (a) any security interest that, in the case of chattel paper claimed as original collateral, was perfected under section 25 or any security interest in it as proceeds of equipment or consumer goods, if the purchaser acquired the chattel paper without notice that it was subject to a security interest;
- (b) any security interest in it as proceeds of inventory, whether or not the purchaser has notice of the security interest.

Priority of liens

32 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 such materials or services has priority over a perfected security interest unless the lien is given by an Act that provides that the lien does not have such priority.

Alienation of rights of debtor

33 The rights of a debtor in collateral may be transferred voluntarily or involuntarily 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.

Priority of purchase-money security interest

34(1) Subject to section 28, a purchase-money security interest in:

- (a) collateral or its proceeds, other than intangibles or inventory, that is perfected within fifteen days after the day the debtor obtains possession of the collateral; or
- (b) an intangible or its proceeds that is perfected within fifteen days after the day the security interest in the intangible attaches;

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

Same

(2) Subject to section 28 and subsection (4) of this section, a purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor if:

- (a) the purchase-money security interest in the inventory is perfected at the time the debtor receives possession of it; and
- (b) the purchase-money secured party serves a notice on any person who has registered a financing statement or security agreement covering the same type or kind of collateral, unless the purchase-money secured party registers his interest before that time, in which case the notice shall be served on secured parties who have registered financing statements or security agreements covering the same type or kind of collateral of the debtor before registration by the purchase-money secured party.

Notice

(3) The notice required in subsection (2) shall:

- (a) contain a statement that the person giving the notice has acquired or expects to acquire a purchase-money security interest in inventory of the debtor and its proceeds and a description of the inventory and its proceeds according to type or kind; and
- (b) be served at any time within a period of two years before the debtor receives possession of the collateral.

Purchase-money security interest sub-ordinate

(4) No purchase-money security interest in proceeds of inventory has priority over a security interest in accounts given for new value where a financing statement relating thereto is registered before the purchase-money security interest is perfected or a financing statement relating thereto is registered.

Priority of non-proceeds purchase-money security interest

(5) 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 fifteen days thereafter.

Priority between perfected security interests

(6) A perfected security interest in crops or their proceeds, given, not more than three months before the crops become growing crops by planting or otherwise, to enable the debtor to produce the crops during the production season, 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, even though the person giving the consideration has notice of the earlier security interest.

Priority between conflicting security interests

35(1) If no other provision of this Act is applicable, priority between conflicting, perfected security interests in the same collateral is determined by the order of:

- (a) registration;
- (b) possession of the collateral by the secured party pursuant to section 24;
- (c) perfection;

whichever is earliest, and, as between unperfected security interests, by the order of attachment.

Same

(2) Where there is a period, after the registration of a security interest, the taking of possession of the collateral by the secured party or the perfection of the security interest, during which there is no registration of the security interest, possession of the collateral by the secured party or perfection of the security interest, priority of the security interest dates from the time when it is re-registered, reperfected or from the time the secured party retakes possession.

Date for determining priority

(3) The time for determining priority of conflicting security interests in proceeds where no other provision of this Act is applicable is the same time as established under subsection (1) for determining priority between conflicting security interests in the collateral.

Future advances

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

Priority in case of lapse

(5) Where the registration of a security interest lapses as a result of the secured party's failure to renew the registration or where the registration of a security interest has been discharged fraudulently, in error or without authorization, the secured party may re-register his security interest within thirty days after the lapse or discharge, and, where he re-registers, the prior lapse or discharge does not affect the priority status of the security interest in relation to competing interests in the collateral which arose prior to the lapse or discharge, except insofar as subsequent advances are made or contracted for following the lapse or discharge and prior to the re-registration.

Priority where debtor transfers interest

(6) Where a debtor transfers his interest in collateral which, at the time of the transfer is subject to a perfected security interest, that security interest has priority over any other security interest granted by the transferee before the transfer, except insofar as the security interest granted by the transferee secures advances made or contracted for after the transfer at a time when the security interest granted by the debtor is unperfected through the operation of section 49.

Where debtor's interest unencumbered

(7) Subsection (6) does not apply where the transferee acquires the debtor's interest free from the security interest granted by the debtor.

Priority re fixtures

36(1) Except as provided in subsections (2) and (3), a security interest that attaches to goods:

- (a) before they become fixtures has priority as to the goods over the claim of any person who has an interest in the real property;
- (b) after they become fixtures has priority over the claim of any person who subsequently acquires an interest in the real property, but not over any person who has a registered interest in the real property at the time the security interest attaches to the goods and who has not consented in writing to the security interest or disclaimed an interest in the goods as fixtures.

