

1990 BILL 18

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 18

PERSONAL PROPERTY SECURITY
AMENDMENT ACT, 1990

THE ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 18

1990

PERSONAL PROPERTY SECURITY AMENDMENT ACT, 1990

(Assented to _____, 1990)

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

1 The Personal Property Security Act is amended by this Act.

2 Section 1(1) is amended

(a) by adding the following after clause (b):

(b.1) "advance" means the payment of money, the provision
of credit or the giving of value;

(b) in clause (d)

*(i) by striking out the portion preceding subclause (i) and
substituting the following:*

(d) "building materials" means materials that are
incorporated into a building and includes goods attached
to a building so that their removal

*(ii) in subclause (i) by striking out "removal or destruction"
and substituting "dislocation or destruction";*

*(c) in clause (g) by striking out "transaction" and substituting
"consignment";*

(d) by repealing clause (k) and substituting the following:

(k) "crops" means crops, whether matured or otherwise, and
whether naturally grown or planted, attached to land by roots

Explanatory Notes

1 This Bill will amend chapter P-4.05 of the Statutes of Alberta, 1988.

2 Section 1(1) presently reads in part:

1(1) In this Act,

(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;

(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;

(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

or forming part of trees or plants attached to land, but does not include trees other than

- (i) nursery stock,
- (ii) trees being grown for uses other than the production of lumber or wood products, and
- (iii) trees being grown for use in reforestation of land other than the land on which the trees are growing;

(e) in clause (l)(iv) by striking out “64 and 65(3)” and substituting “65(2)(b), 65(3) and 67”;

(f) by adding the following after clause (o):

(o.1) “financial institution” means a bank, a trust company, a credit union and a Treasury Branch;

(g) by repealing clause (p) and substituting the following:

(p) “financing statement” means

(i) a printed financing statement in the form authorized under the regulations and required or permitted to be registered under this Act, and

(ii) where the context permits,

(A) data authorized under the regulations to be transmitted to an office of the Registry to effect a registration,

(B) a financing change statement,

(C) a security agreement registered before the coming into force of this Act, and

(D) a financial interest statement or amending financial interest statement under the *Chattel Security Registries Act*, accompanying a security agreement registered before October 1, 1990, if there is a conflict between the financial interest statement or amending financial interest statement and the security agreement;

(h) by repealing clause (q) and substituting the following:

(q) “financing change statement” means a financing change statement in the form authorized under the regulations and,

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;

(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;

(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;

(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

where the context permits, data authorized under the regulations to be transmitted to an office of the Registry to amend a registration;

(i) by repealing clause (s) and substituting the following:

(s) “future advance” means an advance whether or not made pursuant to an obligation and includes reasonable costs incurred and expenditures made for the protection, maintenance, preservation or repair of collateral;

(j) in clause (t) by striking out “timber until it is cut” and substituting “trees that are not crops until they are severed”;

(k) in clause (u) by striking out the portion following subclause (iii) and substituting the following:

but does not include

(iv) chattel paper, a document of title or a security, or

(v) a writing that provides for or creates a mortgage or charge in respect of an interest in land that is specifically identified in the writing;

(l) by repealing clause (x);

(m) in clause (y)(iii) by striking out “which terms” and substituting “which, including the original term,”;

(n) by adding the following after clause (bb):

(bb.1) “new value” means value other than an antecedent debt or antecedent liability;

(o) by repealing clause (ee);

(p) by adding the following after clause (ff):

(ff.1) “prior security interest” means an interest created, reserved or provided for under a valid agreement or other transaction entered into 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 agreement or other transaction was entered into;

(q) in clause (gg)(ii) by striking out “and, in the case of goods, of which the debtor obtains possession,”;

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;

(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

(r) in clause (nn) by striking out “and” at the end of subclause (i) and adding the following after subclause (i):

(i.1) a person who holds a security interest for the benefit of another person, and

(s) in clause (oo) by adding the following after subclause (iv):

but does not include a writing that provides for or creates a mortgage or charge in respect of an interest in land that is specifically identified in the writing;

(t) by repealing clause (pp) and substituting the following:

(pp) “security agreement” means an agreement that creates or provides for a security interest, and, if the context permits, includes

(i) an agreement that creates or provides for a prior security interest, and

(ii) a writing that evidences a security agreement;

(u) by repealing clause (qq) and substituting the following:

(qq) “security interest” means

(i) an interest in goods, chattel paper, a security, a document of title, an instrument, money or an intangible that secures payment or performance of an obligation, other than the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of the agent of the seller unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods, and

(ii) the interest of

(A) a transferee arising from the transfer of an account or a transfer of chattel paper,

(B) a person who delivers goods to another person under a commercial consignment, and

(C) a lessor under a lease for a term of more than one year,

whether or not the interest secures payment or performance of the obligation;

(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;

(ee) "person" includes a partnership or association;

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

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

(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;

(v) in clause (ss) by deleting the comma after “guarantee of”;

(w) in clause (tt) by adding “antecedent” before “liability”.

