

1988 BILL 51

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Third Session, 21st Legislature, 37 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 51

**PERSONAL PROPERTY SECURITY ACT**

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MR. STEWART

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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Bill 51  
Mr. Stewart

## BILL 51

1988

### PERSONAL PROPERTY SECURITY ACT

(Assented to , 1988)

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

Definitions

1(1) In this Act,

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

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

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

(d) “building materials” includes goods that are incorporated or built into a building so that their removal

(i) would necessarily involve the removal or destruction of some other part of the building and cause substantial damage to the building, apart from the loss of value of the building resulting from the removal, or

(ii) would result in weakening the structure of the building or exposing the building to weather damage or deterioration,

but does not include heating, air conditioning or conveyancing devices or machinery installed in a building or on land for use in carrying on an activity inside the building or on the land;

(e) “chattel paper” means 1 or more writings that evidence both a monetary obligation and a security interest in or lease of specific goods or specific goods and accessions, but does not include a security agreement providing for a security interest in specific goods and after-acquired goods other than accessions;

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

(g) “commercial consignment” means a transaction under which goods are delivered for sale, lease or other disposition to a consignee who, in the ordinary course of the consignee’s business, deals in goods of that description, by a consignor who,

(i) in the ordinary course of the consignor’s business, deals in goods of that description, and

(ii) reserves an interest in the goods after they have been delivered,

but does not include an agreement under which goods are delivered to an auctioneer for sale or to a consignee for sale, lease or other disposition if it is generally known to the creditors of the consignee that he is in the business of selling or leasing goods of others;

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

(i) “Court” means the Court of Queen’s Bench;

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

- (k) “crops” means crops, whether matured or otherwise, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, but does not include trees;
- (l) “debtor” means, subject to subsection (4), a person who owes payment or other performance of the obligation secured, whether or not that person owns or has rights in the collateral, and includes any one or more of the following:
- (i) a person who receives goods from another person under a commercial consignment;
  - (ii) a lessee under a lease for a term of more than 1 year;
  - (iii) a transferor of an account or chattel paper;
  - (iv) in sections 17, 24, 26, 58, 59, 60(12), 62(7), 64 and 65(3), a transferee of or a successor to a debtor’s interest in collateral;
- (m) “default” means the failure to pay or otherwise perform the obligation secured when due, or the occurrence of any event or set of circumstances on which under the terms of the security agreement the security interest becomes enforceable;
- (n) “document of title” means a writing issued by or addressed to a bailee
- (i) that covers goods in the bailee’s possession that are identified or are fungible portions of an identified mass, and
  - (ii) in which it is stated that the goods identified in it will be delivered to a named person, or to the transferee of the person, to bearer or to the order of a named person;
- (o) “equipment” means goods that are held by a debtor other than as inventory or consumer goods;
- (p) “financing statement” means a writing in the prescribed form required or permitted to be registered under this Act and, where the context requires, includes
- (i) a financing change statement, and
  - (ii) a financial interest statement or an amending financial interest statement registered under the *Chattel Security Registries Act*;
- (q) “financing change statement” means a writing in the prescribed form;
- (r) “fixture” does not include building materials;
- (s) “future advance” means the payment of money, the provision of credit or the giving of other value secured by a security interest whether or not there is an obligation to pay the money, provide the credit or give the value, and includes all advances and expenditures made for the protection, maintenance, preservation or repair of the collateral;
- (t) “goods” means tangible personal property other than chattel paper, a document of title, an instrument, a security and money,

and includes fixtures, growing crops and the unborn young of animals, but does not include timber until it is cut or minerals until they are extracted;

(u) “instrument” means

(i) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada),

(ii) 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, or

(iii) a letter of credit or an advice of credit if the letter or advice states that it must be surrendered on claiming payment under it,

but does not include chattel paper, a document of title or a security;

(v) “intangible” means personal property other than goods, chattel paper, a security, a document of title, an instrument and money;

(w) “inventory” means goods

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

(ii) that are to be furnished by a person or have been furnished by that person 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;

(x) “judge” means a judge of the Court;

(y) “lease for a term of more than 1 year” includes

(i) a lease for an indefinite term even though the lease is determinable by 1 or both parties within 1 year after its execution,

(ii) subject to subsection (3), a lease initially for 1 year or less than 1 year 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 1 year after the date the lessee first acquired possession of the goods, and

(iii) a lease for a term of 1 year or less that is automatically renewable or that is renewable at the option of one of the parties, or by agreement, for 1 or more terms, the total of which terms may exceed 1 year,

but does not include

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

(v) a lease of household furnishings or appliances as part of a lease of land where the goods are incidental to the use and enjoyment of the land, or

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

(z) “minerals” means minerals as defined in the *Mines and Minerals Act*;

(aa) “Minister” means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

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

(cc) “obligation secured” means, when determining the amount payable under a lease that secures payment or performance of an obligation,

(i) the amount originally contracted to be paid under the lease,

(ii) any other amounts payable pursuant to the terms of the lease, and

(iii) any other amount required to be paid by the lessee to obtain full ownership of the collateral,

less any amount paid prior to the determination;

(dd) “pawnbroker” means a person who engages in the business of granting credit to individuals for personal, family or household purposes and who takes and perfects security interests in consumer goods by taking possession of them, or who purchases consumer goods under agreements or undertakings, express or implied, that the goods may be repurchased by the sellers;

(ee) “person” includes a partnership or association;

(ff) “prescribed” means prescribed by the regulations;

(gg) “proceeds” means identifiable or traceable personal property, including fixtures and crops,

(i) derived directly or indirectly from any dealing with collateral or the proceeds of the collateral, and

(ii) in which the debtor acquires an interest, and, in the case of goods, of which the debtor obtains possession,

and includes

(iii) a right to an insurance payment or any other payment as indemnity or compensation for loss of or damage to the collateral or proceeds of the collateral, and

(iv) a payment made in total or partial discharge or redemption of an intangible, chattel paper, an instrument or a security;

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

- (ii) "purchase-money security interest" means
  - (i) a security interest taken or reserved in collateral to secure payment of all or part of its purchase price,
  - (ii) a security interest taken in collateral by a person who gives value for the purpose of enabling the debtor to acquire rights in the 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 1 year, or
  - (iv) the interest of a person who delivers goods to another person under a commercial consignment,

but does not include a transaction of sale by and lease back to the seller, and, for the purposes of this definition, "purchase price" and "value" include credit charges or interest payable in respect of the purchase or loan;

(jj) "purchaser" means a person who takes by purchase;

(kk) "receiver" includes a receiver-manager;

(ll) "Registrar" means the Registrar of Personal Property designated under section 42;

(mm) "Registry" means the Personal Property Registry continued under Part 4;

(nn) "secured party" means

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

and, for the purposes of sections 17, 36, 38, 55, 56, 57, 58(1), 60(1), (3), (12) and (14), 61, 63(1)(a), 64 and 67, includes a receiver;

(oo) "security" means a writing that is

- (i) in bearer, order or registered form,
- (ii) of a kind commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,
- (iii) one of a class or series or by its terms divisible into a class or series, and
- (iv) evidence of a share, participation or other interest in or obligation of the issuer of the writing;

(pp) "security agreement" means an agreement that creates or provides for a security interest, and, if the context permits, includes a writing that evidences a security agreement;

(qq) "security interest" means an interest in goods, chattel paper, a security, a document of title, an instrument, money or an in-



tangible, that secures payment or performance of an obligation, and includes

- (i) an interest arising from a transfer of an account or a transfer of chattel paper,
- (ii) the interest of a person who delivers goods to another person under a commercial consignment, and
- (iii) the interest of a lessor under a lease for a term of more than 1 year,

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

(rr) "specific goods" means goods identified and agreed on at the time a security agreement in respect of those goods is made;

(ss) "trust indenture" means any deed, indenture or document, however designated, including any supplement or amendment to it, by the terms of which a person issues or guarantees, or provides for the issue or guarantee of, debt obligations secured by a security interest and in which a person is appointed as trustee for the holder of the debt obligations issued, guaranteed or provided for under it;

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

(2) For the purposes of this Act,

(a) a person knows or has knowledge when information is acquired by him under circumstances in which a reasonable person would take cognizance of it;

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

(c) a corporation or an association knows or has knowledge when information has come to the attention of

(i) a managing director or officer of the corporation or association, or

(ii) a senior employee of the corporation or association 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 corporation or attorney for service for the corporation.

(3) A lease referred to in subsection (1)(y)(ii) does not become a lease for a term of more than 1 year until the lessee's possession extends for more than 1 year.

(4) If the debtor and the owner of the collateral are not the same person, “debtor” means

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

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

or both where the context permits.

## **PART 1 GENERAL**

The Crown  
is bound

**2** The Crown is bound by this Act.

Application  
of Act

**3(1)** Subject to section 4, this Act applies to

(a) every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral, and

(b) without limiting the generality of clause (a), a chattel mortgage, conditional sale, floating charge, pledge, trust indenture, trust receipt, assignment, consignment, lease, trust and transfer of chattel paper where they secure payment or performance of an obligation.

(2) Subject to sections 4 and 55, this Act applies to a transfer of an account or chattel paper, a lease of goods for a term of more than 1 year and a commercial consignment, notwithstanding that the transfer, lease or consignment does not secure payment or performance of an obligation.

Non-application  
of Act

**4** Except as otherwise provided in this Act, this Act does not apply to the following:

(a) a lien, charge or other interest given by an Act or rule of law in force in Alberta;

(b) a security agreement governed by an Act of the Parliament of Canada that deals with rights of parties to the agreement or the rights of third parties affected by a security interest created by the agreement, and any agreement governed by Division B of Part V of the *Banks and Banking Law Revision Act, 1980* (Canada);

(c) the creation or transfer of an interest or claim in or under any contract of annuity or policy of insurance, except a right to money or other value payable under a policy of insurance as indemnity or compensation for loss of or damage to collateral;

(d) the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for labour or personal services;

(e) the transfer of an interest in an earned right to payment under a contract to a transferee who is to perform the transferor's obligations under the contract;

- (f) the creation or transfer of an interest in land, including a lease;
- (g) the creation or transfer of an interest in a right to payment that arises in connection with an interest in land, including an interest in rental payments payable under a lease of land, but not including a right to payment evidenced by a security;
- (h) a sale of accounts or chattel paper as part of a sale of the business out of which they arose, unless the vendor remains in apparent control of the business after the sale;
- (i) a transfer of accounts made solely to facilitate the collection of accounts for the transferor;
- (j) the creation or transfer of an interest in a right to damages in tort;
- (k) an assignment for the general benefit of creditors made pursuant to an Act of the Parliament of Canada relating to insolvency.

Applicable law – 5(1) Subject to this Act, the validity, perfection and effect of perfection or non-perfection of  
 general rules

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

is 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) not later than 60 days after the goods are brought into the Province,
- (b) not later than 15 days after the day the secured party has knowledge 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 were situated when the security interest attached,

whichever is the earliest, but the security interest is subordinate to the interest of a buyer or lessee of the goods who acquires his interest without knowledge of the security interest and before it is perfected in the Province under section 24 or 25.

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

(4) If a security interest referred to 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.

Applicable law –  
goods to be  
removed from  
jurisdiction

**6(1)** Subject to section 7,

(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, not later than 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 other jurisdiction referred to in subsection (1) is not the Province and the goods are later brought into the Province, the security interest in the goods is deemed to be a security interest to which section 5(2) applies if it was perfected under the law of the jurisdiction to which the goods were removed.

Applicable law –  
mobile goods,  
intangibles, etc.

**7(1)** For the purposes of this section, 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 1 place of business, and

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

(2) 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 1 jurisdiction, if the goods are equipment or inventory leased or held for lease by the debtor to others, and

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

shall be governed by the law, including the conflict of laws rules, of the jurisdiction where the debtor is located at the time the security interest attaches.

(3) If the debtor relocates to another jurisdiction or transfers an interest in the collateral to a person located in another jurisdiction, a security interest perfected in accordance with the applicable law as provided in subsection (2) continues perfected in the Province if it is perfected in the other jurisdiction

(a) not later than 60 days after the day the debtor relocates or transfers an interest in the collateral to a person in the other jurisdiction,

(b) not later than 15 days after the day the secured party has knowledge that the debtor has relocated or has transferred an interest in the collateral to a person located in the other jurisdiction, or

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

whichever is the earliest.

(4) If the law governing the perfection of a security interest referred to in subsection (2) or (3) does not provide for public registration or recording of the security interest or a notice relating to it, and the collateral is not in the possession of the secured party, the security interest is subordinate to

(a) an interest in an account payable in the Province, or

(b) an interest in goods, chattel paper, a security, a negotiable document of title, an instrument or money acquired when the collateral was situated in the Province,

unless it is perfected under this Act before the interest arises.

(5) A security interest referred to in subsection (4) may be perfected under this Act.

(6) Notwithstanding section 6 and subsection (2) of this section, 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 of them at the wellhead or minehead,

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

Applicable law —  
substance and  
procedure

**8(1)** Notwithstanding sections 5, 6 and 7,

(a) procedural issues involved in the enforcement of the rights of a secured party against collateral other than an intangible are governed by the law of the jurisdiction in which the collateral is located at the time of the exercise of the rights,

(b) procedural issues involved in the enforcement of the rights of a secured party against an intangible are governed by the law of the forum, and

(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.

(2) For the purposes of sections 5, 6 and 7, a security interest is perfected under the law of a jurisdiction when the secured party has complied with the law of the jurisdiction with respect to the creation and continuance of a security interest, and the security interest has a status in relation to the interests of other secured parties, buyers, judgment creditors or a trustee in bankruptcy of the debtor, similar to that of an equivalent security interest created and perfected under this Act.