Interest in fixtures subordinate

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

- (a) is subordinate to the interest of:
 - (i) a subsequent purchaser for value of an interest in real property; and
 - (ii) a person with a prior registered encumbrance on the real property in respect of subsequent advances;

if the subsequent purchase or subsequent advance under a prior encumbrance is made or contracted for without fraud and before the security interest is filed in accordance with section 54; and

- (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 land to enforce a judgment if the lien or charge arises before the security interest is filed in accordance with section 54.

Priority over purchase-money security interest

(3) No lien or charge mentioned in clause (2)(b) takes priority over a purchase-money security interest in the goods that is filed in accordance with section 54 before, on or within fifteen days after the day the debtor obtains possession of the goods.

Exercising rights to remove goods

(4) A secured party who, under this Act, has the right to remove goods from real property shall exercise his right of removal in a manner that causes no greater damage or injury to the land or to the other property situated thereon, or that puts the owner, lessee or occupier of the land to any greater inconvenience than is necessarily incidental to the work of effecting the removal of the goods.

Reimbursement 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 attached 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 re-imbursement

(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.

Application to court

(7) The secured party may apply to a court for an order:

- (a) determining the persons entitled to reimbursement under this section;
- (b) determining the amount and kind of security to be provided by the secured party;
- (c) prescribing the depository for the security;
- (d) dispensing with the consent of any or all of the persons mentioned in clause (a).

Retention of goods

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

Notice of intention to remove goods

(9) 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 land titles office to have an interest in the land, a notice in writing of his intention to remove the goods which notice shall contain:

- (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 land to which the goods are affixed; 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 twelve days after service of the notice in accordance with subsection (10).

Service of notice

(10) A notice mentioned in subsection (9) shall be served at least fifteen days before removal of the goods and may be served in accordance with subsection 67(1) or by registered mail addressed to the post office address of the person to be served as it appears in the records of the land titles office.

Application for order postponing removal

(11) Any person entitled to receive a notice under subsection (9) may apply to a judge for an order postponing removal of the goods from the real property, and the judge may make any order that he considers just and reasonable.

Priority re accessions

37(1) Except as provided in subsections (2) and (3) of this section and in section 38, a security interest in goods that attaches:

- (a) before they become an accession has priority as to the accession goods over the claim of any person in respect of the whole;
- (b) after they become an accession has priority over the claim of any person who subsequently acquires an interest in the whole, but not over any person who has an interest in the whole at the time the security interest attaches to the accessions and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.

Interest in accessions subordinate

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

- (a) is subordinate to the interest of:
 - (i) a subsequent purchaser for value of an interest in the whole; and
 - (ii) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances;

if the subsequent purchase or subsequent advance under the prior perfected security interest is made or contracted for before the security interest is perfected; and

- (b) 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) No interest of a creditor or the sheriff mentioned in clause (2)(b) takes priority over a purchase-money security interest in the accession goods that is perfected before or within fifteen days after the day the debtor obtains possession of the collateral.

Exercising right to remove accession goods

(4) A secured party who has the right to remove accession goods from the whole shall exercise his right of removal in a manner that causes no greater damage or injury to the other goods or that puts the person who is in possession of the whole to any greater inconvenience than is necessarily incidental to the work of effecting removal of the accession goods from the other goods.

Reimbursement for damage to interest

(5) 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 an accession to the other goods is entitled to reimbursement for any damage to his interest in the other goods resulting from the removal of the accession goods, but is not entitled to reimbursement for diminution in the value of the other goods resulting from the removal of the accession goods caused by the absence of the accession goods removed or by the necessity for replacement.

Security for reimbursement

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

Application to court

- (7) The secured party may apply to a court for an order:
- (a) determining the persons entitled to reimbursement under this section;
 - (b) determining the amount and kind of security to be provided by the secured party;
 - (c) prescribing the depository for the security;
 - (d) dispensing with the consent of any or all of the persons mentioned in clause (a).

Retention of accession goods

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

Notice of intention to remove accession goods

(9) The secured party who has the right to remove accession goods 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 accession goods which notice shall contain:

- (a) the name and address of the secured party;
- (b) a description of the accession 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 other goods sufficient to enable them to be identified; and
- (e) a statement of intention to remove the accession goods 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 (10).

Service of notice

(10) A notice mentioned in subsection (9) shall be served at least fifteen days before removal of the accession goods and may be served in accordance with subsection 67(1) or, in the case of a person who has registered a financing statement, by registered mail addressed to the post office address of the person to be served as it appears on the security agreement or financing statement.