3 Section 1(2) is amended

(a) in clause (a) by striking out “a person” and substituting “an individual”;

(b) in clause (c) by striking out “or an association” and “or association” wherever they occur;

(c) by adding the following after clause (c):

(d) the members of an association know or have knowledge when information has come to the attention of

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

(ii) a senior employee of the association with responsibility for matters to which the information relates, or

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

(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.

3 Section 1(2) presently reads:

(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

(iii) all the members

under circumstances in which a reasonable person would take cognizance of it;

(e) the Government knows or has knowledge when information has come to the attention of a senior employee of the Government with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it.

4 *Section 1 is amended by adding the following after subsection (4):*

(5) Unless otherwise provided in this Act, goods are “consumer goods”, “inventory” or “equipment” if at the time the security interest in the goods attaches they are “consumer goods”, “inventory” or “equipment”.

(6) Proceeds are traceable whether or not there exists a fiduciary relationship between the person who has a security interest in the proceeds as provided in section 28 and the person who has rights in or has dealt with the proceeds.

5 *Section 4 is amended*

(a) *in clause (b) by striking out “of the Banks and Banking Law Revision Act, 1980” and substituting “of the Bank Act”;*

(b) *in clause (c) by adding “the transfer of” after “except”;*

(c) *in clause (d) by adding “, other than fees for professional services” after “personal services”;*

(d) *in clause (e) by striking out “earned” and substituting “unearned”;*

(e) *in clause (g) by adding “or an instrument” after “security”.*

(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.

4 Interpretation

5 Section 4 presently reads:

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;

6 Section 7 is amended

(a) in subsection (1)(c) by striking out “place of residence” and substituting “principal residence”;

(b) in subsection (2)(a)(ii) by adding “are” before “inventory”;

(c) by repealing subsection (6) and substituting the following:

(6) Notwithstanding section 6 and subsection (2) of this section, the validity, perfection and effect of perfection or non-perfection of a security interest in minerals or in an account resulting from the sale of the minerals at the well-head or minehead that

(a) is provided for in a security agreement executed before the minerals are extracted, and

(b) attaches to the minerals on extraction or attaches to an account on the sale of the minerals

is governed by the law of the jurisdiction in which the well-head or minehead is located.

(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.

6 Section 7 presently reads in part:

7(1) For the purposes of this section, a debtor is deemed to be located

(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

(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

(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.

7 *Section 10(1) is amended by striking out “a security interest is unenforceable against a third party unless” and substituting “a security interest is enforceable against a third party only where ”.*

8 *Section 12 is amended*

(a) in subsection (1) by striking out the portion following clause (c) and substituting “unless the parties specifically agree in writing to postpone the time for attachment, in which case the security interest attaches at the time specified in the agreement.”;

(b) by repealing subsection (2) and substituting the following:

(2) For the purposes of subsection (1)(b) and without limiting other rights that the debtor may have in the collateral, a debtor has rights in goods leased to him or consigned to him when he obtains possession of them in accordance with the lease or consignment.

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

- (a) crops until they become growing crops,*
- (b) the young of animals until they are conceived,*
- (c) minerals until they are extracted, and*
- (d) trees other than crops until they are severed.*

7 Section 10(1) presently reads:

10(1) Subject to subsection (2), a security interest is unenforceable against a third party unless

- (a) the collateral is in the possession of the secured party, or*
- (b) the debtor has signed a security agreement that contains
 - (i) a description of the collateral by item or kind,*
 - (ii) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property, or*
 - (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.**

8 Section 12 presently reads:

12(1) A security interest, including a security interest in the nature of a floating charge, attaches when

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

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

(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.*

9 *Section 13(2) is repealed and the following is substituted:*

(2) A security interest does not attach to after-acquired property that is

(a) a crop that becomes a growing crop more than one year after the security agreement has been entered into, except that a security interest in crops that is given in conjunction with a lease, agreement for sale or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of the lease, agreement for sale or mortgage, or

(b) 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.

10 *Section 17 is amended*

(a) *in subsections (1) and (2) by striking out “parties” wherever it occurs and substituting “parties to the security agreement”;*

(b) *in subsection (3) by striking out “A secured party” and substituting “Subject to subsection (1), a secured party”.*

9 Section 13(2) presently reads:

(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.

10 Section 17 presently reads:

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,

11 Section 18 is amended

(a) in subsection (1) by striking out “at his address in a financing statement containing a description of the personal property” and substituting “at his most recent address in a registered financing statement relating to the property”;

(b) in subsection (2) by striking out “he” and substituting “that person”;

(c) by repealing subsection (5) and substituting the following:

(5) The secured party shall comply with a demand under subsection (1) or (3) not later than

(a) 25 days after he receives it, where the secured party is a trustee under a trust indenture, or

(b) 10 days after he receives it, in the case of any other secured party.