**PART 2**  
**VALIDITY OF SECURITY AGREEMENTS**  
**AND RIGHTS OF PARTIES**

Effectiveness of security agreement	<p><b>9</b> Subject to this Act or any other Act, a security agreement is effective according to its terms.</p>
Enforceability of security interest	<p><b>10(1)</b> Subject to subsection (2), a security interest is unenforceable against a third party unless</p> <ul style="list-style-type: none"><li>(a) the collateral is in the possession of the secured party, or</li><li>(b) the debtor has signed a security agreement that contains<ul style="list-style-type: none"><li>(i) a description of the collateral by item or kind,</li><li>(ii) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property, or</li><li>(iii) a statement that a security interest is taken in all of the debtor's present and after-acquired property except specified items or kinds of personal property.</li></ul></li></ul> <p>(2) For the purposes of subsection (1)(a), a secured party is deemed not to have taken possession of collateral that is in the apparent possession or control of the debtor or the debtor's agent.</p> <p>(3) A description is inadequate for the purposes of subsection (1)(b) if it describes the collateral as consumer goods or equipment without further reference to the kind of collateral.</p> <p>(4) A description of collateral as inventory is adequate for the purposes of subsection (1)(b) only while it is held by the debtor as inventory.</p> <p>(5) A security interest in proceeds is not unenforceable against a third party by reason only that the security agreement does not contain a description of the proceeds.</p>
Delivery of copy of security agreement	<p><b>11</b> Where a security agreement is in writing, the secured party shall deliver a copy of the security agreement to the debtor not later than 10 days after the execution of the security agreement, and if he fails to do so after a request by the debtor the Court may, on application by the debtor, make an order for the delivery of a copy to the debtor.</p>
Attachment of security interests	<p><b>12(1)</b> A security interest, including a security interest in the nature of a floating charge, attaches when</p> <ul style="list-style-type: none"><li>(a) value is given,</li><li>(b) the debtor has rights in the collateral, and</li><li>(c) except for the purpose of enforcing rights between the parties to the security agreement, the security interest becomes enforceable within the meaning of section 10,</li></ul> <p>unless the parties intend it to attach at a later time, in which case it attaches in accordance with the intention of the parties.</p>

(2) Without limiting the generality of subsection (1)(b), the debtor is deemed to have rights in

(a) goods purchased by him under an agreement to sell, when the contract of sale is made, and

(b) goods leased or consigned to him, when he obtains possession of the goods pursuant to the lease or consignment,

but is deemed not to have rights in

(c) crops until they become growing crops,

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

(e) minerals until they are extracted, and

(f) timber until it is cut.

After-acquired collateral

**13**(1) Except as provided in subsection (2), where a security agreement provides for a security interest in after-acquired property, the security interest attaches in accordance with section 12, without the need for specific appropriation.

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

(a) to crops that become crops more than 1 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 an accession, unless the security interest is a purchase-money security interest or a security interest in collateral obtained by the debtor as replacement for collateral described in the security agreement.

Future advances

**14**(1) A security agreement may provide for future advances.

(2) Unless the parties otherwise agree, an obligation owing to a debtor to make future advances is not binding on a secured party if the collateral has been seized, attached, charged or made subject to an equitable execution under circumstances described in section 20(1)(a) and the secured party has knowledge of the fact before making advances pursuant to the obligation.

Seller's warranties

**15** Where a seller has a purchase-money security interest in goods, the law relating to contracts of sale, including a disclaimer, limitation or modification of the seller's performance obligations with respect to the goods, governs the sale.

Acceleration of payment or performance

**16** 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 security agreement 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.

Preservation  
of collateral

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

(2) Unless the parties otherwise agree, if collateral is in the possession of a secured party or a sheriff,

(a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in the obtaining, maintaining possession of and preserving the collateral, 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 or sheriff, 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 on its receipt in reduction of the obligation secured, and

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

(3) A secured party may use the collateral

(a) in the manner and to the extent provided in the security agreement,

(b) for the purpose of preserving the collateral or its value, or

(c) pursuant to an order of the Court.

Request for  
statement from  
secured party

**18(1)** The debtor, a creditor, a sheriff, or a person with an interest in personal property of the debtor, or an authorized representative of any of them, may, by a demand in writing containing an address for reply and delivered to the secured party at his address in a financing statement containing a description of the personal property, or a more recent address if known by the person making the demand, require the secured party to send or make available to the person making the demand or, if the demand is made by the debtor, to any person at an address specified by the debtor, one or more of the following:

(a) a copy of any security agreement providing for a security interest held by the secured party in the personal property of the debtor;

(b) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness as of the date specified in the demand;

(c) a written approval or correction of an itemized list of personal property attached to the demand indicating which items are collateral as of the date specified in the demand;

(d) a written approval or correction of the amount of the indebtedness and of the terms of payment of the indebtedness as of the date specified in the demand;



- (e) sufficient information as to the location of the security agreement or a copy of it to enable a person entitled to receive a copy of the security agreement to inspect it.
- (2) A person with an interest in personal property of the debtor is entitled to make a demand under subsection (1) only with respect to a security agreement providing for a security interest in the property in which he has an interest.
- (3) The secured party, on the demand of the person entitled to receive a copy of the security agreement under subsection (1), shall permit him to inspect the security agreement or a copy of it during normal business hours at the location referred to in subsection (1)(e).
- (4) Where a demand is made in accordance with subsection (1)(c) and the secured party claims a security interest in all of the personal property of the debtor, in all the property of the debtor other than a specified kind or item of property or in all of a specified kind of property of the debtor, the secured party may indicate this in lieu of approving or correcting the itemized list of the property.
- (5) The secured party shall comply with the demand made under subsection (1) or (3) not later than 10 days after the demand is made, and if, without reasonable excuse, the secured party fails to do so or, in the case of a demand under subsection (1), his reply is incomplete or incorrect, the person making the demand, in addition to any other remedy provided by this Act, may apply to the Court for an order requiring the secured party to comply with the demand.
- (6) If the secured party who received a demand under subsection (1) or (3) no longer has an interest in the obligation or property of the debtor that is the subject of the demand, he shall, not later than 10 days after receiving the demand, disclose the name and address of his successor in interest and the latest successor in interest, if known to him, and if, without reasonable excuse, this is not done, the person making the demand, in addition to any other remedy provided in this Act, may apply to the Court for an order requiring the person to whom the demand was made to comply with this section.
- (7) On an application under subsection (5) or (6), the Court may make an order requiring
- (a) the secured party referred to in subsection (5) to comply with the demand referred to in that subsection, or
  - (b) the person receiving the demand referred to in subsection (6) to disclose the information referred to in that subsection,
- and if the order is not complied with, may order that the security interest of the secured party with respect to which the demand was made is unperfected or extinguished and that any related registration be discharged, and may make any other order it considers necessary to ensure compliance with the demand.
- (8) On an application of the secured party referred to in subsection (5) or the person receiving the demand referred to in subsection (6), the Court, subject to section 67(1), may exempt the secured party or person receiving the demand in whole or in part from complying with subsection (5) or (6), other than a demand made by the debtor, or may extend the time for compliance.

(9) A secured party who has replied to a demand referred to in subsection (1) is estopped for the purposes of this Act, as against the person making the demand and any other person who can reasonably be expected to rely on the reply, to the extent that the person making the demand or the other person, as the case may be, has relied on the reply, from denying

(a) the accuracy of the information contained in the reply to the demand under subsection (1)(b), (c) or (d), and

(b) that the copy of the security agreement that he provided in response to a demand under subsection (1)(a) is a true copy of the security agreement required to be provided under subsection (1)(a).

(10) A successor in interest referred to in subsection (6) is estopped for the purposes of this Act, as against the person making the demand referred to in subsection (1) and any other person who can reasonably be expected to rely on the reply to the demand, to the extent that the person making the demand or the other person, as the case may be, has relied on the reply, from denying

(a) the accuracy of the information contained in the reply to the demand under subsection (1)(b), (c) or (d), and

(b) that the copy of the security agreement that was provided in response to a demand under subsection (1)(a) is a true copy of the security agreement required to be provided under subsection (1)(a)

unless

(c) the person who relied on the reply knew that the interest had been transferred and knew the identity and address of the successor in interest, or

(d) prior to the demand, a financing change statement was registered as provided in section 45 disclosing the successor in interest as the secured party.

(11) The person to whom a demand is made under this section may require payment in advance of a fee in a prescribed amount for each demand, but the debtor is entitled to a reply without charge once every 6 months.

### PART 3

#### PERFECTION AND PRIORITIES

Perfection of security interest

**19** A security interest is perfected when

(a) it has attached, and

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

regardless of the order of occurrence.

Priority of unperfected and certain perfected security interests

**20(1)** A security interest

(a) in collateral is subordinate to the interest of

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

(ii) a sheriff who has seized or has obtained a right to the collateral under the *Execution Creditors Act*, or a person entitled by law to participate in the distribution of property or its proceeds seized under legal process, and

(iii) a representative of creditors, but only to the extent that the person represents persons referred to in subclause (i),

if that security interest is unperfected at the time the interest of the person referred to in subclause (i), (ii) or (iii) arises;

(b) in collateral is not effective against a trustee in bankruptcy if the security interest is unperfected at the date the trustee's status has effect;

(c) in goods, chattel paper, a security, a negotiable document of title, an instrument or an intangible is subordinate to the interest of a transferee who

(i) acquires the interest under a transaction that is not a security agreement,

(ii) gives value, and

(iii) acquires the interest without knowledge of the security interest and before the security interest is perfected.

(2) Collateral is seized through garnishment within the meaning of subsection (1)(a)(i) when a garnishee summons binds the collateral.

Measure of  
damages suffered

**21** Where the interest of a lessor under a lease for a term of more than 1 year or of a consignor under a commercial consignment is not effective against a trustee in bankruptcy under section 20(1)(b), the lessor or consignor is deemed as against the lessee or consignee, as the case may be, to have suffered, immediately prior to the date of bankruptcy, damages in an amount equal to

(a) the value of the leased or consigned goods at the date of bankruptcy, and

(b) the amount of loss resulting from the termination of the lease or consignment.

Priority of  
purchase-money  
security interest

**22(1)** A purchase-money security interest in

(a) collateral, other than an intangible, that is perfected not later than 15 days after the day that

(i) the debtor obtains possession of the collateral, or

(ii) a third party, at the request of the debtor, obtains possession of the collateral,

whichever is the earlier, or

(b) an intangible that is perfected not later than 15 days after the day the security interest attaches

has priority over the interests of persons referred to in section 20(1)(a) and (b).

(2) For the purposes of this section, where goods are shipped by common carrier to a debtor or to a person designated by the debtor, the debtor does not have possession of the goods until the debtor or

the third person, at the request of the debtor, has obtained actual possession of the goods or a document of title to the goods, whichever is earlier.

Continuity of perfection

**23(1)** If a security interest is originally perfected in a way permitted under this Act and is again perfected in some other way under this Act without an intermediate period when it is unperfected, the security interest is deemed to be perfected continuously for the purposes of this Act in the way in which it was originally perfected.

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

Perfection by possession

**24(1)** Subject to section 19, possession of the collateral by the secured party, or on his behalf by another person, perfects a security interest in

- (a) goods,
- (b) chattel paper,
- (c) a security,
- (d) a negotiable document of title,
- (e) an instrument, and
- (f) money,

but only while it is actually held as collateral.

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

Perfection by registration

**25** Subject to section 19, registration of a financing statement perfects a security interest in collateral.

Temporary perfection

**26(1)** A security interest perfected under section 24 in

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

- (i) ultimate sale or exchange,
- (ii) presentation, collection or renewal, or
- (iii) registering a transfer,

or

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

- (i) ultimate sale or exchange,
- (ii) loading, unloading, storing, shipping or trans-shipping, or

(iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange.

remains perfected, notwithstanding section 10, for the first 15 days after the collateral comes under the control of the debtor.

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

Perfection  
where goods in  
possession  
of bailee

**27(1)** Subject to section 19, a security interest in goods in the hands of a bailee is perfected by

- (a) the issuance of a document of title by the bailee in the name of the secured party,
- (b) the perfection of a security interest in a negotiable document of title where the bailee has issued one,
- (c) a holding by the bailee on behalf of the secured party pursuant to section 24, or
- (d) the registration of a financing statement.

(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.

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

Perfection  
re proceeds

**28(1)** Subject to this Act, where collateral is dealt with or otherwise gives rise to proceeds, the security interest

- (a) continues in the collateral, unless the secured party expressly or impliedly authorized the dealing, and
- (b) extends to the proceeds,

but where the secured party enforces a security interest against both the collateral and the proceeds, the amount secured by the security interest in the collateral and the proceeds is limited to the market value of the collateral at the date of the dealing.

(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 contains a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind,
- (b) by the registration of a financing statement that covers the original collateral, 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, if the proceeds consist of money, cheques or deposit accounts in banks or similar financial institutions.

(3) Where the security interest in the original collateral was perfected other than in a manner referred to in subsection (2), the security interest in the proceeds is a continuously perfected security interest but becomes unperfected on the expiration of 15 days after the security interest in the original collateral attaches to the proceeds, 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.

Goods returned  
or repossessed

**29(1)** Where a debtor sells or leases goods that are subject to a security interest under circumstances in which the buyer or lessee takes free of the security interest under section 28(1)(a) or 30, the security interest in the goods reattaches to the goods if

(a) the goods are returned to, seized or repossessed by the debtor or a transferee of chattel paper created by the sale or lease, and

(b) the obligation secured remains unpaid or unperformed.

(2) Where a security interest reattaches under subsection (1), the perfection of the security interest and the time of registration or perfection is determined as if the goods had not been sold or leased if the security interest was perfected by registration at the time of the sale or lease, and the registration is effective at the time of the return, seizure or repossession.

(3) Where 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, seized or repossessed by the debtor or the transferee of the chattel paper,

the transferee of the account or chattel paper has a security interest in the goods that attaches when the goods are returned, seized or repossessed.

(4) A security interest arising under subsection (3) is perfected if the security interest in the account or chattel paper was perfected at the time of the return, seizure or repossession, but becomes unperfected on the expiry of 15 days after the return, seizure or repossession of the goods, unless the transferee registers a financing statement relating to the security interest or takes possession of the goods before the expiry of that period.

(5) A security interest in goods that a transferee of an account has under subsection (3) is subordinate to a perfected security interest arising under subsection (1) and to a security interest of a transferee of chattel paper arising under subsection (3).

(6) A security interest in goods that a transferee of chattel paper has under subsection (3) has priority over

(a) a security interest in the goods arising under subsection (1), and

(b) a security interest in the goods as after-acquired property that attaches on the return, seizure or repossession of the goods

if the transferee of the chattel paper would have priority under section 31(5) as to the chattel paper over an interest in the chattel paper claimed by the holder of the security interest in the goods.

(7) A security interest in goods given by a buyer or lessee of the goods referred to in subsection (1) that attaches while the goods are in the possession of the buyer, the lessee or the debtor and that is perfected when the goods are returned, seized or repossessed has priority over a security interest in the goods arising under this section.

Buyer or lessee  
takes free of  
security interest

**30(1)** For the purposes of this section,

(a) “buyer of goods” includes a person who obtains vested rights in goods pursuant to a contract to which he is a party, as a consequence of the goods’ becoming a fixture or accession to property in which he has an interest;

(b) “ordinary course of business of the seller” includes the supply of goods in the ordinary course of business as part of a contract for services and materials.