Application for order postponing removal

(11) Any person entitled to receive a notice under subsection (9) may apply to a judge for an order postponing removal of the accession goods from the whole, and the judge may make any order that he considers just and reasonable.

Continuity of perfection

38(1) 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.

Interests share equally

(2) Where more than one perfected security interest attaches to the product or mass, the security interests are entitled to share in the product or mass according to the ratio that the obligation secured by each security interest entitled to share bears to the sum of the obligations secured by all security interests.

Application of section

(3) This section does not apply to a security interest in accession goods to which section 37 applies.

Subordination of interest

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

Rights of assignee

40(1) Unless a debtor on an intangible 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) all of the terms of the contract between the debtor on an intangible or chattel paper and the assignor and any defence or claim arising therefrom; and
- (b) any other defence or claim of the debtor on an intangible or chattel paper against the assignor that accrued before the debtor on an intangible or chattel paper received notice of the assignment.

Modification, etc., effective against assignee

(2) So far as the right to payment under an assigned contract right has not been earned by performance and notwithstanding notification of the assignment, any modification of or a 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 on an intangible 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 on an intangible 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.

Same

(5) A debtor on an intangible 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 assignment void

(6) A term in any contract between a debtor on an intangible and an assignor which prohibits assignment of the whole of an account or intangible for money due or to become due is void.

PART IV
REGISTRATION

Registry established

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

Appointment of registrar and other staff

42(1) The Attorney General shall appoint an official, to be known as the Registrar of Personal Property Security, and any deputy registrars that may be required for the proper operation of the registry.

Functions

(2) The registrar shall, under the direction of the Attorney General, supervise the operation of the registry.

Registrar may designate

(3) The registrar may designate one or more persons or deputy registrars on the staff of his office to act on his behalf.

Requisition of search

43(1) Upon payment of the prescribed fee in the prescribed manner, any person may, in person at the office of the registry in Regina or by mail:

- (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.

Same

(2) Upon payment of the prescribed fee in the prescribed manner, a deputy registrar employed at a place other than Regina shall requisition, by telephone, telegraph message or mail:

- (a) verbal 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) Where verbal search results are requested and the results of the search are, in the opinion of the registrar, of such length as to preclude verbal 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.

(5) Where so approved by the Attorney General, 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 that provided by the person requisitioning the search.

Printed search result prima facie proof

(7) A printed search result issued under clause (1)(b) or (2)(a) or subsection (3) is receivable in evidence as prima facie proof of its contents.

Certified copy prima facie proof

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

Effective time of registration

44(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 Regina, and the registration of the document is effective from the time assigned to the document by the registrar.

Registration of financing statement

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

Financing change statement

45(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.

Where collateral is assigned

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

Assignee disclosed as secured party

(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 is secured party

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

Time when registered

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

Amendment to registered document

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

Subordinated interest

47 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.

Renewal of registration

48(1) Where a financing statement has been registered with respect to a security interest, the registration may be renewed at any time before the document to which it refers expires by registering a financing change statement.

(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;
- (b) a financing change statement renewing the registration is effective for the length of time indicated on the financing change statement;
- (c) any other document is effective for the remainder of the period for which the financing statement to which the document relates or any financing change statement 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 judge's order maintaining the financing statement under subsection 50(4);
- (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

49(1) Where a security interest has been perfected by registration and the debtor has the consent of the secured party to transfer his interest in the collateral or part of the collateral, the transferee is deemed to be the debtor for the purposes of registration, and the security interest is unperfected as against any interest arising subsequent to the transfer and before the secured party registers a financing change statement amending the original financing statement.

When security interest becomes unperfected

(2) Where a security interest has been perfected by registration and the secured party has notice that:

- (a) the debtor has:
 - (i) transferred his interest in the collateral or part of the collateral; or
 - (ii) changed his name;

the security interest, as against any interest arising subsequent to the transfer or change of name and before the secured party registers a financing change statement, is unperfected:

- (iii) where the secured party has notice that the debtor has transferred his interest in the collateral or part of the collateral, fifteen days after the secured party has notice of the debtor's transfer;

(iv) where the secured party has notice that the debtor is about to transfer his interest in the collateral or part of the collateral:

(A) on the date of the transfer; or

(B) fifteen days after the secured party has notice that the debtor is about to transfer his interest in the collateral or a part of the collateral; of the debtor's transfer;

whichever is later;

(iv) where the secured party has notice that the debtor is about to change his name:

(A) on the day the debtor changes his name; or

(B) fifteen days after the secured party has notice that the debtor is about to change his name;

whichever is later.

Effect of section

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

(a) a prior security interest, as defined in clause 72(1)(a), registered under a prior registration law, as defined in clause 72(1)(b); or

(b) a security interest in collateral that is required by the regulations to be and is described by its serial number in a registered financing statement.

