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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 98

THE PERSONAL PROPERTY SECURITY ACT

THE ATTORNEY GENERAL

First Reading
Second Reading
Committee of the Whole
Third Reading
Royal Assent

THE PERSONAL PROPERTY SECURITY ACT

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BILL 98

1980

THE PERSONAL PROPERTY SECURITY ACT

(Assented to _____, 1980)

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

1 In this Act,

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

(a.1) “building” includes a structure, erection, mine or work built, erected, constructed or opened on or in land;

(b) “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, unbelting, unclamping or uncoupling, or by some other method of disconnection; or

(ii) machinery installed in a building for use in the carrying on of an activity where the only substantial damage, apart from the value of the machinery removed, that would necessarily be caused to the building in removing the machinery from the building 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;

(b.1) “chattel paper” means one or more writings that evidence both a monetary obligation and a security interest in specific goods or a security interest in or lease of specific goods and accessions but does not include,

Explanatory Notes

1 Definitions.

- (i) a writing that evidences a security interest in specific goods and after-acquired goods other than accessions, or
- (ii) a charter-party or a lease of a ship;

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

(c.1) “consignment” means a transaction under which goods are delivered for sale, resale or lease to a person who in the ordinary course of business deals in goods of that description by a person who

- (i) in the ordinary course of business deals in goods of that description, and

- (ii) reserves title to the goods after they have been delivered to the other person,

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

(d) “consumer goods” means goods that are used or acquired for use by the debtor primarily for personal, family or household purposes;

(d.1) “Court” means the Court of Queen’s Bench of Alberta;

(e) “creditor” includes an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver, a receiver manager, an executor, an administrator or a committee;

(e.1) “debtor” means

- (i) a person who is obligated to pay or otherwise perform under a secured obligation, whether or not that person owns or has rights in the collateral, and includes any one or more of the following:

- (A) a consignee under a consignment;
- (B) a lessee under a lease;
- (C) an assignor of an account or chattel paper; and
- (D) an assignee of the debtor’s interest in collateral; or

- (ii) if the debtor is not the owner of the collateral,

(A) an owner of the collateral, in a provision of this Act dealing with the collateral, or

(B) an obligor, in a provision of this Act dealing with the obligation,

and includes both if the context so requires;

(f) “default” means the failure to pay or otherwise perform the secured obligation when due, or the occurrence of any event or set of circumstances whereupon under the terms of the security agreement the secured party becomes entitled to realize upon the collateral;

(f.1) “document of title” means a writing

(i) that purports to be issued by or addressed to a bailee,

(ii) that purports to cover goods in the bailee’s possession that are identified or are fungible portions of an identified mass of goods, and

(iii) that in the ordinary course of business is treated as establishing that the person in possession of the writing is entitled to receive, hold and dispose of the writing and the goods it covers;

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

(g.1) “financing statement” means a writing required or permitted to be registered pursuant to this Act and includes a financing change statement, where the context requires;

(h) “Fund” means the “Personal Property Security Assurance Fund” established pursuant to section 43;

(h.1) “fungibles” means, with respect to goods or securities, goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement;

(i) “future advance” includes the payment of money, the provision of credit or the giving of other value by a secured party pursuant to the terms of a security agreement whether or not the secured party is obligated to pay the money, provide the credit or give the value;

(i.1) “goods” means tangible personal property other than money, and includes fixtures, growing crops and the unborn young of animals, but does not include timber until it is cut and minerals until they are extracted;

(j) “instrument” means a bill, 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 kind that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, but does not include

(i) chattel paper,

(ii) a document of title, or

(iii) securities;

(j.1) “intangible” means personal property other than goods, chattel paper, documents of title, instruments and securities;

(k) “inventory” means goods

(i) that are held by a person for sale or lease, or that have been leased,

(ii) that are to be furnished or have been furnished under a contract of service,

(iii) that are raw materials or work in progress, or

(iv) that are materials used or consumed in a business;

(k.1) “judge” means a judge of the Court;

(l) “lease for a term of more than one year” includes

(i) a lease for a term of one year or less that is automatically renewable or that is renewable at the option of one of the parties, or by agreement, for one or more terms, the total of which terms may exceed one year, or

(ii) subject to subsection (2), a lease initially for an indefinite term, or for a term of one year or less, if the lessee, with the consent of the lessor, retains uninterrupted, or substantially uninterrupted, possession of the leased goods for a period in excess of one year from the date the lessee first acquired possession of the goods,

but does not include,

(iii) a lease of goods excepted by the regulations, notwithstanding the length of the term of the lease, or

(iv) a lease by a lessor who is not ordinarily engaged in the business of leasing goods;

(l.1) “minerals” means minerals as defined in *The Mines and Minerals Act*;

(m) “person” includes a partnership, association, corporation, trustee, executor, administrator or legal representative;

(m.1) “prescribed” means prescribed by the regulations;

(n) “proceeds” means identifiable or traceable personal property in any form or fixtures derived directly or indirectly from any dealing with collateral or the proceeds of the collateral, and includes

(i) a payment received, or a right to receive payment, by way of damages, insurance, compensation, indemnity, or settlement in respect of loss of, or damage to, the collateral, or the proceeds of the collateral, and

(ii) a payment received by way of total or partial discharge of any intangible, chattel paper, instrument or securities;

(n.1) “purchase” includes taking by sale, lease, discount, negotiation, mortgage, pledge, lien, issue, reissue, gift or any other consensual transaction creating an interest in personal property;

(o) “purchase money security interest” means

(i) a security interest that is taken or reserved in collateral, by a person giving rights in or to the collateral, to secure all or part of the value agreed to be given for those rights,

(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 collateral, to the extent that the value is applied to acquire those rights,

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

(iv) the interest of a consignor of goods delivered under a consignment;

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

(p.1) “Registrar” means the Registrar of the Personal Property Security Registry;

(q) “Registry” means the Personal Property Registry established under Part 4;

(q.1) “secured party” means

(i) a person who has a security interest, and

(ii) the trustee, if a security agreement is embodied or evi-

denced by a trust indenture, equipment trust or similar document;