(2) 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 28 or 29, whether or not the buyer or lessee has knowledge of it, unless the buyer or lessee also has knowledge that the sale or lease constitutes a breach of the security agreement under which the security interest was created.

(3) A buyer or lessee of consumer goods takes free from a perfected or unperfected security interest in the goods if the buyer or lessee

(a) gave new value for the interest acquired, and

(b) bought or leased the goods without knowledge of the security interest.

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

(a) a fixture, or

(b) goods the purchase price of which exceeds \$1000 or, in the case of a lease, the market value of which exceeds \$1000.

(5) A buyer or lessee of goods takes free from a security interest that is temporarily perfected under section 26, 28(3) or 29(4) or a security interest the perfection of which is continued under section 51 during any of the 15-day periods referred to in those sections, if the buyer or lessee

(a) gave new value for the interest acquired, and

(b) bought or leased the goods without knowledge of the security interest.

(6) Where goods are sold or leased other than in the ordinary course of business of the seller or lessor, the buyer or lessee takes free from any security interest in the goods perfected under section 25 if

- (a) the buyer or lessee bought or leased the goods without knowledge of the security interest, and
- (b) the goods were not described by serial number in the registration relating to the security interest.

(7) Subsection (6) applies only to goods that at the date of the sale or lease were held by the seller or lessor as equipment and that are of a kind that may be described in a registration by serial number.

(8) A sale or lease under subsections (2), (3), (5) and (6) may be

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

and includes delivering goods or a document of title to goods under a pre-existing contract for sale but does not include a transfer as security for, or in total or partial satisfaction of, a money debt or past liability.

Protection of  
transferees of  
negotiable  
collateral

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

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

(2) A creditor who receives an instrument drawn or made by a debtor and delivered in payment of a debt owing to the creditor by that debtor has priority over a security interest in the instrument whether or not the creditor has knowledge of the security interest at the time of delivery.

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

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

(4) A holder of a negotiable document of title has priority over a security interest in the document of title that is perfected under section 25 or temporarily perfected under section 26 or 28(3) if the holder

- (a) gave value for the document of title, and
- (b) acquired the document of title without knowledge that it was subject to a security interest.



(5) A purchaser of chattel paper who takes possession of the chattel paper in the ordinary course of his business and for new value has priority over any security interest in it that

(a) was perfected under section 25 if the purchaser does not have knowledge at the time of taking possession that the chattel paper is subject to a security interest, or

(b) has attached to proceeds of inventory under section 28 whatever the extent of the purchaser's knowledge.

Priority of liens **32** Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien that he has with respect to the materials or services has priority over a perfected security interest in the goods unless the lien is given by an Act that provides that the lien does not have the priority.

Alienation of rights of debtor **33** 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.

Priority of purchase-money security interests **34(1)** In this section, "non-proceeds security interest" or "non-proceeds purchase-money security interest" means a security interest or purchase-money security interest, as the case may be, in original collateral.

(2) A purchase-money security interest in

(a) collateral or, subject to section 28, its proceeds, other than intangibles or inventory, that is perfected not later than 15 days after the day the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier, or

(b) an intangible or, subject to section 28, its proceeds, that is perfected not later than 15 days after the day the security interest in the intangible attaches

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

(3) Subject to subsection (6), a purchase-money security interest in inventory or, subject to section 28, its proceeds, has priority over any other security interest in the same collateral given by the same debtor if

(a) the purchase-money security interest in the inventory is perfected at the time the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier,

(b) the secured party gives a notice to any other secured party who has registered a financing statement containing a description that includes the same item or kind of collateral before the time of registration of the purchase-money security interest,

- (c) the notice referred to in clause (b) states that the person giving the notice expects to acquire a purchase-money security interest in inventory of the debtor, and describes the inventory by item or kind, and
  - (d) the notice is given before the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier.
- (4) A notice referred to in subsection (3) may be given in accordance with section 70 or by registered mail addressed to the address of the person to be notified as it appears in the financing statement referred to in subsection (3)(b).
- (5) A purchase-money security interest in goods or, subject to section 28, its proceeds, taken by a seller, lessor or consignee of the collateral, that is perfected
- (a) in the case of inventory, at the date the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier, and
  - (b) in the case of collateral other than inventory, not later than 15 days after the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier,
- has priority over any other purchase-money security interest in the same collateral given by the same debtor.
- (6) A non-proceeds security interest in accounts given for new value has priority over a purchase-money security interest in the accounts as proceeds of inventory if a financing statement relating to the security interest in the accounts is registered before the purchase-money security interest is perfected or a financing statement relating to it is registered.
- (7) A non-proceeds purchase-money security interest has priority over a purchase-money security interest in the same collateral as proceeds if the non-proceeds purchase-money security interest,
- (a) in the case of inventory, is perfected at the date the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier, and
  - (b) in the case of collateral other than inventory, is perfected not later than 15 days after the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier.
- (8) For the purposes of this section, where goods are shipped by common carrier to a debtor or to a person designated by a debtor, the debtor is deemed not to have obtained possession of the goods until the debtor, or another person at the request of the debtor, has obtained actual possession of the goods or a document of title to the goods, whichever is earlier.
- (9) A perfected security interest in crops or their proceeds, given for value to enable a debtor to produce the crops and given during a period of 6 months immediately prior to the time the crops become growing crops, has priority over any other security interest in the crops given by the same debtor.

Residual  
priority rules

(10) A perfected security interest in fowl, cattle, horses, sheep, swine or fish given for value to enable the debtor to acquire food, drugs or hormones to be fed to or placed in the fowl, animals or fish has priority over any other security interest in the fowl, animals or fish given by the same debtor other than a perfected purchase-money security interest.

**35(1)** Where this Act provides no other method for determining priority between security interests,

(a) priority between perfected security interests in the same collateral is determined by

(i) the registration of a financing statement, without regard to the date of attachment of the security interest,

(ii) possession of the collateral under section 24, without regard to the date of attachment of the security interest, or

(iii) perfection under section 5, 7, 26, 29 or 75,

whichever is earlier,

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

(c) priority between unperfected security interests is determined by the order of attachment of the security interests.

(2) Subject to section 28, for the purposes of subsection (1), the time of registration, possession or perfection of a security interest in original collateral is also the time of registration, possession or perfection of its proceeds.

(3) A security interest in goods that are held by the debtor as equipment and that may be described by serial number is not registered or perfected by registration for the purposes of subsection (1), (6) or (7) unless a financing statement relating to the security interest and containing a description of the goods by serial number is registered.

(4) Subject to subsection (5), the priority that a security interest has under subsection (1) applies to all advances, including future advances.

(5) A perfected security interest has priority over the interests of persons referred to in section 20(1)(a) only to the extent of

(a) advances made before the interests of the persons arise or made before the sheriff seizes the collateral or obtains a right to it,

(b) advances made before the secured party acquires knowledge

(i) of the interests of the persons,

(ii) of the seizure of the collateral by the sheriff, or

(iii) of an order giving the sheriff a right to the collateral,

(c) advances made pursuant to an obligation owing to a person other than the debtor entered into by the secured party before acquiring the knowledge referred to in clause (b), and

(d) reasonable costs incurred and expenditures made by the secured party for the protection, preservation or repair of the collateral.

(6) Where registration of a security interest lapses as a result of failure to renew the registration or where a registration has been discharged in error or without authorization and the secured party re-registers the security interest not later than 30 days after the lapse or discharge, the lapse or discharge does not affect the priority status of the security interest in relation to a competing perfected security interest that immediately prior to the lapse or discharge had a subordinate priority position, except to the extent that the competing security interest secures advances made or contracted for after the lapse or discharge and prior to the re-registration.

(7) Where a debtor transfers an interest in collateral which, at the time of the transfer, is subject to a perfected security interest, that security interest has priority over any other security interest granted by the transferee before the transfer, except to the extent that the security interest granted by the transferee secures advances made or contracted for

(a) after the expiry of 15 days from the day the secured party who holds the security interest in the transferred collateral has knowledge of the information required to register a financing statement disclosing the transferee as the new debtor, and

(b) before the secured party referred to in clause (a) amends the registration to disclose the name of the transferee as the new debtor or takes possession of the collateral.

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

Fixtures

**36(1)** Subject to the regulations, this section applies only with respect to land for which a certificate of title has been issued under the *Land Titles Act*.

(2) Except as provided in this section and in section 30, a security interest in goods that attaches before or at the time the goods become fixtures has priority with respect to the goods over a claim to the goods made by a person with an interest in the land.

(3) A security interest referred to in subsection (2) is subordinate to the interest of

(a) a person who acquires for value an interest in the land after the goods become fixtures, including an assignee for value of the interest of a person with an interest in the land at the time the goods become fixtures, and

(b) a person with a registered mortgage on the land who

(i) makes an advance under the mortgage, but only with respect to the advance, or

(ii) obtains an order confirming sale or a vesting order in a foreclosure action

without fraud and before the security interest is registered in accordance with section 49.

(4) A security interest in goods that attaches after the goods become fixtures is subordinate to the interest of a person who

(a) has an interest in the land at the time the goods become fixtures and who

(i) has not consented to the security interest,

(ii) has not disclaimed an interest in the goods or fixtures,

(iii) has not entered into an agreement under which a person is entitled to remove the goods, or

(iv) is not otherwise precluded from preventing the debtor from removing the goods, or

(b) acquires an interest in the land after the goods become fixtures, if the interest is acquired without fraud and before the security interest in the goods is registered in accordance with section 49.

(5) A security interest referred to in subsection (2) or (4) is subordinate to the interest of a creditor of the debtor who caused to be registered a writ of execution, judgment, order, certificate or similar instrument authorized to be registered pursuant to an Act in the appropriate land titles office before the security interest is registered in accordance with section 49.

(6) The interest of a creditor referred to in subsection (5) does not take priority over a purchase-money security interest in goods that is registered in accordance with section 49 not later than 15 days after the goods are affixed to the land.

(7) A secured party who, under this Act, has the right to remove goods from land shall exercise his right of removal in a manner that causes no greater damage or injury to the land and to other property situated on it and that puts the occupier of the land to no greater inconvenience than is necessarily incidental to the removal of the goods.

(8) A person, other than the debtor, who has an interest in the land at the time the goods subject to the security interest are affixed to the land is entitled to reimbursement for any damages to his interest in the land caused during the removal of the goods, but is not entitled to reimbursement for diminution in the value of the land caused by the absence of the goods removed or by the necessity of replacement.

(9) The person entitled to reimbursement as provided in subsection (8) may refuse permission to remove the goods until the secured party has given adequate security for the reimbursement.

(10) The secured party may apply to the Court for any one or more of the following:

(a) an order determining who is entitled to reimbursement under this section;

(b) an order determining the amount and kind of security to be provided by the secured party;

(c) an order prescribing the depository for the security;

(d) an order dispensing with the need to provide security for reimbursement under subsection (9).

(11) A person having an interest in the land that is subordinate to a security interest as provided in this section may, before the goods have been removed from the land by the secured party, retain the goods on payment to the secured party of the lesser of

(a) the amount secured by the security interest having priority over his interest, and

(b) the market value of the goods.

(12) The secured party who has a right to remove the goods from the land shall give to each person who appears by the records of the land titles office to have an interest in the land a notice of the intention of the secured party to remove the goods, and the notice shall contain

(a) the name and address of the secured party,

(b) a description of the goods to be removed,

(c) the amount required to satisfy the obligation secured by the security interest,

(d) a description of the land to which the goods are affixed, and

(e) a statement of intention to remove the goods unless the amount referred to in subsection (11) is paid on or before a specified date that is not less than 15 days after the notice is given in accordance with subsection (13).

(13) A notice referred to in subsection (12) shall be given at least 15 days before removal of the goods, and may be given in accordance with section 70 or by registered mail addressed to the address of the person to be notified as it appears in the records of the land titles office.

(14) A person entitled to receive a notice under subsection (12) may apply to the Court for an order postponing removal of the goods from the land.

Security interests  
in crops

**37(1)** Subject to the regulations, this section applies only with respect to land for which a certificate of title has been issued under the *Land Titles Act*.

(2) Except as provided in this section, a security interest in crops has priority with respect to the crops over an interest in the crops claimed by a person with an interest in the land.

(3) A security interest referred to in subsection (2) is subordinate to the interest of

(a) a person who acquires for value an interest in the land while the crops are growing crops, including an assignee for value of the interest of a person with an interest in the land where the assignee acquires his interest for value and while the crops are growing crops, and

- (b) a person with a registered mortgage on the land who
  - (i) makes an advance under the mortgage, but only with respect to the advance, or
  - (ii) obtains an order confirming sale or a vesting order in a foreclosure action

without fraud and before the security interest in the growing crops is registered in accordance with section 49.

(4) A security interest referred to in subsection (2) is subordinate to the interest of a creditor of the debtor who causes to be registered a writ of execution, judgment, order, certificate or similar instrument authorized to be registered pursuant to an Act in force in the Province in the appropriate land titles office before the security interest is registered in accordance with section 49.

(5) The interest of a creditor referred to in subsection (4) does not take priority over a purchase-money security interest in the crops, or a security interest in the crops referred to in section 34(9), that is registered in accordance with section 49 not later than 15 days after the time the security interest in the crops attaches.

(6) Section 36(7) to (14) apply to the seizure and removal of growing crops from land.

Security interests  
re accessions

**38(1)** In this section,

- (a) “other goods” means goods to which an accession is installed or affixed;
- (b) “the whole” means an accession and the goods to which the accession is installed or affixed.

(2) Except as provided in this section, a security interest in goods that attaches before or at the time the goods become an accession has priority with respect to the goods over a claim to the goods as an accession made by a person with an interest in the whole.

(3) A security interest referred to in subsection (2) is subordinate to the interest of

- (a) a person who acquires for value an interest in the whole after the goods become an accession, including an assignee for value of the interest of a person with an interest in the whole at the time the goods become an accession, and
- (b) a person with a prior perfected security interest in the whole who
  - (i) makes an advance under a security agreement, but only with respect to the advance, or
  - (ii) acquires the right to retain the whole in satisfaction of the obligation secured

without knowledge of the security interest in the accession and before it is perfected.

(4) A security interest in goods that attaches after the goods become an accession is subordinate to the interest of a person who

(a) has an interest in the other goods at the time the goods become an accession and who

(i) has not consented to the security interest,

(ii) has not disclaimed an interest in the accession,

(iii) has not entered into an agreement under which a person is entitled to remove the accession, or

(iv) is not otherwise precluded from preventing the debtor from removing the accession,

or

(b) acquires an interest in the whole after the goods become an accession, if the interest is acquired without knowledge and before the security interest in the accession is perfected.