(5.1) If, without reasonable excuse, the secured party fails to comply with a demand under subsection (5) or, in the case of a demand under subsection (1), if 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.

(d) in subsection (7) by striking out “(5) or (6)” and substituting “(5.1) or (6)”;

(e) in subsection (8) by striking out “in subsection (5)” and substituting “in subsection (5.1)”;

(f) by adding the following after subsection (11):

(12) A secured party who receives a demand that purports to be made by a person entitled to make the demand under subsection (1) may act as if the person is entitled to make the demand unless the secured party knows that the person is not entitled to make it.

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

(c) pursuant to an order of the Court.

11 Section 18 presently reads in part:

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.

(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.

12 Section 20(1) is amended

(a) by repealing clause (a) and substituting the following:

(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 a right to the collateral under the *Execution Creditors Act*,

(iii) an execution creditor entitled by law to participate in the distribution of property or its proceeds seized under legal process as provided in the *Execution Creditors Act*, and

(iv) a representative of creditors, but only for the purposes of enforcing the rights of a person referred to in subclause (i)

if that security interest is unperfected at the time the interest of the person mentioned in subclause (i), (ii) or (iv) arises or at the time the execution creditor mentioned in subclause (iii) delivers a writ of execution to the sheriff under section 10(2) of the *Execution Creditors Act*;

(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.

12 Section 20(1) presently reads:

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

(b) by repealing clause (b) and substituting the following:

(b) in collateral is not effective against

(i) a trustee in bankruptcy if the security interest is unperfected at the date of bankruptcy, or

(ii) a liquidator appointed under the *Winding-up Act* (Canada) if the security interest is unperfected at the date the winding-up order is made;

(c) in clause (c) by striking out “or an intangible” and substituting “, an intangible or money”.

13 Section 21 is repealed and the following is substituted:

21 Where the interest of a lessor under a lease for a term of more than one year or of a consignor under a commercial consignment is not effective against an execution creditor under section 20(1)(a) or a trustee or liquidator 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 before the seizure of the leased or consigned goods or the date of the bankruptcy or winding-up order, damages in an amount equal to

(a) the value of the leased or consigned goods at the date of the seizure, bankruptcy or winding-up order, and

(b) the amount of the loss, other than that referred to in clause (a), resulting from the termination of the lease or consignment.

14 Section 23 is repealed and the following is substituted:

23(1) If a security interest is perfected under this Act and is again perfected in some other way without an intermediate period during which it is unperfected, the security interest is continuously perfected for the purposes of this Act.

(2) A transferee of a security interest has the same priority with respect to perfection of the security interest as the transferor had at the time of the transfer.

15 Section 24(1) is amended by adding “and not while it is held as a result of a seizure or repossession” after “as collateral”.

(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.

13 Section 21 presently reads:

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.

14 Section 23 presently reads:

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.

15 Section 24 presently reads:

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

16 Section 27(1) is amended by striking out “hands” and substituting “possession”.

17 Section 28(2)(c) is amended by striking out “banks or similar financial institutions” and substituting “a financial institution”.

- (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.

16 Section 27(1) presently reads:

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.*

17 Section 28(2) presently reads:

(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.*

18 Section 29(4) is amended by adding “, whether by seizure or repossession of the goods or otherwise,” after “takes possession of the goods”.

19 Section 30 is amended

(a) in subsection (1) by adding the following after clause (b):

(c) “seller” includes a person who supplies goods that become a fixture or accession

(i) under a contract with a buyer of goods, or

(ii) under a contract with a person who is a party to a contract with a buyer of goods.

(b) in subsection (3)

(i) by adding “goods that are acquired as” before “consumer goods”;

(ii) in clause (a) by striking out “new”;

(c) in subsection (5)(a) by striking out “new”;

(d) in subsection (6) by striking out “other than in the ordinary course of business of the seller or lessor”;

(e) by repealing subsection (7) and substituting the following:

(7) Subsection (6) applies only to goods that are equipment and are of a kind prescribed by the regulations as serial number goods.

18 Section 29(4) presently reads:

(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.

19 Section 30 presently reads in part:

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.

(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.

(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.

20 *Section 31 is amended by adding the following after subsection (4):*

(4.1) For the purposes of subsections (3) and (4), a purchaser of an instrument or security or a holder of a negotiable document of title who acquired his interest in a transaction entered into in the ordinary course of the transferor's business has knowledge only if he acquired his interest with knowledge that the transaction violated the terms of the security agreement creating or providing for the security interest.

21 *Section 32 is amended by adding "or unperfected" after "perfected".*

22 *Section 33 is renumbered as section 33(2) and the following is added before subsection (2):*

33(1) For the purposes of this section, "transfer" includes a sale, the creation of a security interest or a transfer under proceedings to enforce a judgment.