(r) “securities” means shares, stocks, warrants, bonds, debentures, debenture stock or similar documents

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

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

(r.1) “security agreement” means an agreement that creates or provides for a security interest, and includes a writing that evidences a security agreement if the context permits;

(s) “security interest” means an interest in personal property that secures payment or performance of an obligation, and includes

(i) an interest of an assignee of an account or of a transferee of chattel paper,

(ii) an interest of a consignor under a consignment, and

(iii) an interest of a lessor under a lease for a term of more than one year,

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

(s.1) “serial numbered goods” means goods of a kind prescribed to be serial numbered goods;

(t) “specific goods” means goods identified and agreed upon at the time a security agreement in respect of those goods is made;

(t.1) “trust indenture” means a security agreement under which a body corporate

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

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

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

(2) A lease referred to in subsection (1)(l)(ii) does not become a lease for a term of more than one year until the lessee’s possession extends for more than one year.

PART 1

GENERAL

2 The Crown is bound by this Act.

3 Subject to section 4, this Act applies to every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest, including, without limiting the foregoing,

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

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

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

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

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

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

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

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

(f) an assignment of an unearned right to payment to an assignee

2 The Crown is bound.

3 Application of Act.

4 Non-application of Act.

who is to perform the assignor's obligations under the contract;

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

PART 2

VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

5 Subject to this Act or any other Act, a security agreement is effective according to its terms.

6(1) Subject to subsection (2), a security interest is not enforceable by a secured party against a person other than the debtor unless

(a) the collateral is in the possession of the secured party; or

(b) the debtor has signed a security agreement that contains a description of the collateral sufficient to enable it to be identified.

(2) A security interest in proceeds is not enforceable by a secured party against a person other than the debtor unless the security interest in the original collateral is enforceable.

7 Within 10 days after the execution of a security agreement, the secured party shall deliver a copy of the security agreement to the debtor, and if he fails to do so after a request by the debtor, the Court may, on application by the debtor, make an order for the delivery of a copy to the debtor.

8(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 rights between the parties to the security agreement, it becomes enforceable within the meaning of section 6.

(2) For the purpose of subsection (1)(b), the debtor is deemed to have rights in

5 Effectiveness of a security agreement.

6 Enforceability of security interest.

7 Delivery of copy of security interest.

8 Attachment of security interests.

(a) goods purchased by him under an agreement to sell, when he obtains possession of the goods pursuant to the sales contract; and

(b) goods leased or hired by him or consigned to him, when he obtains possession of the goods pursuant to the lease, hiring agreement or consignment, as the case may be.

(3) For the purpose of subsection (1)(b), a debtor is deemed not to have rights in

(a) crops until they become growing crops,

(b) the young of animals until they are conceived,

(c) minerals until they are extracted, and

(d) timber until it is cut.

9(1) Except as provided in subsection (3), a security agreement may cover after-acquired property.

(2) A security interest in after-acquired property attaches in accordance with section 8, without the need for specific appropriation.

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

(a) to crops that become crops more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of the lease, purchase or mortgage; or

(b) to consumer goods, other than accessions, unless the debtor acquires rights in them within 10 days after the secured party gives value.

10(1) A security agreement may secure future advances whether or not the advances are given pursuant to an obligation in the security agreement.

(2) Unless the security agreement expressly provides otherwise, an obligation to make future advances is not binding on a secured party if the collateral has been seized, attached or charged under circumstances described in section 17(1)(d) or (e), and the secured party receives notice of this fact.

11 Where a seller retains a purchase-money security interest in

9 After-acquired collateral.

10 Future advances.

11 Seller's warranties.

goods,

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

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

13(1) A secured party shall use reasonable care in preserving the collateral in his possession and, unless otherwise agreed, in the case of an instrument, securities or chattel paper, reasonable care includes taking necessary steps to preserve rights against other parties.

(2) Unless otherwise agreed, if collateral is in the possession of a secured party,

- (a) reasonable costs incurred by the secured party in the custody and preservation of the collateral, including costs relating to insurance and the payment of taxes, are chargeable to the debtor and are secured by the collateral;
- (b) the risk of loss or damage, except if 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, resulting from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the secured obligation;
- (d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
- (e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor's right to redeem it.

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

(4) A secured party may use the collateral

12 Acceleration of payment or performance.

13 Preservation of 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 the Court under subsection (5).

(5) On application by a debtor or any person who has an interest in collateral that may be affected by an order under this section and after notice has been given to any person that the Court directs, the Court may make an order

- (a) to ensure compliance with this section, including binding declarations of right and injunctive relief;
- (b) giving directions to any person regarding the exercise of his rights or discharge of his obligations under this section;
- (c) to relieve any person from compliance with the requirements of this section, but only on terms that are just and reasonable for all persons concerned;
- (d) to stay enforcement of rights provided in this section under any terms and conditions that the Court, in its discretion, considers just and reasonable;
- (e) to ensure protection of the interests of any person in the collateral.

14(1) This section applies only to a security interest in goods taken or reserved by a seller or lessor of those goods where the security interest secures payment or performance of an obligation, but does not apply

- (a) to the sale or lease of
 - (i) machinery, equipment or material manufactured or made for use in the exploration for, or in the production of, petroleum or natural gas, or
 - (ii) rolling stock or equipment for use on railways, or
- (b) where, after seizure, the goods are destroyed or damaged to an extent that the secured party's security is materially impaired by the wilful act of the debtor or by his neglect or otherwise.

(2) A secured party may enforce his right to recover money owing to him pursuant to a sale or lease of goods covered under a security agreement either

- (a) by instructing the sheriff to seize the goods pursuant to *The*

14 Security interest taken or reserved.

Seizures Act, or

(b) by an action against the debtor for the money owing in respect of the goods.

(3) If the secured party elects to seize the goods and the goods are seized, his rights are restricted to his right of seizure and sale of the goods, and no action may be commenced by the secured party pursuant to the security agreement for any money owing by the debtor, notwithstanding anything to the contrary in any other Act or in an agreement between the secured party and the debtor.