(5) A security interest referred to in subsections (2) and (4) is subordinate to the interest of a creditor or of a sheriff who has seized or caused the whole to be seized under legal process to enforce a judgment, if the seizure occurs under circumstances referred to in section 20 and if the security interest is not perfected at the date of seizure.

(6) The interest of a creditor or of a sheriff referred to in subsection (5) does not take priority over a purchase-money security interest in goods that is perfected not later than 15 days after the goods become an accession.

(7) A secured party who, under this Act, has the right to remove an accession from the whole shall exercise his right of removal in a manner that causes no greater damage or injury to the other goods and that puts the person in possession of the whole to no greater inconvenience than is necessarily incidental to the removal of the accession.

(8) A person, other than the debtor, who has an interest in the other goods at the time the goods subject to the security interest become an accession is entitled to reimbursement for any damages to his interest in the other goods caused during the removal of the accession, but is not entitled to reimbursement for diminution in the value of the other goods caused by the absence of the accession or by the necessity of its replacement.

(9) The person entitled to reimbursement as provided in subsection (8) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.

(10) The secured party may apply to the Court for one or more of the following:

(a) an order determining who is entitled to reimbursement under this section;

(b) an order determining the amount and kind of security to be provided by the secured party;

(c) an order prescribing the depository for the security;



(d) an order dispensing with the need to provide security for reimbursement under subsection (9).

(11) A person having an interest in the whole that is subordinate to a security interest as provided in this section may, before the accession has been removed from the whole by the secured party, retain the accession on payment to the secured party of the lesser of

(a) the amount secured by the security interest having priority over his interest, and

(b) the market value of the accession.

(12) The secured party who has a right to remove the accession from the whole shall give

(a) to each person who is known by the secured party to have an interest in the other goods or in the whole, and

(b) to each person who has registered a financing statement indexed in the name of the debtor and referring to the other goods or according to the serial number of the other goods where the serial number is required or permitted for registration,

a notice of the intention of the secured party to remove the accession, and the notice shall contain

(c) the name and address of the secured party,

(d) a description of the goods to be removed,

(e) the amount required to satisfy the obligations secured by the security interest,

(f) a description of the other goods, and

(g) a statement of intention to remove the accession unless the amount referred to in subsection (11) is paid on or before a specified date that is not less than 15 days after the notice is given in accordance with subsection (13).

(13) A notice referred to in subsection (12) shall be given at least 15 days before removal of the accession, and may be given in accordance with section 70 or by registered mail addressed to the address of the person to be notified as it appears on the financing statement.

(14) A person entitled to receive a notice under subsection (12) may apply to the Court for an order postponing removal of the accession.

Security interests  
in processed or  
commingled  
goods

**39(1)** A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product.

(2) Subject to subsection (3), if more than 1 perfected security interest continues in the same product or mass under subsection (1), and each was a security interest in separate goods, the security interests are entitled to share in the product or mass according to the ratio that the obligation secured by each security interest bears to the sum of the obligations secured by all the security interests.

- (3) A perfected purchase-money security interest in goods that continues in the product or mass under subsection (1) has priority over
- (a) a non-purchase-money security interest in the goods that continues in the product or mass under subsection (1),
  - (b) a non-purchase-money security interest in the product or mass, other than as inventory, given by the same debtor, and
  - (c) a non-purchase-money security interest in the product or mass as inventory given by the same debtor if
    - (i) the secured party with the purchase-money security interest in the product or mass gives a notice to any secured party with a non-purchase-money security interest in the product or mass who registers a financing statement containing a description of collateral that includes the product or mass, before the identity of the goods is lost in the product or mass,
    - (ii) the notice contains a statement that the person giving the notice has acquired or expects to acquire a purchase-money security interest in goods supplied to the debtor as inventory, and
    - (iii) the notice is given before the identity of the goods is lost in the product or mass.
- (4) A notice referred to in subsection (3)(c) may be given in accordance with section 70 or by registered mail addressed to the address of the person to be notified as it appears in the financing statement referred to in subsection (3)(c).
- (5) This section does not apply to a security interest in an accession to which section 38 applies.

Subordination of interest

**40** A secured party may, in a security agreement or otherwise, subordinate his security interest to any other interest, and the subordination is effective according to its terms between the parties and may be enforced by a third party if the third party is the person or one of a class of persons for whose benefit the agreement was intended.

Rights of assignee

**41(1)** In this section, “account debtor” means a person who is obligated under an intangible or chattel paper.

(2) The rights of an assignee of collateral that is either an intangible or chattel paper are subject to

- (a) the terms of the contract between the account debtor and the assignor and any defence or claim arising out of the contract, and
- (b) any other defence or claim of the account debtor against the assignor that accrues before the account debtor receives notice of the assignment,

unless the account debtor has made an enforceable agreement not to assert defences or claims arising out of the contract.

(3) To the extent that an assigned right to payment arising out of the contract has not been earned by performance, and notwithstanding notice of the assignment to the account debtor, any modification of or substitution for the contract, made in good faith and in accordance with reasonable commercial standards and without material adverse

effect on the assignee's rights under the contract or the assignor's ability to perform the contract, is effective against the assignee unless the account debtor has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract.

(4) Nothing in subsection (3) affects the validity of a term in an assignment agreement that provides that a modification or substitution referred to in that subsection is a breach of contract by the assignor.

(5) Where collateral that is either an intangible or chattel paper is assigned, the account debtor may make payments under the contract to the assignor

(a) before the account debtor receives a notice that

(i) states that the amount payable or to become payable under the contract has been assigned and payment is to be made to the assignee, and

(ii) identifies the contract under which the amount payable is to become payable,

or

(b) after

(i) the account debtor requests the assignee to furnish proof of the assignment, and

(ii) the assignee fails to furnish the proof within 15 days from the date of the request.

(6) Payment by an account debtor to an assignee pursuant to a notice referred to in subsection (5)(a) discharges the obligation of the account debtor to the extent of the payment.

(7) A term in a contract between an account debtor and an assignor that prohibits or restricts assignment of the whole of the account or chattel paper for money due or to become due is binding on the assignor, but only to the extent of making the assignor liable in damages for breach of contract, and is unenforceable against third parties.

#### PART 4

#### REGISTRATION

Personal  
Property Registry

**42(1)** The Central Registry and the Vehicle Registry continued under the *Chattel Security Registries Act* are continued 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.

(2) The Registrar may have a seal of office in the form prescribed by the Minister.

(3) The Minister may designate a person as Registrar and may designate any other persons to exercise the powers and duties of the Registrar.

(4) The Registrar may designate 1 or more persons as deputy registrars.

(5) The Registrar shall direct and supervise the operation of the registry under the direction of the Minister.

**43(1)** A financing statement may be submitted for registration at an office of the Registry specified by the Minister.

(2) Registration of a financing statement is effective from the date assigned to it by the Registrar, and, where 2 or more financing statements are assigned the same date, the order of registration is determined by reference to the registration numbers assigned by the Registrar.

(3) The Registrar shall not register a financing statement or issue a search result under this Part until any prescribed fees have been paid or arrangements for their payment have been made.

(4) A financing statement may be registered before a security agreement is made and before a security interest attaches.

(5) A registration may relate to 1 or more than 1 security agreement.

(6) The validity of the registration of a financing statement is not affected by a defect, irregularity, omission or error in the financing statement or notice or in the execution or registration of it unless the defect, irregularity, omission or error is seriously misleading.

(7) Subject to subsection (9), where collateral is of a kind that is required to be described in a financing statement by serial number or where 1 or more debtors are required to be disclosed in a financing statement, and there is a seriously misleading defect, irregularity, omission or error in

(a) the disclosure of any debtor, other than a debtor who does not own or have rights in the collateral, or

(b) the serial number of the collateral,

the registration is invalid.

(8) Nothing in subsections (6) and (7) shall require, as a condition to a finding that a defect, irregularity, omission or error is misleading, proof that anyone was actually misled by it.

(9) Failure to provide a description in a financing statement in relation to any item or kind of collateral does not affect the validity of the registration with respect to other collateral.

(10) Notwithstanding anything in this Part, the Registrar may reject a financing statement when, in the opinion of the Registrar, it does not comply with this Act or the regulations or any other Act and the regulations under any other Act under which registration of a financing statement is authorized, and the Registrar shall give the reason for the rejection.

(11) The secured party or a person disclosed as a secured party in a financing statement shall give to each person disclosed as a debtor in the statement, not later than 15 days after it is submitted for registration, a copy of the statement unless a person entitled to a copy has waived in writing his right to receive it.

Duration of and amendments to registrations

**44(1)** Subject to the regulations, a registration under this Act is effective for the period of time indicated on the financing statement by which the registration is effected or amended.

(2) A registration may be renewed by registering a financing change statement at any time before the registration expires, and, subject to the regulations, the renewed registration is effective from the registration date of the renewal to the expiry of the period indicated on the financing change statement.

(3) An amendment to a registration may be made by registering a financing change statement at any time during the period that the registration is effective, and the amendment is effective from the date the financing change statement is registered to the expiry of the registration being amended.

(4) When an amendment of a registration is not otherwise provided for in this Part, a financing change statement may be registered to amend the registration.

Registration of transfers and subordinations

**45(1)** Where a secured party with a registered security interest transfers the interest or a part of it, a financing change statement may be registered disclosing the transfer.

(2) Where an interest in part of the collateral is transferred, the financing change statement shall disclose the transfer and shall contain a description of the collateral.

(3) Where a secured party transfers an interest in collateral and the security interest of the secured party is not perfected by registration, a financing statement may be registered disclosing the transferee as the secured party.

(4) A financing change statement disclosing a transfer of a security interest may be registered before or after the transfer.

(5) After registration of a financing change statement disclosing a transfer of a security interest, the transferee is the secured party for the purposes of this Part.

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

Registry records

**46(1)** Where a financing statement is registered in the Registry, the Registrar may have the statement reproduced by any means he considers appropriate, and the reproduction is for all purposes deemed to be the statement reproduced.

(2) Information in a registration may be removed from the records of the Registry

(a) when the registration is no longer effective,

(b) on the receipt of a financing change statement discharging or partially discharging the registration, or

(c) on receipt of an order of the Court compelling the discharge or partial discharge of a registration.

Registration not  
constructive  
notice

**47** Registration of a financing statement in the Registry is not constructive notice or knowledge of its existence or contents to third parties.

Registry searches

**48(1)** A person may request one or more of the following:

- (a) a search according to the name of a debtor;
- (b) a search according to the serial number of goods of a kind that may or are required to be described by serial number on a financing statement;
- (c) a search according to a registration number;
- (d) if authorized by the Minister, a search according to criteria other than that referred to in clauses (a) to (c);
- (e) a printed result of a search referred to in clauses (a) to (d);
- (f) a copy or certified copy of any registered document.

(2) A printed search result that purports to be issued by the Registry is receivable in evidence as prima facie proof of its contents.

(3) The date of registration of a financing statement as indicated on a printed search result issued under this section is prima facie proof of the date of registration of the financing statement, and the registration number as indicated on the printed search result is prima facie proof of the order of registration of the financing statement.

(4) A copy of a registered financing statement or other registered document bearing the certification of the Registrar is receivable in evidence as a true copy of the statement or document without proof of the signature or official position of the Registrar.

Registration in  
land titles office

**49(1)** In this section,

- (a) “debtor” includes any person named in a notice under this section as a debtor;
- (b) “secured party” includes any person named in a notice under this section as a secured party.

(2) A security interest in a fixture under section 36 and a security interest in a growing crop under section 37 may be registered by tendering a notice in the prescribed form to the appropriate land titles office.

(3) The registrar of the land titles office to which the notice in subsection (2) is tendered shall make a memorandum of the notice on the certificate of title or the condominium plan, as the case may be, in respect of the parcel of land to which the notice relates.

(4) If a notice has been registered in a land titles office under subsection (2) and the registration of the notice has not expired, a notice of a renewal, amendment, transfer or discharge of the security interest to which the original notice relates, or a notice of postponement of the security interest to another interest, may be registered in the land titles office, and, on its being so registered, the registrar of the land titles office shall make a memorandum of it on the proper certificate of title or condominium plan, as the case may be.

(5) Sections 43(4), (5), (6), (8), (9) and (11), 44 and 45 apply to a notice registered under this section.

(6) If a notice registered under this section expires or has been discharged, the registrar of the land titles office in which it has been registered may vacate the registered notice and any other notice that relates to the same security interest.

(7) Where a notice is registered under this section and

(a) all of the obligations under the security agreement to which the notice relates have been performed,

(b) the secured party has agreed to release part or all of the collateral described in the notice,

(c) the description of the collateral contained in the notice includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor, or

(d) no security agreement exists between the secured party and the debtor,

the debtor or any person having a registered interest in the land may give a written demand to the secured party.

(8) A demand referred to in subsection (7) shall require that the secured party, not later than 40 days after the demand is given, either

(a) submit for registration a notice in the prescribed form

(i) discharging the registration of the notice, in a case falling within subsection (7)(a) or (d),

(ii) amending or discharging the registration of the notice, as the case may be, to reflect the terms of the agreement, in a case falling within subsection (7)(b), or

(iii) amending the collateral description on the notice to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor, in a case falling within subsection (7)(c),

or

(b) submit for registration an order of the Court confirming that the registration need not be amended or discharged.

(9) If a secured party fails to comply with a demand referred to in subsection (7), the person giving the demand may submit for registration the notice referred to in subsection (8)(a) and the registrar of the land titles office shall register the notice on receiving satisfactory proof that the demand has been given to the secured party.

(10) A demand referred to in subsection (7) may be given in accordance with section 70 or by registered mail addressed to the address of the secured party as it appears on the notice registered under this section.

(11) Section 50(7) to (9) apply to a notice registered under this section.

(12) No fee or expense shall be charged and no amount shall be accepted by a secured party for compliance with a demand referred to in subsection (7).

Amendment or  
discharge of  
registrations

**50(1)** In this section,

- (a) “debtor” includes any person named in a registered financing statement as a debtor;
  - (b) “secured party” includes any person named in a registered financing statement as a secured party.
- (2) Where a registration relates exclusively to a security interest in consumer goods, the secured party shall discharge the registration not later than 1 month after all obligations under the security agreement creating the security interest are performed, unless prior to the expiry of that 1-month period the registration lapses.
- (3) Where a financing statement is registered and
- (a) all of the obligations under the security agreement to which it relates have been performed,
  - (b) the secured party has agreed to release part or all of the collateral described in the financing statement,
  - (c) the collateral described in the financing statement includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor, or
  - (d) no security agreement exists between the secured party and the debtor,

the debtor or any person with an interest in property that falls within the collateral description on the financing statement may give a written demand to the secured party.