23 *Section 34 is amended*

(a) by repealing subsection (3)(b) and substituting the following:

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

(b) by repealing subsection (9) and substituting the following:

(9) A perfected security interest in crops or their proceeds, given for value to enable the debtor to produce or harvest the crops and given

(a) while the crops are growing crops, or

(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.

20 Section 31 presently reads in part:

(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.

21 Section 32 presently reads:

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.

22 Section 33 presently reads:

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.

23 Section 34 presently reads in part:

(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

(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,

(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

(b) during the 6-month period immediately prior to the time when the crops became growing crops,

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

(c) *in subsection (10)*

(i) *by striking out “or fish given for value” and substituting “, fish or their proceeds given for value”;*

(ii) *by striking out “fowl, animals or fish given by the same debtor” and substituting “same collateral given by the same debtor”.*

24 *Section 35 is amended*

(a) *in subsection (1)(a) by striking out the portion before subclause (i) and substituting the following:*

(a) *priority between perfected security interests in the same collateral is determined by the order of occurrence of the following:*

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

(1.1) *For the purposes of subsection (1), a continuously perfected security interest shall be treated at all times as having been perfected by the method by which it was originally perfected.*

(c) *in subsection (3) by striking out “held by the debtor as equipment and that may be described by serial number” and substituting “equipment and are of a kind prescribed by the regulations as serial number goods”;*

(d) *in subsection (5)(a) by adding “under the Execution Creditors Act” after “right to it”.*

crops become growing crops, has priority over any other security interest in the crops given by the same debtor.

(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.

24 Section 35 presently reads in part:

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.

(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.

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

25 *Section 36 is amended*

(a) *in subsection (3)(b) by adding “, after the goods become fixtures,” after “who”;*

(b) *by adding the following after subsection (3):*

(3.1) Where

(a) a search is made of a certificate of title,

(b) at the time of the search there is not any notice under section 49 endorsed on that certificate of title, and

(c) on the day that search is made, in reliance on that search, mortgage money is advanced under a mortgage registered against that certificate of title,

that mortgage money shall be deemed to have been advanced before the registration of any notice under section 49 not disclosed by that search notwithstanding that a notice was registered against that certificate of title on the day that the search was made.

(c) *in subsection (5) by adding “after the goods became fixtures and” after “land titles office”;*

(d) *in subsection (11)(b) by adding “if they were removed” after “goods”;*

(e) *in subsection (12) by striking out “and” at the end of clause (d), by adding “and” at the end of clause (e) and by adding the following after clause (e):*

(f) a statement of the market value of the goods.

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

25 Section 36 presently reads in part:

(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.

(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.

(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,

26 *Section 37(3)(b) is amended by adding “, after the crops become growing crops,” after “who”.*

27 *Section 38 is amended*

(a) in subsection (2) by adding “and section 30” after “section”;

(b) in subsection (3)(b) by striking out “prior perfected security interest in the whole who” and substituting “security interest taken and perfected in the whole who, after the goods become accessions,”;

(c) in subsection (11)(b) by adding “if it were removed” after “accession”;

(d) in subsection (12)

(i) in clause (b) by striking out “serial number is required or permitted for registration” and substituting “other goods are of a kind prescribed by the regulations as serial number goods”;

(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).

26 Section 37(3) presently reads:

(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.

27 Section 38 presently reads in part:

(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

(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

(ii) by striking out “and” at the end of clause (f), by adding “and” at the end of clause (g) and by adding the following after clause (g):

(h) a statement of the market value of the accession.

28 *Section 39 is amended*

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

(1.1) For the purposes of section 35, perfection of a security interest in goods that subsequently become part of a product or mass shall also be treated as perfection of the interest in the product or mass.

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

(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).

28 Section 39 presently reads in part:

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

(1.2) Any priority that a perfected security interest that has been continued in the product or mass under subsection (1) has over a perfected security interest in the product or mass is limited to the value of the goods at the time they became part of the product or mass.

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

(2.1) For the purposes of subsection (2), the obligation secured by a security interest does not exceed the market value of the goods at the time the goods become part of the product or mass.

29 Section 40 is amended by striking out “agreement was” and substituting “subordination was”.

30 Section 41(2) is amended

(a) in clause (a) by adding “or a closely connected contract” after “arising out of the contract”;

(b) in clause (b) by striking out “receives notice” and substituting “has knowledge”.

31 Section 42 is amended by adding the following after subsection (1):

(1.1) Where any other enactment permits or requires a registration to be made in the Registry, unless the regulations otherwise provide,

(a) the registration shall be in accordance with the regulations, and

(b) this Part applies to the registration.

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.

29 Section 40 presently reads:

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.

30 Section 41(2) presently reads:

(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.

31 Section 42(1) presently reads:

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.