(4) If the secured party elects to bring an action against the debtor and the secured party recovers a judgment for the money owing, then if the goods in respect of which the money is owing are seized under an execution issued pursuant to the judgment, the secured party's rights are restricted to the amount realized from the sale of those goods and the judgment, to the extent that the judgment is based on money owing pursuant to the security agreement, and taxed costs shall be deemed to be fully paid and satisfied.

(5) When goods

(a) are surrendered by the debtor to the secured party with the consent of the secured party, or

(b) are seized pursuant to a security agreement or under execution,

the indebtedness of the debtor under the security agreement or under the judgment, to the extent that it is based on the purchase price of the goods, is extinguished, and any money thereafter paid by the debtor in respect of the purchase price, or judgment therefor, is recoverable by action against the secured party.

(6) Notwithstanding anything in this section, if a secured party, in order to recover money due pursuant to a security agreement, has seized or caused to be seized the goods, and it is found that an accessory forming part of the collateral was removed from the goods and was not replaced by another accessory of a similar kind and value, the secured party may sue the debtor for the lesser of

(a) the value of the accessory, and

(b) the amount by which the amount owing by the buyer exceeds

(i) the sum realized on the sale of the goods, and

(ii) the amount of the proper fees, charges, claims and disbursements in connection with the seizure and the sale.

(7) Any waiver or release of any or all of the rights, benefits or protection provided by this section in favour of a debtor is void,

unless the waiver or release is given by a corporation.

15(1) The debtor, a creditor of the debtor, a sheriff or a person with a legal or equitable interest in the collateral may, by a notice in writing containing an address for reply and sent by registered mail or delivered to the secured party at the address set forth in the security agreement or the financing statement, or at a more recent address if known, require the secured party to send or deliver to any person at the address specified in the notice any one or more of the following:

- (a) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness, as of the date specified in the notice;
 - (b) a written approval or correction, as of the date specified in the notice, of the itemized list of the collateral attached to the notice;
 - (c) a written approval or correction, as of the date specified in the notice, of the amount of the indebtedness and of the terms of payment of the indebtedness set out in the notice;
 - (d) a copy of the security agreement;
 - (e) sufficient information as to the location of the security agreement and any copy of the security agreement to enable a person entitled to receive a true copy of the security agreement, or his authorized representative, to inspect it, if he so desires.
- (2) The secured party, on the request of a person entitled to receive a true copy of the security agreement, shall permit him, or his authorized representative, to inspect the security agreement or a true copy of the security agreement during normal business hours, at the location disclosed in the information provided pursuant to subsection (1).
- (3) If a notice is sent or delivered requiring the information specified in subsection (1)(b), and if the secured party claims a security interest in all of a particular kind of collateral owned by the debtor, or the proceeds of the collateral, the secured party shall so indicate in addition to approving or correcting the itemized list of the collateral.
- (4) The secured party shall reply to a demand served under subsection (1) within 10 days after it is served and if, without reasonable excuse, he fails to do so or his reply is incomplete or incorrect, the person who has served the demand is entitled, in addition to any other remedy provided by this Act, on notice to the secured party, to apply to the Court for an order requiring the secured party to comply with the demand.
- (5) If a secured party fails to comply with an order granted under

15 Request for statement from secured party.

subsection (4), the Court, on application of the party who obtained the order upon notice to the secured party, may

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

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

(6) Where the person receiving a demand under subsection (1) no longer has an interest in the obligation or collateral, he shall, within 10 days after he receives the demand, disclose the name and address of the latest successor in interest if known to him, and, if without reasonable excuse he fails to do so or his reply is incomplete or incorrect, subsections (4) and (5) apply with all necessary modifications.

(7) Upon application of the secured party or in an application under subsection (4), the Court may make any order that it considers reasonable and just, including an order exempting the secured party in whole or in part from complying with the demand or extending the time for answering the demand.

(8) The secured party may require payment in advance of the charges prescribed for each reply to a demand under subsection (1), but the debtor is entitled to a reply without charge once every 6 months.

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

PART 3

PERFECTION AND PRIORITIES

16 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.

17(1) An unperfected security interest of a person is subordinate to the interest of

(a) a person entitled to a lien, charge or other interest pursuant

16 Perfection of security agreement.

17 Priority of unperfected and certain perfected security interests.

to statute, unless the statute otherwise provides;

(b) a person entitled to a lien given by law for the furnishing of goods, services or materials;

(c) a person who holds a perfected security interest;

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

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

(f) a transferee who is not a secured party and who, for value without knowledge of the security interest and before it is perfected, acquired his interest

(i) in collateral other than intangibles, if the transferee receives delivery of the collateral;

(ii) in intangibles.

(2) A perfected security interest is subordinate to the rights of persons mentioned in subsection (1)(d) and (e) except to the extent that a security interest secures

(a) reasonable costs incurred for the protection, custody, maintenance and preservation or repair of the collateral;

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

(c) advances made after the interests of those persons arise if the advances are made without knowledge of those interests.

18 A purchase-money security interest in

(a) collateral, other than an intangible, that is registered within 10 days after the day the debtor obtains possession of the collateral;

(b) an intangible that is registered within 10 days after the day the security interest attaches

has priority over the interest of persons mentioned in section 17(1)(d) and (e).

19(1) A security interest that becomes unperfected under this Act may again be perfected in accordance with this Act.

18 Priority of a purchase-money security interest.

19 Continuity of perfection.

(2) If a security interest is originally perfected under this Act and is again perfected under this Act without an intermediate period during which it is unperfected, the security interest shall be deemed to be continuously perfected for the purposes of this Act.

(3) An assignee of a security interest succeeds, with respect to its perfection, to the position of the assignor at the time of the assignment.

20(1) 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 18, only during its actual holding as collateral.

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

21 Registration perfects a security interest in any kind of collateral.

22 A security interest perfected under section 20

- (a) in 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 a transfer; or
- (b) in a negotiable document of title or goods not covered by a negotiable document of title that are held by a bailee and made available to the debtor by the secured party for the purpose of

20 Perfection by possession.

21 Perfection by registration.

22 Temporary perfection.

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

remains perfected for the first 10 days after the collateral comes under the control of the debtor.