Re-perfecting security interest

(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.

Financing change statement acts as discharge

50(1) Where a financing statement is registered and the collateral or proceeds, as the case may be, is released or partially released, the secured party shall discharge the registration, wholly or partially, as the case may require, by registering a financing change statement.

Prohibition

(2) No financing change statement mentioned in subsection (1) shall be registered unless financing change statements in respect of all assignments by the secured party or transfers by the debtor are registered.

Demand for financing change statement

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

(a) all the obligations under the security agreement to which it relates 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 such obligations; or

(c) it 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 which 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 sign and deliver or send to the registry the financing change 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, within fifteen days after service of the demand.

Notice of discharge

(4) Where the secured party fails to deliver the required financing change statements within the time provided by subsection (3), 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 judge's order accompanied by a financing change statement maintaining the registration of the interest of the secured party.

Service of notice

(5) The notice mentioned in subsection (3) or (4) may be served in accordance with subsection 67(1) 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 judge

(6) Upon application to a judge by a secured party, the judge may order that the registration of a financing statement:

- (a) be maintained on any conditions and, subject to section 48, for any period of time that he 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

(7) Subsection (4) does not apply to an agreement registered under *The Corporation Securities Registration Act* or to a financing statement or a financing change statement registered with respect to a security interest taken under a trust indenture where the financing statement indicates that the security agreement with respect to which the financing statement was registered is a trust indenture.

Application to judge

(8) Where the secured party under a registration to which *The Corporation Securities Registration Act* applies or under a trust indenture fails to deliver the financing change statements demanded in subsection 50(3), the person making the demand may apply to a judge, upon notice to all persons concerned, for an order directing that the financing statement or financing change statements be removed from the registry.

No constructive notice

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

Registrar may refuse registration

52(1) Where, in the opinion of the registrar or deputy registrar, a document 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 document 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.

Document to be original

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

Agent

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

Certificate of registrar

(4) A certificate of the registrar or deputy registrar designated to sign certificates is receivable in evidence as prima facie proof of the time of the registration of a document, without proof of his signature or official position.

Microfilm

(5) When directed to do so by the Attorney General, the registrar shall cause any document 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 document registered.

Destruction of records

(6) When directed to do so by the Attorney General, the registrar shall authorize the destruction of any books, documents, 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.

Action against registrar

53(1) Subject to the other provisions of this section, any person who suffers loss or damage, as a result of his reliance upon a prescribed registry document or printed search results that are 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 person's having suffered the loss or damage.

Class action

(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 prescribed registry document or printed search results, 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.

Same

(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 such person, constitutes a judgment between each such 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 prescribed registry document or printed search results is not necessary if it is established that the trustee relied on the prescribed registry document 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 prescribed registry document 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 considers appropriate to give notice to members of the class.

Payment of damages

(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 claim

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

Payment of judgment

(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, it is disposed of in favour of the plaintiff, the Minister of Finance shall authorize payment out of the consolidated fund in the manner and in the amount specified in the judgment, including any costs awarded to the claimant.

Registrar subrogated

(11) Where damages are paid to a claimant under this section, the registrar is subrogated to the rights of the claimant to the amount so paid against any person indebted to the claimant and whose debt to the claimant was the basis of the loss or damage in respect of which the claimant was paid, and the registrar may enforce those rights by action in court or otherwise in the name of the Crown in right of Saskatchewan.

Immunity from action

(12) Notwithstanding *The Proceedings Against the Crown Act*, no action shall be brought against the Crown in right of Saskatchewan, 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 is provided in this section.

Notice filed in land titles office

54(1) In order to take priority over interests in real property according to section 36, a notice in the prescribed form shall be filed in the appropriate land titles office upon payment of the prescribed fee, and upon being so filed the registrar of the land titles office shall make a memorandum thereof on the certificate of title to the parcel of land to which the notice relates and on the condominium plan or replacement plan, as the case may require.

Renewal of notice

(2) Where a notice has been filed in the land titles office under subsection (1) and the filing of the notice has not expired, notice of a document 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 land titles office in the form prescribed, and, upon such filing, the registrar of the land titles office shall make a memorandum thereof on the proper certificate of title.

Application of section 48

(3) Section 48 applies, *mutatis mutandis*, 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 W.

Registrar may vacate notice

(5) Where the filing of a notice of a security interest in fixtures expires, the registrar of the land titles 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 thereof 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 land titles 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 Land Titles Act* for contesting the filing of a caveat.