(4) A demand referred to in subsection (3) shall require that the secured party, not later than 40 days after the demand is given, either

- (a) register a financing change statement
  - (i) discharging the registration, in a case falling within subsection (3)(a) or (d),
  - (ii) amending or discharging the registration, as the case may be, to reflect the terms of the agreement, in a case falling within subsection (3)(b), or
  - (iii) amending the collateral description in the registration to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor, in a case falling within subsection (3)(c),

or

- (b) register an order of the Court confirming that the registration need not be amended or discharged.

(5) If a secured party fails to comply with a demand referred to in subsection (3), the person giving the demand may register the financing change statement referred to in subsection (4)(a) on providing to



the Registrar satisfactory proof that the demand has been given to the secured party.

(6) A demand referred to in subsection (3) may be given in accordance with section 70 or by registered mail addressed to the address of the secured party as it appears on the financing statement.

(7) On application to the Court by the secured party, the Court may order that the registration

(a) be maintained on any conditions and, subject to section 44(1), for any period of time, or

(b) be discharged or amended.

(8) Subsection (5) does not apply to a registration of a security interest provided for in a trust indenture if the financing statement through which the security interest was registered indicates that the security agreement providing for the security interest is a trust indenture.

(9) Where a registration relates to a security interest provided for under a trust indenture and the secured party fails to comply with a demand referred to in subsection (3), the person making the demand may apply to the Court for an order directing that the registration be amended or discharged.

(10) No fee or expense shall be charged and no amount shall be accepted by a secured party for compliance with a demand referred to in subsection (3).

Transfer of  
debtors' interests  
in collateral  
or change of  
debtors' names

**51(1)** Where a security interest has been perfected by registration and the debtor transfers all or part of his interest in the collateral with the prior consent of the secured party, the security interest in the transferred collateral is subordinate to

(a) an interest, other than a security interest in the transferred collateral, arising in the period from the expiry of the 15th day after the transfer to, but not including, the day the secured party amends the registration to disclose the transferee of the interest in the collateral as the new debtor or takes possession of the collateral,

(b) a perfected security interest in the transferred collateral registered or perfected in the period referred to in clause (a), and

(c) a perfected security interest in the transferred collateral registered or perfected after the transfer and before the expiry of the 15th day after the transfer if, before the expiry of the 15 days,

(i) the registration of the security interest first mentioned in this subsection is not amended to disclose the transferee of the interest in the collateral as the new debtor, or

(ii) the secured party does not take possession of the collateral.

(2) Where a security interest is perfected by registration and the secured party has knowledge of

(a) information required to register a financing change statement disclosing the transferee as the new debtor, where the debtor has transferred all or part of the debtor's interest in the collateral, or

(b) the new name of the debtor, where there has been a change in the debtor's name,

the security interest in the transferred collateral, where clause (a) applies, and in the collateral, where clause (b) applies, is subordinate to

(c) an interest, other than a security interest in the collateral, arising in the period from the expiry of the 15th day after the secured party first has knowledge of the information referred to in clause (a) or the new name of the debtor, as the case may be, to, but not including, the day the secured party amends the registration to disclose the transferee of the collateral as the new debtor, or to disclose the new name of the debtor, as the case may be, or takes possession of the collateral,

(d) a perfected security interest in the collateral registered or perfected in the period referred to in clause (c), or

(e) a perfected security interest in the collateral registered or perfected after the secured party first has knowledge of the information referred to in clause (a) or of the new name of the debtor, as the case may be, and before the expiry of the 15th day referred to in clause (c), if, before the expiry of the 15 days,

(i) the registration of the security interest first mentioned in this subsection is not amended to disclose the transferee of the collateral as the new debtor or disclose the new name of the debtor, as the case may be, or

(ii) the secured party does not take possession of the collateral.

(3) This section does not have the effect of subordinating a prior security interest under prior registration law deemed under section 75 to be registered under this Act.

(4) Where the debtor's interest in part or all of the collateral is transferred by the debtor without the consent of the secured party and there are 1 or more subsequent transfers of the collateral without the consent of the secured party before the secured party learns the name of the most recent transferee, the secured party shall be deemed to have complied with subsection (2) if the secured party registers a financing change statement not later than 15 days after learning the name of the most recent transferee and the information required to register a financing change statement, and the secured party need not register financing change statements with respect to any intermediate transferee.

Recovery of loss  
caused by error  
in Registry

**52(1)** A person who suffers loss or damage as a result of his reliance on a printed search result under section 48 that is incorrect because of an error or omission in the operation of the Registry may bring an action against the Registrar to recover damages.

(2) No action for damages under this section or section 53 lies against the Registrar unless it is commenced not later than 1 year after the person entitled to bring the action became aware of the loss or damage, or 6 years from the date the printed search result was issued, whichever is earlier.

(3) No action under this section may be brought by a person who relied on a printed search result unless that person or an agent of that person requested the printed search result.

(4) Notwithstanding the *Proceedings Against the Crown Act*, no action may be brought against the Crown in right of the Province, the Registrar or an officer or employee of the Registry for any error 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 Act, the regulations or under any other Act except as provided in this section and in section 53.

Recovery of loss  
where trust deeds  
involved

**53(1)** An action for recovery of damages under section 52 brought by a trustee under a trust indenture or by a person with an interest in a trust indenture shall be brought 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 each error or omission.

(2) In an action brought by a trustee under a trust indenture or by a person with an interest in a trust indenture, proof that each person relied on the printed search result is not necessary if it is established that the trustee relied on the printed search result, but no person is entitled to recover damages under this section if he knows at the time he loans money to the debtor that the printed search result relied on by the trustee is incorrect.

(3) In proceedings under this section, the Court may make any order that it considers appropriate in order to give notice to the persons with interests in the same trust indenture.

(4) Subject to section 54, the Court may order payment of all or a portion of the damages awarded to identified persons with interests in the same trust indenture at any time after judgment, and the obligation of the Registrar to satisfy the judgment is satisfied to the extent that payment is made.

Payment of  
claim for loss

**54(1)** The total amount recoverable in a single action under section 52 shall not exceed a prescribed amount, and the total amount recoverable for all claims in a single action under section 53 shall not exceed a prescribed amount.

(2) Where damages are paid to a claimant pursuant to section 52 or 53, the Crown is subrogated to the rights of the claimant against any person indebted to the claimant whose debt to the claimant was the basis of the loss or damage in respect of which the claim was paid.

(3) Where the claimant recovers pursuant to section 52 or 53 an amount less than the value of the interest the claimant would have had if the error or omission had not occurred, the right of subrogation under subsection (2) does not prejudice the right of the claimant to recover in priority to the Crown an amount equal to the difference between the amount paid to the claimant and the value of the interest the claimant would have had if the error or omission had not occurred.

**PART 5**  
**RIGHTS AND REMEDIES ON DEFAULT**

Application  
of Part

- 55(1)** Unless otherwise provided in this Part, this Part applies only to a security interest that secures payment or performance of an obligation.
- (2) The rights and remedies referred to in this Part are cumulative.
- (3) Notwithstanding subsection (1), this Part does not apply to a transaction between a pledgor and a pawnbroker.
- (4) Subject to any other Act or rule of law to the contrary, where the same obligation is secured by an interest in land and a security interest to which this Act applies, the secured party may
- (a) proceed under this Part as to the personal property, or
  - (b) proceed as to both the land and the personal property, as if the personal property were land, in which case
    - (i) the secured party's rights, remedies and duties in respect of the land apply as if the personal property were land, and
    - (ii) this Part does not apply.
- (5) A security interest does not merge merely because a secured party has reduced his claim to judgment.

Rights and  
remedies

- 56(1)** Where the debtor is in default under a security agreement,
- (a) except as provided by subsection (2), the secured party has against the debtor the rights and remedies provided in the security agreement, the rights and remedies provided in this Part and, in sections 36, 37 and 38 and when in possession, the rights, remedies and obligations provided in section 17, and
  - (b) the debtor has against the secured party, the rights and remedies provided in the security agreement, the rights and remedies provided by any other Act or rule of law not inconsistent with this Act and the rights and remedies provided in this Part and in section 17.
- (2) Except as provided in sections 17, 60, 61 and 63, no provision of section 17 or 59 to 67, to the extent that it gives rights to the debtor or imposes obligations on the secured party, can be waived or varied by agreement or otherwise.

Collection rights  
of secured party

- 57(1)** Where so agreed and in any event on default under a security agreement, a secured party is entitled
- (a) to notify a debtor on an intangible or chattel paper or an obligor on an instrument to make payment to him whether or not the assignor was making collections on the collateral before the notification, and
  - (b) to take control of any proceeds to which he is entitled under section 28.
- (2) A secured party who by agreement is entitled to charge back the uncollected collateral or otherwise entitled to full or limited recourse against the debtor and who undertakes to collect from an account

debtor as defined in section 41(1) or from an obligor under an instrument may deduct his reasonable expenses of realization from any collection.

Right of secured party to enforce, etc., on default

**58(1)** Subject to subsection (2) and sections 36, 37 and 38, on default under a security agreement,

(a) the secured party has, unless otherwise agreed, the right to enforce the security agreement by any method permitted by law,

(b) if the collateral is a document of title, the secured party may proceed either as to the document of title or as to the goods covered by it, and any method of enforcement that is available with respect to the document of title is also available, with all the necessary modifications, with respect to the goods covered by it,

(c) where the collateral is goods of a kind that cannot be readily moved from the debtor's premises or of a kind for which adequate alternative storage facilities are not readily available, the secured party may seize or repossess the collateral without removing it from the debtor's premises in any manner by which a sheriff may seize without removal under subsection (6)(b) to (d), if the secured party's interest is perfected by registration, and

(d) where clause (c) applies or where the collateral has been seized by a sheriff as provided in subsection (6)(b) to (d) and the collateral is of a kind mentioned in clause (c), the secured party may dispose of the collateral on the debtor's premises, but shall not cause the person in possession of the premises any greater inconvenience and cost than is necessarily incidental to the disposal.

(2) Subject to section 64, seizure of property to enforce rights under a security agreement, other than seizure by a receiver, shall be made only by a sheriff.

(3) No seizure referred to in subsection (2) shall be made unless the secured party or his agent has executed and delivered a warrant in the prescribed form to the sheriff who is to carry out the seizure.

(4) A sheriff may refuse to make or continue a seizure referred to in subsection (2) unless he has been furnished with such security as he considers sufficient to indemnify him in respect of his fees, expenses and anything done in relation to a seizure including indemnification for claims by the debtor or any third party.

(5) Section 38(2) and (3) of the *Seizures Act* apply to any bond provided to the sheriff pursuant to subsection (4).

(6) To make a seizure of property, the sheriff may

(a) take physical possession of the property,

(b) give to the debtor or the person in possession of the collateral a notice of seizure in the prescribed form,

(c) post in some conspicuous place on the premises on which the property is located at the time of seizure a notice of seizure in the prescribed form, or

(d) in the case of property in the form of goods, affix to the goods a sticker in the prescribed form,

and seizure by the sheriff shall continue until possession of the property is surrendered to the secured party or his agent, or the seizure has been released.

(7) At any time after making a seizure, the sheriff may appoint the debtor or other person in possession of the property seized as bailee of the sheriff on the debtor or such other person executing a written undertaking in the prescribed form to hold the property as bailee for the sheriff and to deliver up possession of the property to the sheriff on demand and property held by a bailee is deemed to be held under seizure by the sheriff.

(8) Section 23 of the *Seizures Act* applies to a sheriff making a seizure referred to in subsection (2).

(9) When a seizure referred to in subsection (2) occurs, a sheriff, on the written request of the person who has reasonable grounds to believe that he has an interest in or a right to property seized by the sheriff, shall deliver to such person a list of items of property seized which fall within the general description of property in or to which such person claims to have an interest.

(10) On making a seizure referred to in subsection (2), a sheriff may surrender possession or the right of possession of the property seized to the secured party or to a person designated in writing by the secured party.

(11) A sheriff may give before or after seizure of property, a notice to the secured party named in the warrant under which the seizure was made informing him that the seizure shall be released at a date specified in the notice unless before that date the secured party takes possession of the property seized.

(12) If the person to whom the notice referred to in subsection (11) is given does not take possession of the property referred to in the notice on or before the date specified, the sheriff may release the seizure.

(13) After surrender of possession as provided in subsection (10) or release of seizure as provided in subsection (12), the sheriff has no liability for loss or damage to the property or for unlawful interference with the rights of the debtor or any other person who has rights in or to the property, occurring after the surrender or release.

(14) A seizure referred to in subsection (2) shall not affect the interest of a person who under this Act or under any other law has priority over the rights of the secured party.

(15) The powers that a sheriff has under this section may be exercised by a person appointed by the sheriff.

Seizure of  
mobile homes

**59(1)** In this section, “mobile home” means

(a) a vacation trailer or house trailer, or

(b) a structure, whether ordinarily equipped with wheels or not,

that is designed to be moved from one point to another by being towed or carried and to provide living accommodation for 1 or more persons.

Disposal of collateral on default

(2) When a mobile home is seized to enforce a security agreement and the mobile home is occupied by the debtor or some other person who fails, on demand, to deliver up possession of the mobile home, the person who has authorized the seizure or a receiver may apply to the Court under section 64 for an order directing the occupant to deliver up possession of the mobile home.

(3) The order may provide that if the occupant fails to deliver up possession of the mobile home within the time specified in the order, the sheriff shall eject and remove the occupant together with all goods he may have in the mobile home, and the sheriff may take any reasonable steps necessary to obtain possession of the mobile home.

(4) The sheriff may act under subsection (3) only after an affidavit has been filed with him indicating that a copy of the Court order has been served on the occupant of the mobile home and stating that the occupant has failed to deliver up possession of it as required by the order.

**60(1)** Collateral may be disposed of in accordance with this Part in its condition or after any repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied in the following order to

(a) the reasonable expenses of enforcing the security agreement, holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expenses incurred by the secured party, and

(b) the satisfaction of the obligations secured by the security interest of the party requesting the disposition,

and the surplus, if any, shall be dealt with in accordance with section 61.

(2) Collateral may be disposed of as follows:

(a) by private sale;

(b) by public sale, including public auction or closed tender with sale to the highest bidder or tenderer;

(c) as a whole or in commercial units or parts;

(d) if the security agreement so provides, by lease or by deferred payment.

(3) The secured party may delay disposition of the collateral in whole or in part.