23(1) A security interest in goods in the possession of a bailee is perfected by

- (a) the issuance of a document of title in the name of the secured party,
- (b) a holding of the goods on behalf of the secured party pursuant to section 20,
- (c) the registration of a financing statement with respect to the goods, or
- (d) the perfection of a security interest in the negotiable document of title, if the bailee has issued a negotiable document of title covering the goods.

(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.

24(1) Subject to this Act, where collateral is dealt with or otherwise gives rise to proceeds, the security interest in the collateral

- (a) continues with respect to the collateral, unless the secured party expressly or impliedly authorized those dealings, and
- (b) extends to the proceeds,

until such time as the secured party is required by law to elect between the collateral and the proceeds.

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

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

23 Perfection of security goods in the possession of a bailee.

24 Perfection re proceeds.

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

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

(3) If the interest in the original collateral was perfected other than in a manner mentioned in subsection (2), the security interest in the proceeds is a continuously perfected security interest but becomes unperfected on the expiration of 10 days after receipt of the proceeds by the debtor unless the security interest in the proceeds is otherwise perfected by any of the methods and under the circumstances prescribed in this Act for original collateral of the same kind.

25(1) When a debtor sells or leases goods that are subject to a security interest, the buyer or lessee has taken free of the security interest and the goods are returned to or repossessed by the debtor, the security interest in the goods reattaches if the secured obligation remains unpaid or unperformed.

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

(a) whether or not the security interest in the goods is perfected; and

(b) when the security interest in the goods was perfected or registered

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

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

(a) the account or chattel paper is transferred to a secured party, and

(b) the goods are returned to, or repossessed by, the seller or lessor,

the transferee has a security interest in the goods.

(4) A security interest in goods arising under subsection (3) is perfected if the security interest in the account or chattel paper was also perfected, but the security interest becomes unperfected on the expiration of 10 days after the return or repossession of the goods unless the transferee registers his security interest in or takes possession of the goods before the expiry of that period.

(5) Where a transferee of an account has a perfected security interest

25 Goods returned or repossessed; attachment of security interest.

in goods under subsection (3) or (4), he is, for the purpose of determining his priority as to the goods, deemed to have perfected his security interest in the goods at the time his security interest in the account was perfected.

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

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

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

26(1) A buyer or lessee of goods sold or leased in the ordinary course of business of the seller or lessor takes free of any perfected or unperfected security interest in the goods given by the seller or lessor or arising under section 25, notwithstanding that the buyer or lessee knew of it, unless the buyer or lessee also knew that the sale or lease constituted a breach of the security agreement.

(2) Where serial numbered goods are sold or leased other than in the ordinary course of business of the seller or lessor and the goods were equipment of the seller or lessor, the buyer or lessee takes free from any security interest in the goods given by the seller or lessor and perfected under section 21 if

(a) the buyer or lessee did not know that the goods were subject to the security interest, and

(b) the goods were not described by serial number in the financing statement.

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

(a) any security interest that, in the case of chattel paper or an instrument claimed as original collateral, was perfected under section 21 or any security interest in it as proceeds other than proceeds of inventory, if the purchaser acquired the chattel paper or instrument without knowledge that it was subject to a security interest, or

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

26 Buyer or lessee in the ordinary course of business takes free of security interest.

27 The rights of

- (a) a holder in due course of a negotiable instrument;
- (b) a holder of a negotiable document of title who takes it in good faith for value;
- (c) a bona fide transferee of a security; or
- (d) a transferee from the debtor of money;

are to be determined without regard to this Act.

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

29 The rights of a debtor in collateral may be transferred consensually or by operation of law notwithstanding a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but a transfer does not prejudice 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.

30(1) Subject to sections 26 and 27, a purchase-money security interest in inventory or, subject to section 24, its proceeds, has priority over a security interest in the same collateral given by the same debtor, if

- (a) the purchase-money security interest in the inventory was perfected at the time the debtor received possession of it;
- (b) the purchase-money secured party gives notice in writing to the other secured party who has registered a financing statement covering the same kind of inventory before the date of registration by the purchase-money secured party;
- (c) the other secured party receives the notice mentioned in clause (b) within 2 years before the debtor receives possession of the inventory; and
- (d) the notice mentioned in clause (b) states that the person giving the notice has or expects to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by item or kind.

(2) Subject to sections 26 and 27, a purchase-money security interest

27 Security interest in negotiable documents.

28 Priority of liens.

29 Alienation of rights of debtor.

30 Priority of purchase-money security interests.

in

(a) collateral or, subject to section 24, its proceeds, other than a purchase-money security interest in intangibles or inventory perfected within 10 days after the day the debtor obtains possession of the collateral; or

(b) an intangible or, subject to section 24, its proceeds, perfected within 10 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.

(3) A non-proceeds purchase-money security interest has priority over a purchase-money security interest in proceeds under subsections (1) and (2) in the same collateral if the non-proceeds purchase-money security interest is perfected at the time the debtor obtains possession of the collateral or within 10 days thereafter.

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

(a) in the case of collateral other than an intangible, is perfected within 10 days after the day the debtor obtains possession of the collateral; or

(b) in the case of an intangible, is perfected within 10 days after the day the security interest in the intangible attaches;

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

(5) A perfected security interest in crops or their proceeds given for value to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise has priority over an earlier perfected security interest to the extent that the earlier interest secures obligations that were contracted more than 6 months before the crops become growing crops by planting or otherwise, notwithstanding that the person giving the value knew of the earlier security interest.

31(1) If no other provision of this Act is applicable,

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

(i) registration,

(ii) possession of the collateral under section 20, or

(iii) perfection

31 Priority of perfected security interests in the same collateral.

whichever is the earliest, and

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

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

(a) shall be treated at all times as if perfected by registration, if it was originally so perfected, and

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

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

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

32(1) This section does not apply to building materials.

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

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

(b) after they became fixtures, has priority over the claim of any person who subsequently acquired an interest in the real property, but not over any person

(i) who had a registered interest in the real property at the time the security interest in the goods attached, and

(ii) who has not consented in writing to the security interest or disclaimed an interest in the goods as fixtures.