PART V

RIGHTS AND REMEDIES ON DEFAULT

Application of Part

55(1) Unless otherwise provided in this Part, this Part applies only to a security interest that secures payment or performance of an obligation.

Same

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

Rights and remedies cumulative

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

Remedies of secured party

(4) Subject to any other Act or rule of law to the contrary, 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 real and personal property, in which case this Part applies as to the personal property only to the extent that it is not inconsistent with laws applicable to proceedings against real and personal property in a single action.

Interest does not merge

(5) A security interest does not merge merely because a secured party has reduced his claim to judgment.

Receiver or receiver-manager

56(1) A security agreement may provide for the appointment of a receiver or a receiver-manager and, except as provided in this Act, prescribe his rights and duties.

Application to court

(2) Upon the application of any person entitled to make an application under section 63 and after notice has been given to any person that the judge directs, a court may:

- (a) appoint a receiver or receiver-manager;
- (b) remove, replace or discharge a receiver or receiver-manager whether appointed by a court or 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 a receiver or receiver-manager;
- (e) make any order he thinks fit in the exercise of the jurisdiction of the court over receivers or receiver-managers.

Application of Act to receivers and receiver-managers

(3) Notwithstanding *The Business Corporations Act* and *The Non-profit Corporations Act*, in sections 17, 56 to 58, subsections 59(1) to (3) and (5) to (15) and sections 60 to 62, “**secured party**” includes a receiver and a receiver-manager.

Same

(4) Unless a court orders otherwise:

- (a) a receiver-manager is only required to comply with sections 17 and 57 to 60 when he disposes of collateral other than in the course of carrying on the business of the debtor; and
- (b) sections 61 and 62 do not apply whenever a receiver or receiver-manager has been appointed.

Rights and remedies of secured party

(5) Where the debtor is in default under a security agreement, the secured party has, in addition to any other rights and remedies, the rights and remedies provided in the security agreement except as limited by subsection (8), the rights and remedies provided in this Part and, when in possession, the rights, remedies and duties provided in section 17.

Enforcement of rights

(6) The secured party may enforce the security interest by any method available in or permitted by law and, if the collateral is or includes documents of title, the secured party may proceed either as to the documents of title or as to the goods covered thereby, and any method of enforcement that is available with respect to the documents of title is also available, *mutatis matandis* with respect to the goods covered thereby.

Rights and remedies of debtor

(7) Where the debtor is in default under a security agreement, he has, in addition to the rights and remedies provided in the security agreement and any other rights and remedies, the rights and remedies provided in this Part and in section 17.

Waiver and variation prohibited

(8) Except as provided in sections 17, 61 and 62, no provision of section 17 or sections 59 to 63, to the extent that they give rights to the debtor and impose duties upon the secured party, shall be waived or varied.

Collection rights of secured party

57(1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled:

- (a) to notify any debtor on an intangible or chattel paper or any obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral; and
- (b) to take control of any proceeds to which he is entitled under section 28.

Expenses of collection

(2) A secured party who by agreement is entitled to charge back the collected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the debtors on intangibles or chattel paper or obligors on instruments may deduct his reasonable expenses of realization from the collections.

Right of secured party to take possession, etc., on default

58 Subject to sections 36 and 37, upon default under a security agreement:

- (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral by any method permitted by law;
- (b) the secured party may, if the collateral is equipment and the security interest has been perfected by registration, render that equipment unusable without removal thereof from the debtor's premises, and the secured party is thereupon deemed to have taken possession of the equipment; and
- (c) the secured party may dispose of collateral under section 59 on the debtor's premises.

Right of secured party to dispose of collateral on default

59(1) Upon default under a security agreement, the secured party may dispose of any of the collateral in its condition either before or after any repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to:

- (a) the reasonable expenses of retaking, holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expenses incurred by the secured party; and
- (b) the satisfaction of the obligations secured by the security interest of the party making the disposition.

Manner of disposal

(2) Collateral may be disposed of:

- (a) by public or private sale;
- (b) at any commercially reasonable time of day or place;
- (c) as a whole or in commercial units or parts;
- (d) if the security agreement so provides, by lease or by deferred payment.

Delay

(3) The secured party may delay disposition of the collateral in whole or in part for any period of time that is commercially reasonable.

Notice on disposition of collateral

(4) Not less than twenty days prior to disposition of the collateral, the secured party shall serve a notice on:

- (a) the debtor or any other person who is known by the secured party to be the owner of the collateral;
- (b) any creditor or person with 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 in the name of the debtor or according to the serial number of the collateral when it is required for registration; and
- (c) any other person with an interest in the collateral who has delivered a written notice to the secured party of his interest in the collateral prior to the date that the notice is served on the debtor.