(4) Not less than 20 days prior to the disposition of the collateral, the secured party shall give notice of disposition to

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

(b) a creditor or person with a security interest in the collateral

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

(ii) who has registered a financing statement according to the name of the debtor or according to the serial number of the collateral when it is required or permitted for registration, or

(iii) whose security interest is perfected by possession at the time the secured party seized or repossessed the collateral,

and

(c) any other person with an interest in the collateral who has given notice to the secured party of his interest in the collateral prior to the date that the notice of disposition is given to the debtor.

(5) The notice referred to in subsection (4) shall contain

(a) a description of the collateral,

(b) the amount required to satisfy the obligations secured by the security interest,

(c) the sums actually in arrears, exclusive of the operation of any acceleration clause in the security agreement, and a brief description of any other provision of the security agreement for the breach of which the secured party intends to dispose of the collateral,

(d) the amount of the applicable expenses referred to in subsection (1)(a) or, where the amount of such expenses has not been determined, a reasonable estimate,

(e) a statement that, on payment of the amounts due under clauses (b) and (d), any person entitled to receive the notice may redeem the collateral,

(f) a statement that, on payment of the sums actually in arrears, exclusive of the operation of any acceleration clause in the security agreement, or the curing of any other default, as the case may be, together with payment of the amounts due under subsection (1)(a), the debtor may reinstate the security agreement,

(g) a statement that, unless the collateral is redeemed or the security agreement is reinstated, the collateral will be disposed of and the debtor may be liable for any deficiency, and

(h) the date, time and place of any public sale or the date after which any private disposition of the collateral is to be made.

(6) Where the notice required under subsection (4) is served on any person other than the debtor, it need not contain the information specified in subsection (5)(c), (f) and (g), and, where the debtor is not entitled to reinstate the security agreement, the notice to the debtor need not contain the information specified in subsection (5)(c) and (f).

(7) No statement referred to in subsection (5)(g) shall make reference to any liability on the part of the debtor to pay a deficiency if under any Act or rule of law the secured party does not have the right to collect a deficiency from the debtor.

(8) Not less than 20 days prior to the disposition of the collateral, a receiver shall give notice to

(a) the debtor, and if the debtor is a corporation, a director of the corporation,



- (b) any other person who is known by the secured party to be an owner of the collateral,
  - (c) any person referred to in subsection (4)(b), and
  - (d) any other person with an interest in the collateral who has given a notice to the receiver of his interest in the collateral prior to its disposition.
- (9) The notice mentioned in subsection (8) shall contain
- (a) a description of the collateral, and
  - (b) the date, time and place of any public sale or the date after which any private disposition of the collateral is to be made.
- (10) The notice required under subsection (4) or (8) may be given in accordance with section 70 or, where notice is to be given to the person who has registered a financing statement, by registered mail addressed to the address of the person to whom it is to be given as it appears on the financing statement.
- (11) The secured party may purchase the collateral or any part of it only at a public sale and only for a price that bears a reasonable relationship to the market value of the collateral.
- (12) When a secured party disposes of collateral to a purchaser who acquires his interest for value and in good faith and who takes possession of it, the purchaser acquires the collateral free from
- (a) the interest of the debtor,
  - (b) an interest subordinate to that of the debtor, and
  - (c) an interest subordinate to that of the secured party
- whether or not the requirements of this section have been complied with by the secured party, and all obligations secured by the subordinate interests are deemed performed for the purposes of sections 49(7)(a) and 50(3)(a).
- (13) Subsection (12) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 75 who has not been given a written notice under this section.
- (14) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or who is subrogated to the rights of the secured party has the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral.
- (15) The notice referred to in subsection (4) or (8) is not required where there are reasonable grounds to believe that
- (a) the collateral is perishable;
  - (b) the collateral will decline substantially in value if not disposed of immediately after default;
  - (c) the cost of care and storage of the collateral is disproportionately large relative to its value;

(d) for any other reason, the Court, on an ex parte application, is satisfied that a notice is not required;

(e) after default, every person entitled to receive a notice of disposition under subsection (4) or (8) consents in writing to the immediate disposition of the collateral.

Surplus or  
deficiency

**61(1)** Where a security interest secures an indebtedness and the collateral has been dealt with under section 57 or has been disposed of in accordance with section 60 or otherwise, any surplus shall, unless otherwise provided by law or by the agreement of all interested persons, be accounted for and paid in the following order to

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

(i) who has, prior to the distribution of the proceeds, registered a financing statement according to the name of the debtor or according to the serial number of the collateral where it is required or permitted for registration, or

(ii) whose interest was perfected by possession at the time the collateral was seized,

(b) any other person who has an interest in the collateral, if that person has given a written notice of his interest to the secured party prior to distribution of the proceeds, and

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

but the priority of the interest in the surplus of a person referred to in clause (a), (b) or (c) is not prejudiced by payment to anyone pursuant to this section.

(2) Where there is a question as to who is entitled to receive payment under subsection (1), the secured party may pay the surplus into the Court and the surplus shall not be paid out except on an application under section 68 by a person claiming an entitlement to the surplus.

(3) Within 30 days after receipt of the written notice of a person referred to in subsection (1), the secured party shall provide to that person a written accounting of

(a) the amount collected pursuant to section 57(1) or the amount realized from the disposition of the collateral under section 60,

(b) the manner in which the collateral was disposed of,

(c) the amount of expenses deducted as provided in sections 17, 57 and 60,

(d) the distribution of the amount received from the collection or disposition, and

(e) the amount of any surplus.

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

**62(1)** After default, the secured party may propose to take the collateral in satisfaction of the obligations secured, and shall give a notice of the proposal to

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

(b) a creditor or person who has a security interest in the collateral whose interest is subordinate to that of the secured party, and

(i) who has registered a financing statement according to the name of the debtor or according to the serial number of the collateral where it is required or permitted for registration, or

(ii) whose interest was perfected by possession at the time the collateral was seized,

(c) any other person with an interest in the collateral who has given a written notice to the secured party of an interest in the collateral prior to the date that notice is given to the debtor, and

(d) the sheriff, unless possession or seizure has been surrendered or released by the sheriff pursuant to section 58(10) or (12).

(2) If any person who is entitled to notification under subsection (1) and whose interest in the collateral would be adversely affected by the secured party's proposal gives to the secured party a written notice of objection not later than 15 days after giving the notice under subsection (1), the secured party shall dispose of the collateral in accordance with section 60.

(3) If no notice of objection is made, the secured party is, at the expiry of the 15-day period referred to in subsection (2), deemed to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it, and is entitled to hold or dispose of the collateral free from all rights and interest of the debtor and any person entitled to receive a notice

(a) under subsection (1)(b), and

(b) under subsection (1)(c) whose interest is subordinate to that of the secured party,

who has been given the notice.

(4) The notice required under subsection (1) may be given in accordance with section 70 or, if it is to be given to a person who has registered a financing statement, by registered mail addressed to the address of the person to whom it is to be given as it appears on the financing statement.

(5) The secured party may require any person who has made an objection to his proposal to furnish him with proof of that person's interest in the collateral and, unless the person furnishes the proof not later than 10 days after the secured party's demand, the secured party may proceed as if he had received no objection from that person.

(6) On application by a secured party, the Court may determine that an objection to the proposal of a secured party is ineffective on the grounds that

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

(b) the market value of the collateral is less than the total amount owing to the secured party and the costs of disposition.

(7) Where a secured party disposes of the collateral to a purchaser who acquires his interest for value and in good faith and who takes possession of it, the purchaser acquires the collateral free from

(a) the interest of the debtor,

(b) an interest subordinate to that of the debtor, and

(c) an interest subordinate to that of the secured party

whether or not the requirements of this section have been complied with by the secured party, and all obligations secured by the subordinate interests are deemed performed for the purposes of sections 49(7)(a) and 50(3)(a).

(8) Subsection (7) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 75 who has not been given a written notice under this section.

Redemption of collateral

**63(1)** At any time before the secured party has disposed of the collateral or has contracted for its disposition under section 60 or before the secured party is deemed to have irrevocably elected to take the collateral under section 62,

(a) any person entitled to receive a notice of disposition under section 60(4) or (8) may, unless he has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral, or

(b) the debtor, other than a guarantor or indemnitor, may, unless he has otherwise agreed in writing after default, reinstate the security agreement by paying the sums actually in arrears, exclusive of the operation of any acceleration clause, and by curing any other default by reason of which the secured party intends to dispose of the collateral,

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

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

(a) more than twice, if the security agreement or any agreement modifying the security agreement provides for payment in full by the debtor not later than 12 months after the day value was given by the secured party;

(b) more than twice in each year, if the security agreement or any agreement modifying the security agreement provides for payment by the debtor during a period of time in excess of 1 year after the day value was given by the secured party.

Application  
to Court

**64** On application by a debtor, a creditor of a debtor, a secured party or a sheriff or a person with an interest in the collateral, the Court may

- (a) make any order, including a binding declaration of right and injunctive relief, that is necessary to ensure compliance with this Part or section 17, 36, 37 or 38,
- (b) give directions to any person regarding the exercise of his rights or discharge of his obligations under this Part or section 17, 36, 37 or 38,
- (c) relieve any person from compliance with the requirements of this Part or section 17, 36, 37 or 38,
- (d) stay enforcement of rights provided in this Part or section 17, 36, 37 or 38, or
- (e) make any order necessary to ensure protection of the interests of any person in the collateral.

Receiver

**65(1)** A security agreement may provide for the appointment of a receiver and, except as provided in this or any other Act, his rights and duties.

(2) A receiver shall

- (a) take into his custody and control the property of the debtor in accordance with the security agreement or order under which he is appointed, but unless appointed a receiver-manager or unless the Court orders otherwise, shall not carry on the business of the debtor,
- (b) where the debtor is a corporation, immediately notify the Registrar of Corporations of his appointment or discharge,
- (c) open and maintain a bank account in his name as receiver for the deposit of all money coming under his control as a receiver,
- (d) keep detailed records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions involving collateral or other property of the debtor,
- (e) prepare at least once in every 6-month period after the date of his appointment financial statements of his administration that, as far as is practical, are in the form required by section 149 of the *Business Corporations Act*,
- (f) on completion of his duties, render a final account of his administration in the form referred to in clause (e), and, where the debtor is a corporation, send copies of the final account to the debtor, the directors of the debtor and to the Registrar of Corporations.

(3) The debtor, and where the debtor is a corporation, a director of the debtor, or the authorized representative of any of them, may, by a demand in writing given to the receiver, require the receiver to make available for inspection the records referred to in subsection (2)(d) during regular business hours at the place of business of the receiver in the Province.

- (4) The debtor, and where the debtor is a corporation, a director of the debtor, a sheriff, a person with an interest in the collateral in the custody or control of the receiver, or the authorized representative of any of them, may, by a demand in writing given to the receiver, require the receiver to provide copies of the financial statements referred to in subsection (2)(e) or the final account referred to in subsection (2)(f) or make available such financial statements or final account for inspection during regular business hours at the place of business of the receiver in the Province.
- (5) The receiver shall comply with the demands referred to in subsection (3) or (4) not later than 10 days from the date of receipt of the demand.
- (6) The receiver may require the payment in advance of a fee in the amount prescribed for each demand made under subsection (4), but the sheriff and the debtor, or in the case of an incorporated debtor, a director of the debtor, are entitled to inspect or to receive a copy of the financial statements and final account without charge.
- (7) On the application of any interested person, the Court may
- (a) appoint a receiver;
  - (b) remove, replace or discharge a receiver whether appointed by the Court or pursuant to a security agreement;
  - (c) give directions on any matter relating to the duties of a receiver;
  - (d) approve the accounts and fix the remuneration of a receiver;
  - (e) exercise with respect to a receiver appointed under a security agreement the jurisdiction it has with respect to a receiver appointed by the Court;
  - (f) notwithstanding anything contained in a security agreement or other document providing for the appointment of a receiver, make an order requiring a receiver or a person by or on behalf of whom he is appointed, to make good any default in connection with the receiver's custody, management or disposition of the collateral of the debtor or to relieve such person from any default on such terms as the Court thinks fit.
- (8) The powers referred to in subsection (7) and in section 64 are in addition to any other powers the Court may exercise in its jurisdiction over receivers.
- (9) Unless the Court orders otherwise, a receiver is required to comply with sections 60 and 61 only when he disposes of collateral other than in the course of carrying on the business of the debtor.

**PART 6**  
**MISCELLANEOUS**

Proper exercise  
of rights, duties  
and obligations

**66(1)** All rights, duties or obligations arising under a security agreement under this Act or under any other applicable law shall be exercised or discharged in good faith and in a commercially reasonable manner.

(2) A person does not act in bad faith merely because the person acts with knowledge of the interest of some other person.

Deemed damages

**67(1)** If a person fails to discharge any duties or obligations imposed on him by this Act, the person to whom the duty or obligation is owed has a right to recover loss or damage that was reasonably foreseeable as liable to result from the failure.

(2) Where a secured party, without reasonable excuse, fails to comply with obligations or limitations

(a) in section 43(11), 49 or 50, or

(b) in section 17, 18, 60, 61 or 62 and the collateral is consumer goods,

the debtor or, in a case of non-compliance with section 49 or 50, the person disclosed as the debtor in a registration, shall be deemed to have suffered damages not less than the amount prescribed.

(3) In an action for a deficiency, the defendant may raise as a defence the failure on the part of the secured party to comply with obligations in section 17, 18, 60 or 61, but non-compliance shall limit the right to the deficiency only to the extent that it has affected the right of the defendant to protect his interest in the collateral or has made the accurate determination of the deficiency impracticable.

(4) Where a secured party fails to comply with obligations in section 17, 18, 60 or 61, the onus is on the secured party to show that the failure,

(a) where the collateral is consumer goods, did not affect the debtor's ability to protect his interest in the collateral by redemption or reinstatement of the security agreement, or otherwise, or

(b) did not make the accurate determination of the deficiency impracticable.

(5) Except as otherwise provided in this Act, a provision in a security agreement or any other agreement that purports to exclude a duty or onus imposed by this Act, or that purports to limit the liability of or the amount of damages recoverable from a person who has failed to discharge a duty or obligation imposed on him by this Act is void.

Order of  
the Court

**68** On application of an interested person, the Court may

(a) make an order determining questions of priority or entitlement to collateral;

(b) direct an action to be brought or an issue to be tried.

Extension of time

**69** Where in sections 11, 36(13), 38(13) and 43(11) a time is prescribed not later than or before which an act or thing must be done,

the Court, on application made before or after the time has expired, may extend or abridge, conditionally or otherwise, the time for compliance.