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

(a) is subordinate to the interest of

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

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

32 Fixtures.

property

if the subsequent advance under the prior encumbrance or the subsequent purchase is made or contracted for without fraud and before the security interest is registered in accordance with *The Land Titles Act*; and

(b) is subordinate to the interest of a creditor of the debtor who has acquired through legal process a lien or charge against the real property to enforce a judgment, if the lien or charge arises before the security interest is filed in accordance with section 47.

33(1) Subject to subsection (2) and section 34, a security interest in goods that attached

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

(b) after they became accessions, has priority over the claim of any person who subsequently acquired an interest in the whole, but not over any person

(i) who had an interest in the whole at the time the security interest in the whole attached, and

(ii) who has not consented in writing to the security interest or disclaimed an interest in the accession as part of the whole.

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

(a) is subordinate to the interest of

(i) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances; and

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

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

(b) is subordinate to the interest of a creditor of the debtor 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.

34(1) A perfected security interest in goods that subsequently be-

33 Security interests re: accessions.

34 Continuity of perfected security interests.

come 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.

(2) If more than one perfected security interest attaches to the product or mass, the security interests in the product or mass rank equally, according to the ratio that the value of the goods so commingled to which each interest originally attached bears to the cost of the total product or mass.

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

36(1) Unless a debtor with respect to an account or chattel paper has made an enforceable agreement not to assert defences or claims arising out of a contract, the rights of an assignee of the account or chattel paper are subject to

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

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

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

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

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

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

(6) Payment by a debtor pursuant to subsections (4) and (5) releases him from liability under the account or chattel paper to the extent

35 Subordination of interest.

36 Rights of an assignee.

of the payment made.

(7) A term in a contract relating to an account or chattel paper that prohibits assignment of the whole of an account is ineffective.

PART 4

REGISTRATION

37 There shall be a registry to be known as the Personal Property Registry for the purposes of registrations under this Act and for registrations that are permitted or required under any other Act to be made in the Registry.

38(1) There shall be appointed in accordance with *The Public Service Act* a Registrar and deputy registrars.

(2) The Registrar shall, under the direction of the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act, supervise the operation of the Registry.

39(1) A financing statement or financing change statement required or permitted to be registered under this Act may be tendered for registration in accordance with the regulations.

(2) Where, in the opinion of the Registrar, a writing tendered for registration in the Registry does not comply with this Act or the regulations or with any other Act under which registration of the writing in the Registry is permitted, the Registrar may refuse to register it, and shall give the reason why he is of the opinion that it does not comply.

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

(4) 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.

(5) The registration of a writing is effective from the time recorded on the writing by the Registrar.

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

37 Personal Property Registry.

38 Appointments.

39 Registration of documents.

40(1) When directed to do so by the Minister, the Registrar shall cause any writing registered in the Registry to be photographed, and the photographic film or a print therefrom, for the purposes of this Act or an Act authorizing registration in the Registry, is deemed to be the writing that was registered.

(2) When directed to do so by the Minister, the Registrar shall authorize the destruction of any books, writings, photographic films, 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.

(3) For the purposes of this section, “photographic film” has the same meaning as in section 40(1)(b) of *The Alberta Evidence Act*.

41 Registration of a writing in the Registry does not constitute knowledge of its contents or constructive notice to 3rd parties.

42(1) A person may, in accordance with the regulations, request at the Registry

- (a) that a search be made against the name of any debtor,
- (b) that a search be made according to the serial number of the collateral, if the collateral is required by the regulations to be described by serial number,
- (c) that a certificate as to the results of the search mentioned in clauses (a) and (b) be issued,
- (d) that a certified copy of any registered writing be provided.

(2) A printed search result issued under subsection (1)(c) certified by the Registrar is receivable in evidence as prima facie proof of its contents without proof of the signature or official position of the Registrar.

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

43(1) There is hereby established an assurance fund, called the Personal Property Security Assurance Fund, into which shall be paid the fees prescribed to be paid into the Fund.

(2) The Fund shall be held and administered by the Provincial Treasurer and the fees prescribed to be paid into the Fund shall be paid over to the Provincial Treasurer at the times and in the manner that he may direct.

40 Maintenance of records.

41 No constructive notice.

42 Requisitions from Registry.

43 Personal Property Security Assurance Fund.

(3) The whole or a part of the Fund in excess of the prescribed amount may, at the direction of the Provincial Treasurer, be invested in any class of investments or securities enumerated in section 49(1) of *The Financial Administration Act, 1977*.

(4) An amount of the Fund in excess of the prescribed amount may, at the direction of the Provincial Treasurer, be transferred to the General Revenue Fund.

44(1) Subject to this section, any person who suffers loss or damage as a result of his reliance on a registered writing or printed search result that is incorrect because of a negligent act or omission 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.

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

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

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

(5) No action under this section may be brought by a person who relied on the registered writing or printed search result unless that person or his agent requested the registered writing or printed search result under section 42.

(6) Notwithstanding *The Proceedings Against the Crown Act*, no action shall be brought against the Crown in right of the Province, the Registrar or any officer or employee of the Registry for any negligent 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 under those Acts other than as is provided in this section.

44 Claims for damages.

45(1) The total of all claims for compensation paid under section 44(3) and (4) in any single action shall not exceed the prescribed amount.

(2) In proceedings under section 44(3) and (4), the Court may make any order that it considers appropriate in order to give notice to members of the class.

(3) Subject to subsection (1), 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.

(4) The Provincial Treasurer may, without an action being 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 on receipt of a certificate of the Registrar that in his opinion the claim is just and reasonable.

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

(6) When damages are paid to a claimant under section 44 or this section, the Crown is subrogated to the rights of the claimant 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 claim was paid.

46 Subject to this Act,

(a) a financing statement relating to the registration of a security interest, or

(b) a financing change statement required or permitted under this Part

may be registered before the security agreement is made or before the security interest attaches.