Same

(5) A receiver or receiver-manager appointed by a court or pursuant to a security agreement shall serve notice of his intention to dispose of the collateral on:

- (a) the debtor, unless the debtor is a corporation, the directors of which have ceased to have power to act because of the appointment of a receiver-manager;
- (b) any other person who is known by the secured party to be the owner of the collateral;
- (c) any person mentioned in clause (4)(b); and
- (d) any other person with an interest in the collateral who has delivered a written notice to the secured party of his interest in the collateral prior to its disposition.

Contents of notice

- (6) The notice mentioned in subsection (4) shall contain:
- (a) a description of the collateral sufficient to enable it to be identified;
 - (b) the amount required to satisfy the obligations secured by the security interest;
 - (c) the sums actually in arrears, exclusive of the operation of any acceleration clause in the security agreement, and a brief description of any other provision of the security agreement for the breach of which the secured party intends to dispose of the collateral;
 - (d) the amount of the applicable expenses mentioned in clause (1)(a) or, where the amount of such expenses has not been determined, a reasonable estimate;
 - (e) a statement that upon payment of the amounts due under clauses (b) and (d), any person entitled to receive the notice may redeem the collateral;
 - (f) a statement that, upon payment of the sums actually in arrears or the curing of any other default, as the case may be, together with the amounts due under clause (1)(a), the debtor may reinstate the security agreement;
 - (g) a statement that, unless the collateral is redeemed or the security agreement is reinstated, the collateral will be disposed of and the debtor may be liable for any deficiency; and
 - (h) the date, time and place of any public sale or the date after which any private disposition of the collateral is to be made.

Same

- (7) The notice mentioned in subsection (5) shall contain:
- (a) a description of the collateral by type or kind; and
 - (b) the date, time and place of any public sale or the date after which any private disposition of the collateral is to be made.

Same

- (8) Where the notice required in subsection (4) is served on any person other than the debtor, it need not contain the information specified in clauses (6)(c), (f) and (g), and, where the debtor is not entitled to reinstate the security agreement, the notice to the debtor need not contain the information specified in clauses (6)(c) and (f).

Reference to deficiency prohibited

- (9) No statement mentioned in clause (6)(g) shall make reference to any liability on the part of the debtor to pay a deficiency if under any Act or rule of law the secured party does not have the right to collect a deficiency from the debtor.

Service of notice

- (10) The notice required in subsection (4) or (5) may be served in accordance with subsection 67(1) or, in the case of service on the person who has registered a financing statement, by registered mail addressed to the post office address of the person to be served as it appears on the security agreement or financing statement.

Secured party may purchase collateral

- (11) The secured party may purchase the collateral or any part thereof only at a public sale and only for a price that bears a reasonable relationship to market value.

Sale to bona fide purchaser

(12) When a secured party disposes of collateral by sale to a *bona fide* purchaser for value who takes possession of it, the purchaser acquires the collateral free from the interests of the debtor and 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 such subordinate interests are deemed to be performed for the purposes of section 50.

Non-application of subsection (12)

(13) Subsection (12) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 72 who has not been given a written notice under this section.

Transfer of collateral to guarantor, etc.

(14) 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.

When notice not required

(15) The notice mentioned in subsection (4) is not required where:

- (a) the collateral is perishable;
- (b) the collateral will decline substantially in value if not disposed of immediately after default;
- (c) the cost of care and storage of the collateral is disproportionately large relative to its value;
- (d) due to market conditions, a delay in disposing of the collateral would likely reduce the amount recovered from a disposition of it;
- (e) for any other reason, a judge, on an *ex parte* application, is satisfied that a notice is not required;
- (f) after default, every person entitled to receive a notice of disposition under subsection (4) consents in writing to the immediate disposition of the collateral.

Application of surplus

60(1) Where a security agreement secures an indebtedness and the secured party has dealt with the collateral under section 57 or has disposed of it in accordance with section 59 or otherwise, he shall account for and pay over any surplus consecutively to:

- (a) any person who has a subordinate security interest in the collateral who registers a financing statement indexed in the name of the debtor or according to the serial number of the collateral, when it is required for registration, prior to the distribution of the proceeds;
- (b) any other person who has an interest in the surplus, if that person has delivered a written demand therefore on the secured party prior to distribution of the proceeds; and
- (c) the debtor.

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 such proof within ten days after the secured party's demand, the secured party need not pay over any portion of the surplus to him.