Service of notices  
and demands

**70(1)** A notice or demand required or permitted to be given under this Act may be given as follows:

(a) to an individual by leaving it with the individual or by registered mail addressed by indicating the individual's name and residence, or the name and place of any business of the person;

(b) to a partnership

(i) by leaving it with

(A) one or more of the general partners, or

(B) a person having at the time the notice is given control or management of the partnership business, or

(ii) by registered mail addressed to

(A) the partnership,

(B) any one or more of the general partners, or

(C) any person having at the time the notice is given control or management of the partnership business

at the address of a partnership business;

(c) to a corporation, other than a municipality,

(i) by leaving it with an officer or director of the corporation or person in charge of any office or place of business of the corporation,

(ii) by leaving it with or by registered mail addressed to the registered or head office of the corporation, and

(iii) where the corporation has its registered or head office outside the Province, by leaving it with, or by registered mail addressed to, the attorney for service for the corporation appointed under Part 21 of the *Business Corporations Act*;

(d) to a municipal corporation by leaving it with, or by registered mail addressed to, the principal office of the corporation or to the chief administrative officer of the corporation;

(e) to an association

(i) by leaving it with an officer of the association, or

(ii) by registered mail addressed to an officer of the association at the address of the officer.

(2) A notice or demand by registered mail is deemed to be given when the addressee actually receives the notice or demand or on the expiry of 4 days after the date of registration, whichever is the earlier.

Regulations

**71(1)** The Lieutenant Governor in Council may make regulations

(a) respecting the kinds of goods the leases of which are not within the scope of this Act;



- (b) respecting the Registry and the duties of the Registrar, including the transition from a prior registry system to the system established by this Act;
- (c) respecting fees;
- (d) respecting the registration of financing statements or other writings;
- (e) respecting
  - (i) the form, contents and manner of use of financing statements and other writings,
  - (ii) the form, contents and manner of use of notices referred to in this Act, including notices registered under section 49 in a land titles office or at another place determined in accordance with clause (q)(ii),
  - (iii) the manner in which collateral, including proceeds collateral, is described in financing statements and other writings, and
  - (iv) what kinds of goods may be or shall be described in part by serial number and the requirements of a description by serial number;
- (f) respecting the manner in which any registration may be made under this Act;
- (g) respecting searches of the Registry and the method of disclosure of registered information, including the form of a search result;
- (h) requiring or permitting the use of statements to confirm the registration of information on financing statements and other writings;
- (i) respecting the Registrar's power to amend a registration that contains an error caused by the act of the Registrar or Registry employees;
- (j) respecting abbreviations, expansions or symbols that may be used in a financing statement or other form, notice or document used in connection with the registration of security interests or the disclosure of information in the Registry;
- (k) respecting any matter required or authorized by this Act to be prescribed;
- (l) respecting the retention and disposition of Registry records;
- (m) respecting the period of time during which a registration is effective;
- (n) authorizing the Registrar to enter into agreements whereby fees may be charged on account;
- (o) respecting agreements under clause (n);
- (p) respecting the grounds on which the Registrar may refuse to register a financing statement or other writing;

(q) respecting

(i) the application of all or part of sections 36 and 37 to any land for which a certificate of title has not been issued under the *Land Titles Act*, and

(ii) the place at which a registration is to be made and the manner of registration;

(r) respecting the circumstances in which a financing statement registered prior to October 1, 1990 is deemed to continue the perfected status of an interest referred to in section 75(3).

(2) A regulation under this section may be made in respect of different persons or transactions or classes of persons or transactions.

Conflict with  
other legislation

**72(1)** If there is a conflict between a provision of this Act and a provision for the protection of consumers in any Act, the provision of that Act prevails.

(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 Act other than those referred to in subsection (1), the provision of this Act prevails.

References

**73(1)** *A reference in an Act, regulation, agreement or document to the Assignment of Book Debts Act, the Bills of Sale Act, the Business Corporations Act, the Chattel Security Registries Act or 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 an Act, regulation, agreement or document to a chattel mortgage, lien note, conditional sales contract, floating charge, pledge or assignment of book debts, or any derivative of those 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.*

Transitional  
application  
of Act

**74(1)** *In this section and section 75,*

(a) *“prior law” means the law in force immediately before October 1, 1990;*

(b) *“prior security interest” means an interest created, reserved or provided for by a valid security agreement or other transaction made before October 1, 1990, that is a security interest within the meaning of this Act and to which this Act would have applied if it had been in force at the time the security agreement or other transaction was entered into.*

(2) *This Act applies*

(a) *to every security agreement made after October 1, 1990, including an agreement that renews, extends or consolidates an agreement made before October 1, 1990,*

(b) *to every security agreement made before October 1, 1990 that has not been validly terminated in accordance with the prior law before October 1, 1990, and*

*(c) subject to subsections (3) and (4), to every prior security interest that is not enforced or otherwise validly terminated in accordance with the prior law before October 1, 1990.*

*(3) The validity of a prior security interest 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 October 1, 1990, and*

*(b) between a security interest and the interest of a third party is determined by the prior law, if the third party interest arose before October 1, 1990 and the security interest arose under a security agreement entered into before October 1, 1990.*

Security interest  
prior to  
commencement  
of Act

**75(1)** *In this section, "prior registration law" means the Assignment of Book Debts Act, the Bills of Sale Act, the Business Corporations Act, the Conditional Sales Act, and the Chattel Security Registries Act as they existed immediately before October 1, 1990.*

*(2) Except as otherwise provided in this section, a prior security interest that on October 1, 1990, is covered by an unexpired filing or registration under prior registration law is deemed to have been registered and perfected under this Act, and, subject to this Act, the registered and perfected status of the interest continues for the unexpired portion of the filing or registration, as the case may be, and may be further continued by registration under this Act if the security interest could have been perfected by registration if it had attached after October 1, 1990.*

*(3) A registration of a prior security interest under the Business Corporations Act is deemed to have been registered and perfected under this Act, and the perfected status of the interest expires October 1, 1993, but may be further continued under this Act by registration under this Act if the security interest could have been perfected by registration if it had attached after October 1, 1990.*

*(4) A registration that remains unexpired on October 1, 1990 and which relates exclusively or partly to railway rolling stock, expires October 1, 1993, but may be further continued by registration under this Act in respect of any security interest that could have been perfected by registration if it had attached after October 1, 1990.*

*(5) A prior security interest that under prior law had the status of a perfected security interest without filing or registration and without the secured party taking possession of the collateral is perfected under this Act as of the date the security interest was created, and that perfection continues until October 1, 1993, after which it becomes unperfected unless, being a security interest that could have been perfected under this Act if it had arisen after October 1, 1990, it is otherwise perfected under this Act.*

*(6) A prior security interest that on October 1, 1990 could have been, but was not*

*(a) filed or registered under prior registration law, or*

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

*may, if it is a security interest that could have been perfected by registration or possession under this Act if it had arisen after October 1, 1990, may 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 taking possession of the collateral is perfected for the purposes of this Act when possession of the collateral is taken in accordance with section 24 whether the possession was taken before or after October 1, 1990 and notwithstanding that under prior law the security interest could not be perfected by taking possession of the collateral.*

*(8) A prior security interest that, on October 1, 1990, was covered by an unexpired filing or registration under prior registration law, which is perfected under this Act without registration or the secured party taking possession of the collateral, remains perfected under this Act.*

*(9) A prior security interest that, on October 1, 1990, could have been, but was not, covered by a filing or registration under prior registration law and that, under this Act, may be perfected without registration or the secured party taking possession of the collateral, is perfected under this Act if all of the conditions for perfection of a security interest are met.*

Amends  
RSA 1980 cA-10

**76** *The Agricultural Relief Advances Act is amended*

*(a) in section 16 by striking out “Bills of Sale Act” and substituting “Personal Property Security Act”;*

*(b) by repealing section 21(2) and substituting the following:*

**(2)** *The Personal Property Security Act applies to a mortgage referred to in subsection (1) except that no fee is payable on the registration of the mortgage.*

Amends  
SA 1981 cB-15

**77** *The Business Corporations Act is amended by repealing Division 2 of Part 7.*

Amends  
RSA 1980 cC-24

**78** *The Co-operative Associations Act is amended by repealing section 14.*

Amends  
RSA 1980 cC-34

**79** *The Crop Liens Priorities Act is amended by repealing section 1(b).*

Amends  
Employment  
Standards Code

**80** *The Employment Standards Code is amended in section 110*

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

**110(0.1)** *In this section, “purchase-money security interest” and “security interest” have the meanings given to them in the Personal Property Security Act.*

*(b) by repealing subsections (2) and (3) and substituting the following:*

**(2)** *Subject to subsection (3) and section 111, wages, overtime pay, vacation pay and general holiday pay accruing due or*

due to an employee shall be deemed to be secured by a security interest on the property and assets of the employer to a maximum of \$7500, whether or not such property or assets are subject to other security interests, and payable in priority to any other claim or right in the property or assets including

(a) any claim or right of the Crown in right of Alberta, including, without limitations, claims or rights of the Workers' Compensation Board, and

(b) any security interest, lien, charge, encumbrance, mortgage, assignment, including an assignment of book debts, debenture or other security of whatever kind of any person, whether perfected within the meaning of the *Personal Property Security Act*

made, given, accepted or issued before or after the wages, overtime pay, vacation pay or general holiday pay accrued due, without registration or other perfection of the deemed security interest.

(3) The security interest referred to in subsection (2) does not take priority over a purchase-money security interest that is

(a) taken prior to the wages, overtime pay, vacation pay, or general holiday pay accruing due, and

(b) registered within the time periods referred to in section 22 of the *Personal Property Security Act*.

Amends  
RSA 1980 cF-1

**81** *The Factors Act is amended*

(a) *by adding the following after section 5:*

**5.1** Sections 2 to 5 do not apply to a consignment to which the *Personal Property Security Act* applies.

(b) *in section 8 by renumbering it as section 8(1) and by adding the following after subsection (1):*

(2) Subsection (1) does not apply to a sale, pledge or other disposition of goods or of documents of title to goods, other than negotiable documents of title to goods, that is out of the ordinary course of business of the person having sold the goods where, 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.

(c) *by repealing section 9(2) and substituting the following:*

(2) Subsection (1) does not apply to a sale, pledge or other disposition of goods or of documents of title to 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*.

Amends  
SA 1987 cF-22.5

**82** *The Fuel Tax Act is amended in section 32(1) by striking out "charge of" and substituting "charge on or a security interest under the Personal Property Security Act in".*

**83(1)** *The Garagemen's Lien Act is amended*

(a) *by repealing section 1(d) and substituting the following:*

(d) “financing statement” means a financing statement as defined in the *Personal Property Security Act*;

(e) “financing change statement” means a financing change statement as defined in the *Personal Property Security Act*;

(f) “prescribed” means prescribed in the regulations made under the *Personal Property Security Act*;

(g) “Registrar” means the Registrar of the Registry;

(h) “Registry” means the Personal Property Registry under the *Personal Property Security Act*.

(b) *in section 3(1) by striking out all that portion following clause (c) and substituting the following:*

as the case may be, unless on or before the 21st day the garageman registers in the Registry a financing statement indicating a claim of lien on the motor vehicle or farm vehicle.

(c) *by repealing section 3(2) and substituting the following:*

(2) A financing statement referred to in subsection (1) shall be signed by the garageman or by a person authorized by him.

(d) *by adding the following after section 3:*

**3.1** Sections 43(1), (2), (3), (6), (7), (8), (9) and (10), 46, 47, 48, 52 and 54 of the *Personal Property Security Act* and where the context permits the regulations made under section 71 of that Act apply to registrations referred to in this Act.

(e) *by repealing section 4;*

(f) *by repealing section 5(b) and substituting the following:*

(b) that was created or arose before the registration of a financing statement referred to in section 3(1).

(g) *in section 6(1)(a) by striking out “is filed” wherever it occurs and substituting “is registered”;*

(h) *by repealing section 7 and substituting the following:*

**7(1)** On registration of a financing statement pursuant to section 3, the lien continues for a further period of 6 months from the date of the registration.

(2) A lien determines on the expiry of 6 months from the date of registration of a financing statement unless, within that 6-month period,

(a) there is delivered to the sheriff a certified copy of the registered financing statement or of the registered financing change statement referred to in subsection (3) relating to the lien and a warrant in the prescribed form addressed to the sheriff of the judicial district in which the motor vehicle or farm vehicle that is subject to the lien is for the time being and directing the sheriff to seize the motor

vehicle or farm vehicle in accordance with the requirements of the *Seizures Act*, and

(b) seizure of the motor vehicle or farm vehicle that is subject to the lien has been effected.

(3) Notwithstanding subsection (2), when it appears that a seizure cannot be effected within the 6 months provided for in that subsection, the Court of Queen's Bench may, on ex parte application made during those 6 months, extend the time within which the seizure may be made for a further period not exceeding 6 months from the date of the order, and in that case the lien does not determine until the date so specified, if a financing change statement is registered in respect of the order in the Registry prior to the expiration of the 6-month period provided for in subsection (2).

(i) by adding the following after section 11:

**11.1(1)** Where a financing statement or a financing change statement referred to in section 7(3) is registered and

(a) the indebtedness, with respect to which the lien is claimed and the financing statement or financing change statement has been registered, is paid,

(b) the motor vehicle or farm vehicle has been sold in accordance with section 10, or

(c) the garageman is not entitled to maintain the registration of the financing statement or financing change statement relating to a claim of lien on a motor vehicle or farm vehicle,

the garageman shall discharge the registration by registering a financing change statement.

(2) If a garageman fails to discharge a registration as required by subsection (1), the owner or anyone with an interest in the motor vehicle or farm vehicle may give a written demand to the garageman requiring the garageman to register a financing change statement discharging the registration or an order of the Court of Queen's Bench confirming that the registration need not be amended or discharged.

(3) If a garageman fails to comply with a demand referred to in subsection (2) within 30 days after the demand is given, the person giving the demand may register the financing change statement referred to in subsection (2) on providing to the Registrar satisfactory proof that the demand has been given to the garageman.

(4) A demand referred to in subsection (2) may be given in accordance with section 70 of the *Personal Property Security Act* or by registered mail addressed to the address of the garageman as it appears on the financing statement.

(5) On application to the Court by the garageman, the Court may order that the registration be confirmed or discharged.

(6) No fee shall be charged and no amount shall be accepted by a garageman for compliance with a demand referred to in subsection (2).

(7) If a garageman fails to comply with subsection (1) or the demand referred to in subsection (2), the owner or any person with an interest in the motor vehicle or farm vehicle has a right to recover any loss or damage that was reasonably foreseeable as liable to result from the non-compliance.