47(1) In order to take priority over interest in real property according to section 32, a notice in the prescribed form shall be filed in the 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 of the notice on the certificate of title and the condominium plan, as the case may be, in respect of the parcel of land to which the notice relates.

45 Payment of claims.

46 Registration of statements.

47 Notice in land titles office.

(2) If 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 writing renewing, amending, assigning or discharging the security interest to which the original notice relates, or of a writing subordinating the security interest to another security interest, may be filed in the land titles office in the prescribed form, and, upon so filing, the registrar of the land titles office shall make a memorandum thereof on the proper certificate of title.

(3) Section 49 applies, with all necessary modifications, to a notice filed under this section.

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

(5) If 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 of the notice that is made on the certificate of title.

(6) A notice filed under subsection (1) or (2) may be discharged by filing a certificate in the prescribed form in the land titles office.

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

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

(b) payment or performance has occurred of those obligations required under the security agreement to be paid or performed in order for part of the collateral under the security agreement to be released, or

(c) the notice purports that the secured party has 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.

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

48 Amendment to registered document.

49(1) If a financing statement has been registered with respect to a security interest, the registration may be renewed by registering a financing change statement at any time before the writing to which it refers expires.

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

(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) if the secured party fails to register an order of the Court maintaining the financing statement under section 50(4);

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

50(1) If 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.

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

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

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

(b) payment or performance has occurred of those obligations required under the security agreement to be paid or performed

49 Renewal of registration.

50 Financing change statement acts as discharge.

in order for part of the collateral under the security agreement, to be released, or

(c) the financing statement purports that the secured party has 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, within 15 days after service of the demand, sign and deliver or send to the Registry the financing change statement together with financing change statements in respect of all assignments by the secured party or transfers by the debtor in respect of which financing change statements have not been registered.

(4) If 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 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 40 days after the day the notice is served on the secured party, unless in the meantime the secured party registers with the Registrar an order of the Court accompanied by a financing change statement maintaining the registration of the interest of the secured party.

(5) The notice mentioned in subsection (3) or (4) may be served in accordance with section 62 or by registered mail addressed to the post office address of the secured party as it appears on the security agreement or financing statement.

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

(a) be maintained on any conditions and, subject to section 49, for any period of time that it considers just;

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

(7) Subsection (4) does not apply to a financing statement or a financing change statement registered with respect to a security interest taken under a trust indenture if the financing statement indicates that the security agreement with respect to which the financing statement was registered is a trust indenture.

(8) If the secured party under a trust indenture fails to deliver the financing change statement demanded under subsection (3), the person making the demand may apply to the Court, upon notice to all persons concerned, for an order directing that the financing statement

or financing change statement be removed from the Registry.

51(1) If a financing statement is registered and the secured party has assigned his interest, a financing change statement in the prescribed form may be registered.

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

(3) If 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.

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

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

52 If 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.

53(1) If a security interest has been perfected by registration and the debtor transfers his interest in collateral or part of the collateral, with the consent of the secured party the transferee is deemed to be a debtor with respect to the transferred collateral for the purpose of registration, and the security interest is unperfected as against any interest in the transferred collateral unless the secured party registers a financing change statement amending the original financing statement within 15 days after the date of the transfer.

(2) If a security interest has been perfected by registration and the secured party has notice that the debtor has transferred his interest in all or part of the collateral or changed his name, the security interest becomes unperfected 15 days after the secured party has notice that the debtor has assigned his interest in the collateral or part of the collateral or changed his name, as the case may be.

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

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

(b) a prior security interest registered under a prior registration

51 Financing change statement.

52 Subordinated interest.

53 If debtor transfers interest in collateral.

law and deemed to be registered under section 67.

PART 5

CONFLICT OF LAWS

54(1) Subject to this Act, the validity, perfection and effect of perfection or non-perfection of

- (a) a security interest in goods, and
- (b) a security interest in securities, instruments, negotiable documents of title, money and chattel paper that are in the possession of a secured party,

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

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

- (a) within 60 days after the goods are brought into the Province,
- (b) within 15 days after the day the secured party receives notice that the goods have been brought into the Province, or
- (c) prior to the date that perfection ceases under the law of the jurisdiction in which the goods are situated at the time the security interest attached,

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

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

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

54 Validity of security interests.

55(1) Subject to section 56,

(a) if the parties to a security agreement that creates 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

(b) if the goods are removed to the other jurisdiction, for purposes other than transportation through the other jurisdiction, within 30 days after the security interest attaches,

the validity, perfection and effect of perfection or non-perfection of the security interest shall be governed by the law of the other jurisdiction.

(2) If the jurisdiction to which the goods are removed is other than this Province, but the goods are later brought into this Province, the security interest in the goods is deemed to be a security interest to which section 54(2) applies if it was perfected under the law of the jurisdiction to which the goods were removed.

56(1) The validity, perfection and effect of perfection or non-perfection of

(a) a security interest in

(i) an intangible, or

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

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

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

(2) For the purposes of this section and section 57(2), a debtor is deemed to be located

(a) at his place of business, if he has a place of business,

(b) at his chief executive office, if he has more than one place of business, and

(c) at his place of residence, if he has no place of business.

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

55 Conflict of laws.

56 Validity of intangibles and non-possessory security interests.

- (a) within 60 days from the day the debtor changes his location,
- (b) within 15 days from the day the secured party receives notice that the debtor has changed his location,
- (c) prior to the day that perfection ceases under the law of the first jurisdiction,

whichever is earliest.

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

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

(6) Notwithstanding section 55 and subsection (1), the validity, perfection and effect of perfection or non-perfection of a security interest that

- (a) is created by a debtor who, before extraction, has an interest in minerals, and
- (b) attaches in respect of the minerals 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.

57(1) Except as otherwise provided in this Act, if goods, other than those mentioned in subsection (2), securities, an instrument, a negotiable document of title, money and chattel paper are dealt with in 2 or more jurisdictions and a conflict exists between the priority rules of the jurisdictions,

- (a) if all interests in conflict were perfected by registration, the priority rules of the last jurisdiction in which the collateral was situated at the time of perfection shall prevail;
- (b) if one or more of the interests were perfected by possession, the priority rules of the last jurisdiction in which a conflicting possessory security interest in the collateral was taken shall prevail.