Debtor liable for deficiency

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

Retention of collateral in satisfaction of obligation

61(1) After default, the secured party in possession of the collateral may propose to retain the collateral in satisfaction of the obligations 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 the owner of the collateral;
- (b) any creditor or 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 in the name of the debtor or according to the serial number of the collateral when it is required for registration; and
- (c) any other person with an interest in the collateral who has delivered a written notice to the secured party of an interest in the collateral prior to the date that notice is served on the debtor.

Objection

(2) If any person who is entitled to notification under subsection (1), and whose interest in the collateral would be adversely affected by the secured creditor'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 under section 59.

Irrevocable election to retain collateral

(3) If no objection is made, the secured party in possession is, at the expiration of the fifteen-day period or periods mentioned in subsection (2), deemed to have irrevocably elected to retain the collateral in full satisfaction of the obligations secured, and thereafter is entitled to hold or dispose of the collateral free from all rights and interests therein of any person entitled to notification under clause (1)(b) who has been served with such notice and any person entitled to notification under clauses (1)(a) and (c) whose interest is subordinate to that of the secured party and who has been served with such notice.

Service of notice

(4) The notice required under subsection (1) may be served in accordance with subsection 67(1) or, in the case of service on a person who has registered a financing statement, by registered mail addressed to the post office address of the person to be served as it appears on the security agreement or financing statement.

Proof of interest

(5) 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 such person.

Application to judge

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

- (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

(7) When a secured party in possession disposes of the collateral after expiration of the period mentioned in subsection (3) 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 such subordinate interests are deemed to be performed for the purposes of section 50.

Non-application of subsection (7)

(8) Subsection (7) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 72 who has not been given a written notice under this section.

Redemption of collateral

62(1) At any time before the secured party has disposed of the collateral or contracted for such disposition under section 58 or before the secured party is deemed to have irrevocably elected to retain the collateral under section 61:

- (a) any person entitled to receive a notice of disposition under subsection 59(4) may, unless he has otherwise agreed in writing after default, redeem the collateral by tendering fulfillment of all obligations secured by the collateral;
- (b) the debtor may, unless he has otherwise agreed in writing after default, reinstate the security agreement by paying the sums actually in arrears, exclusive of the operation of any acceleration clause, or by curing any other default by reason whereof the secured party intends to dispose of the collateral;

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

Right of debtor to reinstate security agreement

(2) Unless otherwise agreed, the debtor is not entitled to reinstate a security agreement:

- (a) more than twice, if the security agreement or any agreement modifying the security agreement provides for payment in full by the debtor within twelve months after the day value was given by the secured party;
- (b) more than twice in each year, if the security agreement or any agreement modifying the security agreement provides for payment by the debtor during a period of time in excess of one year after the day value was given by the secured party.

Application to judge

63 Upon application by a debtor, a creditor of a debtor, a secured party, any person who has an interest in collateral which may be affected by an order under this section or a receiver or a receiver-manager, whether appointed by a court or pursuant to a security agreement and after notice has been given to any person that the judge directs, a judge or 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 17;
- (b) give directions to any party regarding the exercise of his rights or discharge of his obligations under this Part or section 17;
- (c) relieve any party from compliance with the requirements of this Part or section 17, but only on terms that are just and reasonable for all parties concerned;
- (d) stay enforcement of rights provided in this Part or section 17 under any terms and conditions that the judge, in his discretion, 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 person by or on behalf of whom 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 of the debtor or to relieve such person from any 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

Rights, etc., to be exercised in good faith, etc.

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 good faith and 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, any person has a right to recover loss or damage which he suffered and which was reasonably foreseeable as liable to result from such failure.

Agreement to limit liability void

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

Assessment of damage

(4) In assessing damages under this Act, a 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.

Common law, etc., applies

(5) The principles of the common law, equity and the law merchant, except insofar as they are inconsistent with the express provisions of this Act, supplement this Act and continue to apply.

Extension of time

65 Where in this Act, other than in sections 5 to 7, 13 and 34, Part IV and this Part, any time is prescribed within which or before which any act or thing must be done, a judge, on application, may extend or abridge the time for compliance on any terms and conditions that he considers just and reasonable.

Error, 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 therein or in the execution or registration thereof unless the defect, irregularity, omission or error is seriously misleading.

Failure to provide description

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

Service

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

- (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 place of business, at any one of his 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 the attorney for the body corporate appointed under section 268 of *The Business Corporations Act* or section 251 of *The Non-profit Corporations Act* or by registered mail addressed to the body corporate at the address of such attorney.

Registered mail

(2) Service by registered mail is effected when the addressee actually receives a notice or any other written matter, or upon the expiry of four days after the day of registration, whichever is earlier.

Knowledge or notice

(3) For the purposes of this Act, a person knows or has notice 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 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 attorney for an extra-provincial body corporate appointed under section 268 of *The Business Corporations Act* or section 251 of *The Non-profit Corporations Act*.