32 *Section 43 is amended*

(a) *in subsection (2) by striking out “date” wherever it occurs and substituting “time”;*

(b) *in subsection (3) by striking out “shall not” and substituting “may refuse to” and by adding “to” before “issue”;*

(c) *in subsection (6) by striking out “or notice” and “execution or”;*

(d) *in subsection (7) by striking out the portion before clause (a) and substituting the following:*

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

(e) *in subsection (8) by adding “seriously” before “misleading”;*

(f) *by repealing subsection (11) and substituting the following:*

(11) Except to the extent that a person entitled to a copy has in writing waived his right under this section to receive it, the secured party or person named as a secured party in a financing statement shall give to each person named as a debtor in the statement

(a) a printed copy of the financing statement, or

(b) a copy of the statement used by the Registry to confirm the registration

not later than 20 days after the financing statement is registered.

33 *Section 44 is amended*

(a) *in subsection (1) by striking out “or amended”;*

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

(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 period of time for which

32 Section 43 presently reads in part:

(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.

(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.

(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.

33 Section 44 presently reads:

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.

the registration is effective is extended by the renewal period indicated on the financing change statement.

34 Section 45 is amended

(a) in subsection (1) by striking out “transfer” and substituting “transferee”;

(b) in subsection (2)

(i) by striking out “transfer” and substituting “transferee”;

(ii) by adding “in which the interest is transferred” after “description of the collateral”;

(c) in subsection (4) by striking out “disclosing a transfer of a security interest” and substituting “referred to in subsection (1) or (2)”;

(d) in subsection (5) by striking out “disclosing a transfer of a security interest” and substituting “referred to in subsection (1) or (2)”.

35 Section 46 is amended

(a) by repealing subsection (1) and substituting the following:

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

(b) in subsection (2)(a) by adding “or is superseded under section 75” after “effective”.

36 Section 48 is amended

(a) in subsection (1)(b) by striking out “may or are required to be described by serial number on a financing statement” and substituting “are prescribed by the regulations to be serial number goods”;

(b) by repealing subsection (1)(f) and substituting the following:

34 Section 45(1), (2), (4) and (5) presently read:

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.

(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.

35 Section 46 presently reads:

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.

36 Section 48 presently reads:

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;

(f) a copy or certified copy of a registered printed financing statement or other document.

(c) by repealing subsection (3) and substituting the following:

(3) A printed search result that purports to be issued by the Registry is receivable in evidence as prima facie proof of its contents, including the following:

(a) the time of registration of a financing statement to which the search result refers, and

(b) the order of registration of the financing statement as indicated by the registration number.

(d) in subsection (4) by adding “printed” before “financing statement”.

37 Section 49 is amended

(a) in subsection (3) by striking out “or the condominium plan, as the case may be, in respect of the parcel of land to which the notice relates” and substituting “in respect of the parcel of land to which the notice relates, or on the condominium plan if the notice relates to common property of a condominium corporation”;

(b) in subsection (4)

(i) by striking out “notice of a renewal” and substituting “notice in the prescribed form of a renewal”;

(ii) by adding “in the prescribed form” after “or a notice”;

(c) in subsection (7) by striking out “or” at the end of clause (c), by adding “or” at the end of clause (d) and by adding the following after clause (d):

(e) the collateral described in the notice is not affixed to the land to which the notice relates,

(d) in subsection (8)(a)(i) by striking out “(d)” and substituting “(e)”.

- (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.

37 Section 49(3), (4), (7) and (8) presently read:

(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.

(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,

38 *Section 50 is amended*

(a) in subsection (3)(c)

(i) by striking out “collateral described” and substituting “collateral description”;

(ii) by adding “or does not distinguish between original collateral and proceeds” after “debtor”;

(b) in subsection (4)(a)(iii) by adding “or to identify items or kinds of property as original collateral or proceeds” after “debtor”;

(c) by repealing subsection (4)(b) and substituting the following:

(b) provide to the Registrar an order of the Court confirming that the registration need not be amended or discharged,

(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.

38 Section 50 presently reads in part:

(3) Where a financing statement is registered and

(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

(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

(iii) amending the collateral description in the registration to exclude items or kinds of property that are

accompanied by a completed financing change statement in respect of the order.

39 *Section 51 is amended*

(a) *in subsection (2)(a) by striking out “where the debtor has transferred all or part of the debtor’s interest in the collateral” and substituting “where all or part of the debtor’s interest in the collateral has been transferred”;*

(b) *in subsection (4)*

(i) *by striking out “by the debtor”;*

(ii) *by striking out “secured party learns” and substituting “secured party acquires knowledge of”;*

(iii) *by striking out “after learning” and substituting “after acquiring knowledge of”;*

(c) *by adding the following after subsection (4):*

(5) This section does not apply to a registration made at a land titles office pursuant to section 49.

40 *The following is added after section 51:*

51.1(1) The Chattel Security Registries Assurance Fund is continued as the Personal Property Security Assurance Fund, into which shall be paid the revenues or fees prescribed to be paid into the Fund.