(2) Subject to section 56(4), if

57 Conflict of priority rules.

- (a) intangibles, or
- (b) goods that are of a kind that are normally used in more than one jurisdiction and that are equipment or inventory leased or held for lease by a debtor to others,

are dealt with in 2 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 at the time the last dealing giving rise to the interest in conflict occurs, shall prevail.

(3) For the purposes of this section, collateral is dealt with when it is

- (a) purchased,
- (b) seized under legal process, or
- (c) becomes subject to a non-consensual lien or charge.

(4) Notwithstanding sections 54, 55 and 56 and subsections (1) and (2),

- (a) procedural matters affecting the enforcement of the rights of a secured party in respect of collateral other than intangibles are governed by the law of the jurisdiction in which the collateral is located at the time of the exercise of those rights;
- (b) procedural issues involved in the enforcement of the rights of a secured party against intangibles are governed by the law of the forum;
- (c) 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 6

MISCELLANEOUS

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

59(1) All rights, duties or obligations arising under a security agree-

58 Application of Common Law.

59 Proper exercise of rights, duties and obligations.

ment, under this Act or under any other applicable law shall be exercised or discharged in a commercially reasonable manner.

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

(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.

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

60(1) If in this Act a time is prescribed within which or before which any act or thing must be done, the Court on application may, upon such terms and conditions and with such notice, if any, that it may order, extend such time for compliance upon being satisfied that no interest of any other person will be prejudiced by such extension, but, if it later appears that the act or thing done within the period so extended has prejudiced the rights that a person acquired before the doing of the act or thing, the act or thing shall be presumed not to have been done in conformity with this Act for the purpose of ascertaining the rights that the person acquired before the doing of the act or thing.

(2) A certified copy of an order made under subsection (1) shall for purposes of registration be attached to the writing to which the order relates.

61(1) The validity or effectiveness of a writing to which this Act applies is not affected by reason of a defect, irregularity, omission or error in the writing or in the execution or registration of the writing unless the defect, irregularity, omission or error is seriously misleading.

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

62(1) If under this Act a notice or any writing 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;

60 Extension of time.

61 Errors and omissions.

62 Service of notices.

(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 or at the post office box designated as its address for service by mail.

(2) Service by registered mail is effected when the addressee actually receives the notice or writing, or upon the expiry of 4 days after the day of registration, whichever is earlier.

(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 when the information in writing has been delivered to the registered office of the body corporate.

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

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

(b) no writing is registered and the security interest is deemed to be perfected under section 67(4),

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

63 An appeal lies to the Court of Appeal from an order, judgment or decision of the Court.

64(1) If there is a conflict between a provision of this Act and a provision of any Act for the protection of consumers, the provisions of that Act prevail.

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

65(1) A reference in an enactment, regulation, order, writing or other thing to *The Assignments of Book Debts Act*, *The Bills of Sale Act*, *The Chattel Security Registries Act*, *The Companies Act* and *The Conditional Sales Act* that relates to a security interest in personal property or fixtures is deemed to be a reference to this Act or to the corresponding provisions of this Act.

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

(3) A reference in this Act to

(a) *The Assignments of Book Debts Act*,

(b) *The Bills of Sale Act*,

(c) *The Companies Act*,

63 Appeals.

64 Conflict between Act and other legislation.

65 References.

- (d) *The Conditional Sales Act*, or
- (e) *The Chattel Security Registries Act*;

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

66(1) In this section, “prior law” means the law in force immediately prior to the coming into force of this section.

(2) This Act applies

- (a) to every security agreement made after this Act comes into force;
- (b) subject to subsections (3), (4) and (5), to every prior security interest as defined in section 67 that is not validly terminated, completed, consummated or enforced in accordance with the prior law.

(3) The validity of a prior security interest as defined in section 67 is governed by the prior law.

(4) The order of priorities

- (a) between security interests is determined by the prior law, if all of the competing security interests arose under security agreements entered into before this Act comes into force; and
- (b) between a security interest and the interests of a 3rd party is determined by the prior law, if the 3rd 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.

(5) 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.

67(1) In this section,

- (a) “prior security interest” means a transaction, lease, assignment or consignment validly created or entered into before this section came 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;

66 Transitional application of Act.

67 Security interest prior to the coming into force of this Act.

(b) “prior registration law” means *The Assignments of Book Debts Act*, *The Bills of Sale Act* and *The Conditional Sales Act*.

(2) Subject to subsection (3), a prior security interest that, at the time this section came into force, was covered by an unexpired filing or registration under a prior registration law, shall be 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 the filing or registration may be continued by registration of a renewal statement under this Act if the security interest could have been perfected by registration if it arose after this Act came into force.

(3) Subject to subsection (4), a prior security interest that, at the time this section came into force, was covered by an unexpired registration under *The Companies Act* shall be deemed to have been registered and perfected under this Act.

(4) A registration of a prior security interest referred to in subsection (3), other than a registration of a security interest created pursuant to a trust indenture, expires 3 years from the date this section came into force, but may be further continued by the registration of a renewal statement under this Act if the security interest could have been perfected by registration if it arose after this Act came into force.

(5) A prior security interest validly created, reserved or provided for under any law in force prior to the coming into force of this section that gave that interest the status of a perfected security interest without filing or registration under any prior registration law and without the secured party taking possession of the collateral is perfected within the meaning of this Act as of the date the security interest attached, and that perfection continues for 2 years from the date this section came into force, after which it becomes unperfected unless otherwise perfected in accordance with this Act.

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

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

(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.

(7) 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 the possession occurred before, on or after the date this section came into

force and notwithstanding that the law in force prior to the coming into force of this section did not permit the perfection of the security interest by such possession.

(8) The perfection of a prior interest that, when this section came 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.

(9) A prior security interest that, at the time this section came 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 if all other conditions for the perfection of the security interest are satisfied.