Service by registered mail

(4) Where a notice or any other written matter 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 subsection 72(3);

the notice or other written matter shall be served in accordance with subsection (1).

Appeal

68 An appeal lies from an order, judgment or decision of a judge or the court to the Court Appeal within the time and in accordance with the practice and procedure established in the rules of the Court of Appeal.

Conflict between Act and other legislation

69(1) Where there is a conflict between a provision of this Act and a provision of *The Limitation of Civil Rights Act*, *The Exemptions Act*, *The Distress Act* or *The Agricultural Implements Act*, the provision of that Act prevails.

Same

(2) 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,

Same

(3) 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 subsections (1) and (2), the provision of this Act prevails.

References

70(1) A reference, in any general or special Act that relates to a security interest in personal property or fixtures to which this Act applies, to *The Assignment of Book Debts Act*, *The Bills of Sale Act*, *The Conditional Sales Act* or *The Corporation Securities Registration Act*, or any provision thereof, is deemed to be a reference to this Act or to the corresponding provision of this Act, as the case may be.

Same

(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 these 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.

Same

(3) A reference in this Act to:

- (a) *The Assignment of Books Debts Act*;
- (b) *The Bills of Sale Act*;
- (c) *The Conditional Sales Act*; or
- (d) *The Corporation Securities Registration Act*;

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

Transitional; application of Act

71(1) This Act applies:

- (a) to every security agreement made after this Act comes into force;
- (b) subject to subsections (2), (3) and (4), to every prior security interest as defined in section 72 which is not validly terminated, completed, consummated or enforced in accordance with the prior law before this section comes into force.

Validity of prior security interest

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

Priorities

(3) The order of priorities:

- (a) between security interests is determined by 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 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.

Application of Act

(4) This Act applies to security interests created under:

- (a) renewal, extension, refinancing or consolidation agreements made after this Act comes into force.
- (b) revolving credit transactions entered into before and continuing after this Act comes into force.

Interpretation

72(1) In this section:

“prior security interest”

(a) **“prior security interest”** means a transaction, lease, assignment or consignment 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 transaction, lease, assignment or consignment was created or entered into;

“prior registration law”

(b) **“prior registration law”** means *The Assignment of Book Debts Act*, *The Bills of Sale Act*, *The Conditional Sales Act*, *The Corporation Securities Registration Act* and section 42 of *The Agricultural Implements Act*.

Prior security interest deemed to be registered and perfected

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

(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 *The Assignment of Books Debts Act*, or section 19 of *The Bills of Sale Act*, 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 if it were to arise after this Act comes into force; and

(b) is covered by a registration under *The Corporation Securities Registration Act* is deemed to have been registered and perfected under this Act, and such registration continues from the day this section comes into force until discharged under section 50.

Same

(3) A prior security interest validly created, reserved or provided for under any prior law, which 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 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 such possession, whether such 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 such 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 of 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.

Regulations

73 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make regulations:

- (a) prescribing a list of goods the lease of which is not covered by this Act by virtue of subclause 2(y)(v);
- (b) prescribing the amount of any charge to which the secured party is entitled under section 18;
- (c) prescribing the duties of the registrar;
- (d) prescribing business hours for the offices of the registry or any of them;
- (e) respecting the registry, including the transition from any prior registry systems to the system established under this Act;
- (f) requiring the payment of fees and prescribing the amount thereof and their manner of payment;
- (g) prescribing the form and content of:
 - (i) financing statements and financing change statements required or permitted to be registered in the registry under this or any other Act, and the manner of their use and for requiring that such documents used, or any of them, must be those provided by the registrar;
 - (ii) notices required or permitted to be filed under section 54 in a land titles office and the manner of their use;
- (h) prescribing the form of any notices required or allowed to be given under this Act and providing for their use;
- (i) prescribing the amounts of compensation payable under section 53;
- (j) requiring or permitting the use of a statement to confirm the registration of any financing statement or financing change statement and permitting the amendment of an error in registering on the part of the registrar or the registry and prescribing the limits of such amendments;

- (k) prescribing abbreviations, expansions or symbols that may be used in a financing statement, financing change statement, or any other form authorized or required by this Act or in the recording or production of information by the registrar;
- (l) 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;
- (m) defining any word or expression used in this Act that is required to be defined in the regulations;
- (n) prescribing any matter required or authorized by this Act to be prescribed by regulation.

Act binds Crown

74 The Crown is bound by this Act.

COMING INTO FORCE**Coming into force**

75 This Act comes into force on a day to be fixed by proclamation of the Lieutenant Governor.