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

(3) The whole or a part of the Fund in excess of \$25 000 may, at the direction of the Provincial Treasurer, be invested in any class of investments or securities enumerated in section 50(1) of the *Financial Administration Act*.

(4) An amount of the Fund in excess of \$100 000 may, at the direction of the Provincial Treasurer, be transferred to the General Revenue Fund.

not collateral under a security agreement between the secured party and the debtor, in a case falling within subsection (3)(c),

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

39 Section 51(2)(a) and (4) presently read:

(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

(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.

40 Chattel Security Registries Assurance Fund.

41 Section 52(1) and (2) are repealed and the following is substituted:

52(1) A person may bring an action against the Registrar to recover loss or damage suffered by that person if the loss or damage resulted from

(a) 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, or

(b) subject to section 43(3) and (10), an error or omission of the Registrar relating to the registration of a printed financing statement submitted for registration.

(2) No action for damages under this section or section 53 lies against the Registrar unless it is commenced not later than

(a) one year after the person entitled to bring the action first had knowledge of the loss or damage, or

(b) 6 years from the date the printed search result was issued or the financing statement was submitted for registration, as the case may be,

whichever is earlier.

42 Section 54 is amended by adding the following after subsection (3):

(4) The Provincial Treasurer may, without an action being brought, pay the amount of a claim against the Registrar from the Personal Property Security Assurance Fund when authorized to do so by the Minister on the report of the Registrar setting forth the facts and on receipt of a certificate of the Registrar that in his opinion the claim is just and reasonable.

(5) When an award of damages has been made in favour of the claimant and the time for appeal has expired, or when an appeal is taken and is disposed of in favour of the plaintiff, the Provincial Treasurer shall authorize payment of the amount specified in the judgment

(a) out of the Personal Property Security Assurance Fund,
or

(b) to the extent that the Fund is insufficient to pay the judgment, out of the General Revenue Fund.

41 Section 52 presently reads in part:

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.

42 Payments from the Fund.

43 *Section 55 is amended*

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

55(1) This Part does not apply to a transaction referred to in section 3(2).

(b) *in subsection (4)(b)(i) by adding “to the personal property” after “apply”.*

(c) *by adding the following after subsection (4):*

(4.1) Subsection (4)(b) does not limit the rights of a secured party who has a security interest in the personal property taken before or after the security interest mentioned in subsection (4).

(4.2) The secured party referred to in subsection (4.1)

(a) has standing in proceedings taken in accordance with subsection (4)(b), and

(b) may apply to the Court for the conduct of a judicially supervised sale under subsection (4)(b).

(4.3) For the purpose of distributing the amount received from the sale of the land and personal property where the purchase price is not allocated to the land and the personal property separately, the amount of the purchase price that is attributable to the sale of the personal property is that proportion of the total price that the market value of the personal property at the time of the sale bears to the total market value of the land and the personal property.

44 *Section 56 is amended*

(a) *in subsection (1)(a) by striking out “rights and remedies provided in this Part” and substituting “rights, remedies and obligations provided in this Part”;*

(b) *in subsection (2) by striking out “59” and substituting “58”.*

43 Section 55 presently reads in 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.

(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.

44 Section 56 presently reads:

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.

45 *Section 57 is amended*

(a) in subsection (1) by striking out “and” at the end of clause (a), adding “and” at the end of clause (b), and adding the following after clause (b):

(c) to apply any money taken as collateral to the satisfaction of the obligation secured by the security interest.

(b) by repealing subsection (2) and substituting the following:

(2) A secured party may deduct the secured party’s reasonable collection expenses from

(a) money held as collateral, or

(b) an amount collected

(i) from a debtor on an intangible or chattel paper,
or

(ii) from an obligor under an instrument.

46 *Section 58 is amended*

(a) in subsection (1)

(i) in clause (a) by adding “take possession of the collateral or otherwise” before “enforce”;

(ii) in clause (c) by striking out “the secured party may seize or repossess the collateral” and substituting “the collateral may be seized”;

(b) by repealing subsection (2) and substituting the following:

(2) Subject to section 64, seizure of property or enforcement of rights under a security agreement by seizure referred to in section 36(7), 38(7), 56(1)(a) or 58(1), other than seizure by a receiver, shall be made only by a sheriff.

(c) in subsection (3) by adding “, together with any other documents required by the sheriff” after “the seizure”.

(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.

45 Section 57 presently reads in part:

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

(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.

46 Section 58 presently reads in part:

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

47 *Section 59(1) is repealed and the following is substituted:*

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 one or more persons.

48 *Section 60 is amended*

(a) *in subsection (1)*

- (i) *by adding “existing” before “condition”;*
- (ii) *in clause (b) by striking out “requesting the disposition” and substituting “disposing of the collateral”;*

(b) *in subsection (2)(b) by striking out “with sale to the highest bidder or tenderer”;*

(c) *by repealing subsection (4)(b) and substituting the following:*

- (b) a creditor or person with 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 in the case of goods of a kind prescribed by the regulations as serial number goods, or

(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.