Amends  
SA 1987 cH-11.5 **84** *The Hotel Room Tax Act is amended in section 24(1) by striking out “charge of” and substituting “charge on or a security interest under the Personal Property Security Act in”.*

Amends  
RSA 1980 cL-5 **85** *The Insurance Act is amended in section 541(16)(b) by striking out “Chattel Security Registries Act” and substituting “Personal Property Security Act”.*

Amends  
RSA 1980 cL-5 **86** *The Land Titles Act is amended*  
*(a) in section 106.1, by adding “and the Personal Property Security Act” after “Builders’ Lien Act”;*  
*(b) in section 107*  
*(i) by repealing subsection (1)(a) and substituting the following:*  
*(a) contained in a purchase-money security agreement that may be registered under the Personal Property Security Act, or*  
*(ii) by adding the following after subsection (3):*  
*(4) In this section, “purchase-money security agreement” means an agreement that provides for a purchase-money security interest as defined in the Personal Property Security Act.*

Amends  
RSA 1980 cL-8 **87** *The Law of Property Act is amended by repealing Part 6 and substituting the following:*

## PART 6

### ENFORCEMENT OF PURCHASE-MONEY SECURITY AGREEMENTS

**47** In this Part,

(a) “consumer goods” means consumer goods as defined in the *Personal Property Security Act*;

(b) “consumer services” means services acquired by an individual other than for the benefit of or use in a business, profession or calling and acquired from a person who is engaged in the business of providing those services;

(c) “debtor” means a debtor under a purchase-money security agreement;

(d) “goods” means tangible personal property other than chattel paper, a document of title, an instrument, a security



and money, and includes fixtures, growing crops and the unborn young of animals, but does not include timber until it is cut or minerals until they are extracted;

(e) “purchase-money security agreement” means an agreement that provides for a purchase-money security interest;

(f) “purchase-money security interest” means

(i) a security interest taken or reserved in consumer goods by a seller to secure payment of all or part of its purchase price and any credit charges payable in respect of the purchase, or

(ii) the interest of a bailor under a sale made pursuant to a contract of bailment of consumer goods under which it is intended that the property in the goods will pass to the bailee on the payment of the purchase price in whole or in part or on the performance of a condition;

(g) “secured party” means a seller or bailor under a purchase-money security agreement;

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

(i) “security interest” means an interest in goods that secures payment or performance of an obligation.

**48(1)** The right of a transferee of the interest of a secured party under a purchase-money security agreement or the right of a transferee under an agreement for the purchase of consumer services to have the whole or any part of the agreement performed by the debtor is no greater than the secured party or the transferor would have had in any action on the agreement and the transferee is subject to the same obligations, duties, liabilities and defences, other than counterclaim, as the secured party or transferor would have been.

(2) Any provision of a purchase-money security agreement or an agreement for the provision of consumer services or any related agreement that

(a) purports in any manner to limit or render inapplicable, or

(b) has the effect of in any manner limiting or rendering inapplicable

the application of subsection (1) is contrary to public policy and void.

**49(1)** A secured party may enforce his right to recover the purchase price owing to him under a purchase-money security agreement or related agreement either

(a) by the enforcement of his purchase-money security interest, in the manner provided by Part 5 of the *Personal Property Security Act*, or

- (b) by an action against the debtor for the money owing in respect of the goods.
- (2) If the secured party elects to enforce his purchase-money security interest and the goods are seized, no action is maintainable for the purchase price of the goods or any part of it, notwithstanding anything to the contrary in any Act or in any agreement between the secured party and the debtor.
- (3) If the secured party elects to bring an action against the debtor and recovers a judgment for the money owing, then if the goods in respect of which that money is owing are seized under a writ of execution issued pursuant to that judgment,
  - (a) the secured party's rights are restricted to the amount realized from the sale of those goods, and
  - (b) the judgment, to the extent that it is based on the purchase price of those goods, and the taxed costs, shall be deemed to be fully paid and satisfied.
- (4) When goods that are collateral under a purchase-money security agreement
  - (a) are surrendered by the debtor to the secured party with the secured party's consent,
  - (b) are taken into the custody and control of a receiver or receiver-manager pursuant to the purchase-money security agreement or Part 5 of the *Personal Property Security Act* and are disposed of,
  - (c) are seized pursuant to the purchase-money security agreement or Part 5 of the *Personal Property Security Act* and are disposed of, or
  - (d) are retained by a secured party in accordance with section 62 of the *Personal Property Security Act*,

the indebtedness of the debtor under the purchase-money security agreement, to the extent that it relates to all or part of the purchase price of some or all of the goods, is extinguished, and any money thereafter paid in respect of the purchase price is recoverable by action against the secured party.

(5) Any waiver or release of any or all of the rights, benefits or protection given to debtors by this section is against public policy and void.

**50(1)** Section 49 does not apply if, after seizure, the goods are destroyed or damaged to such an extent that the secured party's security is materially impaired either by the wilful act of the debtor or by his neglect or otherwise.

(2) Notwithstanding anything in section 49, if the goods have been seized and it is found that an accessory that was part of the goods when they were sold or bailed was removed from the goods before they were seized and has not been replaced by another accessory of a like kind and value, the secured party may bring action against the debtor

- (a) for the value of the accessory, or

(b) for the amount by which the sum realized on the sale of the goods falls short of the amount owing by the debtor and the amount of the proper fees, charges, claims and disbursements in connection with the seizure and the sale,

whichever is less.

Amends  
RSA 1980 cL-20

**88** *The Livery Stable Keepers Act is amended in section 2(2) by striking out “chattel mortgage, bill of sale,” and substituting “security interest as defined in the Personal Property Security Act”.*

Amends  
RSA 1980 cM-9

**89** *The Matrimonial Property Act is amended*

(a) *in section 23 by striking out “the order may be registered at the Vehicle Registry under the Chattel Securities Registries Act” and substituting “a financing statement may be registered in the Personal Property Registry under the Personal Property Security Act”;*

(b) *by repealing section 26 and substituting the following:*

**26** If the Court makes an order with respect to household goods under section 25, a financing statement may be registered in the Personal Property Registry under the *Personal Property Security Act*.

(c) *in section 27(1)(b) by adding “of the financing statement” after “registration”.*

Amends  
SA 1982 cM-18.5

**90** *The Mobile Home Sites Tenancies Act is amended*

(a) *in section 1*

(i) *by adding the following after subsection (1)(f):*

(f.1) “purchase-money security agreement” means an agreement that provides for a purchase-money security interest;

(f.2) “purchase-money security interest” means

(i) a security interest taken or reserved by a seller in a mobile home to secure payment of all or part of its purchase price, or

(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 a mobile home, to the extent that the value is applied to acquire those rights;

(ii) *by repealing subsection (2) and substituting the following:*

(2) For the purposes of this Act, a debtor under a purchase-money security agreement is deemed to own the mobile home.

(b) *in section 29(2)(b) by striking out “Central Registry or Vehicle Registry constituted under the Chattel Security Registries Act” and substituting “Personal Property Registry under the Personal Property Security Act”.*

Amends  
RSA 1980 cM-22

**91** *The Motor Vehicle Administration Act is amended in section 93(4) by striking out “holders of encumbrances registered in respect of the vehicle at the Central Registry under the Chattel Security Registries Act” and substituting “holders of security interests registered in respect of the vehicle at the Personal Property Registry under the Personal Property Security Act”.*

Amends  
RSA 1980 cM-26

**92** *The Municipal Government Act is amended*

(a) *in section 267(4) by striking out “Bills of Sale Act” and substituting “Personal Property Security Act”;*

(b) *in section 272*

(i) *by repealing subsection (2) and substituting the following:*

(2) *The Personal Property Security Act applies to a mortgage referred to in subsection (1) except that no fee is payable on the registration of the mortgage as a security interest under that Act.*

(ii) *in subsection (3) by striking out “or encumbrance” wherever it occurs and substituting “, encumbrance or security interest”.*

Amends  
RSA 1980 cP-2

**93** *The Partnership Act is amended*

(a) *in section 1*

(i) *by repealing clause (b);*

(ii) *by adding the following after clause (e):*

(f) *“Personal Property Registry” means the Personal Property Registry under the Personal Property Security Act.*

(b) *in section 51(3) and 70(2) by striking out “Chattel Security Registries Act” and substituting “Personal Property Security Act”;*

(c) *in the following provisions by striking out “Central Registry” wherever it occurs and substituting “Personal Property Registry”:*

section 51(1) and (1.1);  
section 71;  
section 77(2);  
section 81;  
section 82(2);  
section 85(1);  
section 86;  
section 91.

Amends  
SA 1985 cR-21

**94** *Section 16 of the Rural Utilities Act is repealed.*

Amends  
RSA 1980 cS-2

**95** *The Sale of Goods Act is amended*

(a) *by renumbering section 26 as 26(1) and by adding the following after subsection (1):*

(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).

(b) *in section 27*

(i) *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 goods that is out of the ordinary course of business of the person having sold the goods where, 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, with the necessary modifications, to such registration.

(ii) *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 goods, other than negotiable documents of title to 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*.

(iii) *by repealing subsection (3).*

Amends  
SA 1981 cS-6.1

**96** *The Securities Act is amended in section 66(f) by striking out “conditional sales contract or other title retention contract” and substituting “security agreement as defined in the Personal Property Security Act”.*

Amends  
RSA 1980 cS-11

**97** *The Seizures Act is amended*

(a) *in section 1*

(i) *by adding the following after clause (d):*

(d.1) “goods” means tangible personal property other than chattel paper, a document of title, an instrument, a security and money, and includes fixtures, growing crops and the unborn young of animals, but does not include timber until it is cut or minerals until they are extracted;

(ii) *by adding the following after clause (g):*

(g.1) “proceeds” means identifiable or traceable personal property, including fixtures and crops,

(i) derived directly or indirectly from any dealing with collateral or the proceeds of the collateral, and

(ii) in which the debtor acquires an interest, and, in the case of goods, of which the debtor obtains possession,

and includes

(iii) a right to an insurance payment or any other payment as indemnity or compensation for loss of or damage to the collateral or proceeds of the collateral, and

(iv) a payment made in total or partial discharge or redemption of an intangible, chattel paper, an instrument or a security;

(g.2) “purchase-money security interest” means

(i) a security interest taken or reserved in collateral to secured payment of all or part of the purchase price,

(ii) a security interest taken by a person who gives value for the purpose of enabling the debtor to acquire rights in or to collateral, to the extent the value is applied to acquire such rights,

and for the purposes of this definition “purchase price” and “value” include credit charges and interest payable in respect of the purchase or loan;

(g.3) “registered” means, in connection with a security interest or a writ of execution, registered in the Personal Property Registry in accordance with the *Personal Property Security Act* and the regulations made under that Act;

(g.4) “security agreement” means an agreement that creates or provides for a security interest;

(g.5) “secured party” means a party who has a security interest in goods;

(g.6) “security interest” means an interest in goods that secures payment or performance of an obligation.

(b) by repealing section 4 and substituting the following:

**4(1)** A writ of execution, from delivery of it for execution to a sheriff, binds the goods of the judgment debtor situated within the judicial district of that sheriff, but neither the binding effect of the writ nor seizure of the goods by a sheriff pursuant to the writ shall prejudice

(a) an interest in the goods acquired by any person in good faith for valuable consideration, unless that person had, at the time when he acquired his interest, notice that the writ had been delivered to the sheriff and remained in his hands unsatisfied, or unless the writ was registered before such interest was acquired;

(b) subject to sections 20(1)(a) and 35(5) of the *Personal Property Security Act*, the interest of a secured party unless the writ is registered before such interest is perfected pursuant to the *Personal Property Security Act*;

(c) subject to sections 20(1)(a) and 35(5) of the *Personal Property Security Act*, the interest of a secured party who has taken a purchase-money security interest in the goods that is perfected after registration of the writ but not later than 15 days after

(i) the debtor obtains possession of the goods, or

(ii) a third party, at the request of the debtor, obtains possession of the goods

whichever is the earlier.

(2) Nothing in subsection (1)(a) affects an interest in goods acquired in good faith for valuable consideration by any person under a transaction which was in the ordinary course of business of the execution debtor, whether or not the writ of execution was registered.

(c) *in section 8*

(i) *in subsection (1) by adding “or security interest in” after “encumbrance on”;*

(ii) *in subsections (2), (3) and (4) by striking out “or encumbrance” and substituting “, encumbrance or security interest”;*

(d) *by repealing section 19(2)(a) and (b) and substituting the following:*

(a) *in favour of a person claiming title under or by virtue of an execution against the tenant, or in favour of any person whose title is derived by purchase, gift, transfer or assignment, or otherwise, from the tenant, whether absolute or in trust;*

(b) *subject to clause (b.1), in favour of a person whose title is derived by purchase, gift, transfer or assignment, or otherwise, from the tenant, whether absolute or in trust;*

(b.1) *in favour of a person who has a security interest in goods on the premises other than a person who has a purchase-money security interest in the goods as original collateral or a security interest in proceeds of those goods;*

(e) *by repealing section 29(5)(b).*

Amends  
RSA 1980 cT-4

**98** *The Threshers’ Lien Act is amended by repealing section 2(1)(b) and substituting the following:*

(b) *over all security interests as defined in the Personal Property Security Act, or conveyances, made by the owner of the grain, and*

Amends  
RSA 1980 cT-9

**99** *The Trust Companies Act is amended in sections 148(15)(b) and 151(1)(d) by striking out “Chattel Security Registries Act” and substituting “Personal Property Security Act”.*

Amends  
RSA 1980 cW-3

**100** *The Warehousemen’s Lien Act is amended*

(a) *in section 1 by adding the following after clause (a):*

(a.1) *“security interest” means an interest in goods that secures payment or performance of an obligation;*

(b) *by repealing section 5(1) and substituting the following:*

**5(1)** *Where the goods on which a lien exists were deposited not by the owner nor by his authority but by a person entrusted by the owner or by his authority with the possession*

of the goods, the warehouseman shall, within 2 months after the date of the deposit, give notice of the lien to

(a) the owner of the goods, and

(b) any person who has a security interest in the goods where a financing statement is registered at the date of the deposit with respect to the security interest.

(c) *by repealing section 6(2)(b) and (c) and substituting the following:*

(b) to the owner of the goods and to any person who has a security interest in the goods where a financing statement is registered at the date of the deposit with respect to the security interest, and

Repeal

**101** *The following are repealed:*

(a) *Assignment of Book Debts Act;*

(b) *Bills of Sale Act;*

(c) *Chattel Security Registries Act;*

(d) *Conditional Sales Act;*

(e) *Harvesting Liens Act.*

Coming  
into force

**102(1)** *This Act, except section 93, comes into force on October 1, 1990.*

(2) *Section 93 comes into force on Proclamation.*