68 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 section 1(l)(iii);
- (b) prescribing the amount of any charge to which the secured party is entitled under section 14;
- (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
 - (i) the form and content of 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 requiring that those statements used, or any of them, must be those provided by the Registrar,
 - (ii) the form and content of notices required or permitted to be filed under section 47 in a land titles office and the manner of their use;
- (h) prescribing the form of any notices required or allowed to

68 Regulations.

be given under this Act and providing for their use;

(i) prescribing the amounts of compensation payable under section 44;

(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.

69(1) *The Companies Act is amended by this section.*

(2) *Sections 97, 98 and 99 are repealed.*

(3) *The following is added after section 99:*

99.1 In sections 100, 100.1, 101 and 102,

(a) “security interest” means a security interest as defined in *The Personal Property Security Act*;

(b) “secured party” means a secured party as defined in *The Personal Property Security Act*.

(4) *Section 100(1) is repealed and the following is substituted:*

100(1) Every company shall keep at its registered office a register of security interests and mortgages in which shall be entered all security interests and mortgages specifically affecting property of the company, giving in each case a short description of the property that is the subject matter of the security interest or mortgage, the amount subject to the security interest or mortgage, and (except in the case of securities to bearer) the names of the secured parties or the mortgagees or persons entitled thereto.

(5) *The following is added after section 100:*

69 Consequential amendment to chapter 60 of the Revised Statutes of Alberta 1970.

100.1 Every company shall keep at its registered office a copy of every writing creating any security interest requiring registration under *The Personal Property Security Act* or any instruments creating any mortgage, but in the case of a series of uniform debentures not covered by a deed creating or defining the security, a copy of one such debenture is sufficient.

(6) *Section 101(1) is repealed and the following is substituted:*

101(1) The copy of writings creating any security interests requiring registration under *The Personal Property Security Act* or instruments creating any mortgages or registered under this Act prior to the coming into force of Part 4 of *The Personal Property Security Act* or registered under any former Companies Act or ordinance and the register of security interests and mortgages and the register of holders of debentures shall during business hours (subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any secured party, creditor, member or debenture holder of the company gratis, and the register of the security interests and mortgages shall be open to the inspection of any other person on payment of 25 cents, or such less sum as the company may prescribe, for each inspection.

(7) *Section 102 is repealed and the following is substituted:*

102 Any member, secured party, debenture-holder, creditor or other person may require a copy of the register of security interests and mortgages or any part thereof or of any writing creating any security interest or instrument creating any mortgage registered or required to be registered under *The Personal Property Security Act* or any security interest or mortgage registered or required to be registered under this Act prior to the coming into force of Part 4 of *The Personal Property Security Act*, or registered under any former Companies Act or ordinance, on payment in the case of a printed statement being furnished of the sum of \$1.00 or such less sum as may be prescribed by the company, or on payment of 10 cents for every 100 words required to be copied, and if a copy is refused or not furnished, the company is guilty of an offence, and the court may order that the copy be furnished within such time as it thinks fit.

70(1) *The Factors Act is amended by this section.*

(2) *The following is added after section 6:*

6.1 Sections 3 to 6 do not apply to a consignment to which *The Personal Property Security Act* applies.

(3) *Section 9 is amended by renumbering it as section 9(1) and by adding the following:*

70 Consequential amendment to chapter 132 of the Revised Statutes of Alberta 1970.

(2) Subsection (1) does not apply to a sale, pledge or other disposition of goods or of documents of title to the goods that is out of the ordinary course of business of the person having sold the goods, if, prior to the sale, pledge or disposition, the interest of the owner is registered in the Personal Property Registry in accordance with the regulations made under *The Personal Property Security Act*, and Part 4 of that Act applies to such registration.

(3) Subsection (2) does not operate so as to prevent a person who receives the goods or the documents of title to the goods in good faith and without notice of the previous sale from selling, pledging, or otherwise disposing of the goods or the documents of title to the goods to a person who receives the goods or the documents of title to the goods in good faith and without notice of the first sale, unless the goods are of a kind that is required by the regulations under *The Personal Property Security Act* to be described by serial number and are so described in a registered financing statement.

(4) *Section 10(2) is repealed and the following is substituted:*

(2) Subsection (1) does not apply to a sale, pledge or other disposition of goods or of document of title to the goods by a person who has obtained possession of the goods pursuant to a security agreement under which the seller has a security interest as defined in *The Personal Property Security Act*.

71(1) *The Sale of Goods Act is amended by this section.*

(2) *Section 26 is amended by renumbering it as section 26(1) and by adding the following:*

(2) Notwithstanding *The Personal Property Security Act*, the interest of a buyer under subsection (1) takes priority over any security interest in the grain, if the interest of the buyer is acquired under the circumstances described in subsection (1).

(3) *Section 27 is amended*

(a) *by adding the following after subsection (1):*

(1.1) Subsection (1) does not apply to a sale, pledge, or other disposition of goods or of documents of title to the goods that is out of the ordinary course of business of the person having sold the goods, if prior to the sale, pledge or disposition the interest of the owner is registered in the Personal Property Registry in accordance with the regulations made under *The Personal Property Security Act*, and Part 4 of that Act applies to such registration.

(1.2) Subsection (1.1) does not operate so as to prevent a person who receives the goods or documents of title to the

71 Consequential amendments to chapter 327 of the Revised Statutes of Alberta 1970.

goods in good faith and without notice of the previous sale from selling, pledging, or otherwise disposing of the goods or the documents of title to the goods to a person who receives the goods or the documents of title to the goods in good faith and without notice of the first sale, unless the goods are of a kind that are required by the regulations under *The Personal Property Security Act* to be described by serial number and are so described in a registered financing statement.

(b) *by adding the following after subsection (2):*

(2.1) Subsection (2) does not apply to a sale, pledge, or other disposition of goods or documents of title to the goods by a person who has obtained possession of the goods pursuant to a security agreement under which the seller has a security interest as defined in *The Personal Property Security Act*.

72 *The Assignments of Book Debts Act, The Bills of Sale Act, The Conditional Sales Act and The Chattel Security Registries Act are repealed on a date or dates to be fixed by Proclamation.*

73 This Act comes into force on a date or dates to be fixed by Proclamation.

72 Repeal.