47 Section 59(1) presently reads:

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.

48 Section 60 presently reads in part:

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;*

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

and

(d) *in subsection (5)*

(i) *in clause (c) by striking out the portion following “brief description” and substituting “of any default other than non-payment, and the provision of the security agreement the breach of which resulted in the default,”;*

(ii) *by repealing clause (h) and substituting the following:*

(h) the date, time and place of any sale by public auction, the place to which closed tenders may be delivered and the date after which closed tenders will not be accepted or the date after which any private disposition of the collateral is to be made.

(e) *in subsection (8)(d) by striking out “prior to its disposition” and substituting “prior to the date that the notice of disposition is given to the debtor”;*

(f) *in subsection (12) by adding “, as regards the purchaser,” before “deemed”;*

(g) *by repealing subsection (15) and substituting the following:*

(15) The notice in subsection (4) or (8) is not required if

(a) the collateral is perishable,

(b) the secured party believes on reasonable grounds that 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) the collateral is a security or an instrument that is to be disposed of by sale in an organized market that handles large volumes of transactions between many different sellers and many different buyers,

(e) the collateral is money other than a medium of exchange authorized by the Parliament of Canada,

(f) the Court, on ex parte application, is satisfied that a notice is not required, or

(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.

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

(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,

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

(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,

(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.

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

(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.

(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

(g) after default, every person entitled to receive the notice consents to the disposition of the collateral without notice.

49 Section 61(1)(a)(i) is amended by striking out “where it is required or permitted for registration” and substituting “in the case of goods of a kind prescribed by the regulations as serial number goods”.

(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).

(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.

49 Section 61(1) presently reads:

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

50 Section 62 is amended

(a) in subsection (1)(b)(i) by striking out “where it is required or permitted for registration” and substituting “in the case of goods of a kind prescribed by the regulations as serial number goods”;

(b) in subsection (3)

(i) by striking out “made” and substituting “given”, and

(ii) by adding “and all obligations secured by the interests referred to in clauses (a) and (b) are deemed performed for the purposes of sections 49(7)(a) and 50(3)(a)” after “given the notice”.

51 Section 64(e) is amended by adding “, including a binding declaration of right and injunctive relief, that is” after “order”.

52 Section 65 is amended

(a) in subsection (2)(a) by striking out “take into his custody and control the property of the debtor” and substituting “take the collateral into his custody and control”;

(b) in subsection (7)(f) by striking out “on such terms as the Court thinks fit” and substituting “or failure to comply with this Part”.

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.

50 Section 62 presently reads in part:

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

(b) a creditor of 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

(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.

51 Section 64(e) presently reads:

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

(e) make any order necessary to ensure protection of the interests of any person in the collateral.

52 Section 65 presently reads in part:

(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,

53 Section 66 is amended

(a) in subsection (1) by striking out “agreement under” and substituting “agreement, under”;

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

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

54 Section 67 is amended

(a) in subsection (1) by adding “, without reasonable excuse,” after “fails”;

(b) in subsection (2) by adding “43(11),” after “non-compliance with section”.

55 The following is added after section 67:

67.1 A person who signs a financing change statement to discharge or amend a registration and who is not authorized to do so by the secured party, section 49 or 50, the regulations or an order of the Court is liable to the secured party for loss or damage suffered by the secured party.

(7) *On the application of any interested person, the Court may*

(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.

53 Section 66 presently reads:

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.

54 Section 67 presently reads:

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.

55 Unauthorized discharge or amendment.

56 *The following is added after section 68:*

68.1(1) An application under this Act shall be made by originating notice unless it is further to proceedings that have been commenced.

(2) Where a provision of this Act providing for an application to the Court does not specify the persons to whom notice is to be given, unless the Court otherwise directs notice shall be given to all persons whose rights may be affected.

57 *Section 69 is amended by adding “in Part 5 or” after “Where”.*

58 *Section 70 is amended*

(a) *in subsection (1) by adding “, other than a demand under section 18, or a copy of a financing statement or statement used by the Registry to confirm a registration referred to in section 43(11),” after “demand”;*

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

(2) A document referred to in subsection (1) that is sent by registered mail is deemed to be given when it is actually received by the addressee or on the expiry of 10 days after the mail is registered, whichever is earlier.

56 Application to Court.

57 Section 69 presently reads:

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.

58 Section 70 presently reads:

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,

59 *Section 71(1) is amended*

(a) *in clause (f) by striking out “under this Act” and substituting “in the Registry under this Act or any other enactment”;*

(b) *by adding the following after clause (f):*

(f.1) respecting the application of Part 4 to interests that are permitted or required to be registered in the Registry pursuant to other enactments;

(c) *by repealing clause (g) and substituting the following:*

(g) respecting searches of the Registry, the meaning of “search result” and the method of disclosure of registered information, including the form of a search result;

(d) *in clause (m) by adding “in the Registry or under section 49” after “registration”.*

(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.

59 Section 71(1) presently reads in part:

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

(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;

(m) respecting the period of time during which a registration is effective;

60 Section 74 is amended

(a) by repealing subsection (1) and substituting the following:

74(1) *In this section and section 75, "prior law" means the law in force immediately before October 1, 1990.*

(b) in subsection (2) by adding the following after clause (a):

(a.1) to a receiver appointed before or after October 1, 1990,

(c) by adding the following after subsection (2):

(2.1) Sections 10 and 11 do not apply to a security agreement referred to in subsection (2)(b).

61 Section 75 is amended

(a) by adding the following after subsection (2):

(2.1) A bill of sale that does not evidence a mortgage of chattels and that on October 1, 1990 is covered by a registration under the Bills of Sale Act is deemed to be registered in the Registry for the purposes of section 27(1.1) of the Sale of Goods Act and section 8(2) of the Factors Act, and the registration ceases to be effective after September 30, 1993 unless it is continued by registration in the Registry before October 1, 1993.

(b) in subsection (3)

(i) by striking out "A registration of a prior security interest under the Business Corporations Act" and substituting "A prior security interest registered under the Business Corporations Act or the Companies Act";

(ii) by striking out "expires October 1, 1993" and substituting "ceases to be effective after September 30, 1993";

60 Section 74 presently reads in part:

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.

61 Section 75 presently reads:

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.

(c) in subsection (4)

(i) by adding "under the Conditional Sales Act" after "A registration";

(ii) by striking out "expires October 1, 1993" and substituting "ceases to be effective after September 30, 1993";

(d) by adding the following after subsection (4):

(4.1) Where the perfection of a prior security interest that is deemed registered or perfected under this section is continued by registration under this Act,

(a) registration under this Act continues any registration or perfected status under prior registration law for the purposes of section 74(4), and

(b) the registration under this Act supersedes any registration or perfection under prior law.

(e) in subsection (5) by striking out "October 1, 1993" and substituting "September 30, 1993";

(f) by adding the following after subsection (5):

(5.1) For the purposes of subsection (5), a security interest was perfected under prior law when the secured party complied with such law with respect to the creation and continuation of the security interest, and the security interest has a status in relation to the interests of other secured parties, buyers, judgment creditors or the trustee in bankruptcy of the debtor, similar to that of an equivalent security interest created and perfected under this Act.

(5.2) A prior security interest in the form of an assignment of an existing or future debt to which the Assignment of Book Debts Act did not apply

(a) is deemed perfected for the purposes of section 20(1)(a), and

(b) is perfected under this Act for all other purposes as of the date notice of the assignment is given to the account debtor as defined in section 41(1),

and that perfection continues until September 30, 1993, after which the security interest will become unperfected unless it is otherwise perfected under this Act before October 1, 1993.

(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.

62 Section 80 is amended as to section 113(2)(b) of the *Employment Standards Code* by adding “or not” after “whether”.

63 Section 83(1) is amended

(a) by repealing clause (d);

(b) by adding the following after clause (h):

(h.1) by repealing section 11;

(c) in clause (i) by striking out “after section 11” and substituting “before section 12”;

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

(j) in section 12(a) by striking out “prescribing” and substituting “respecting”.

64 The following is added after section 85:

85.1 *The Interpretation Act* is amended in section 25(1) by adding the following after clause (p):

(p.01) “Personal Property Registry” means the Personal Property Registry under the *Personal Property Security Act*;

65 Section 87 is amended

(a) as to section 47 of the *Law of Property Act* by repealing clause (f) and substituting the following:

(f) “purchase-money security interest” means 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;

(b) as to section 49 of the *Law of Property Act*

(i) by repealing subsection (1)(a) and (b) and substituting the following:

(a) by proceeding as provided in subsection (4), or

(b) by action for a judgment against the debtor.

(ii) as to subsection (4)(a) by adding “, other than for the purpose of perfecting a security interest in the goods pursuant to section 24 of the *Personal Property Security Act*” after “consent”;

62 Consequential amendment.

63 Consequential amendments.

64 Consequential amendment.

65 Consequential amendments.

(c) *as to section 50(2) of the Law of Property Act by striking out “or bailed”.*

66 *Section 89 is amended by adding the following after clause (b):*

(b.1) *in section 27(1)(a) by adding “during the time that the registration is effective” after “order”;*

67 *The following is added after section 93:*

93.1 *The Railway Act is amended in section 63 by repealing subsections (4) and (5) and substituting the following:*

(4) *A mortgage, charge or encumbrance referred to in this section is not a security interest under the *Personal Property Security Act*.*

(5) *Every mortgage deed, every assignment of it, and every other instrument in any way affecting the mortgage or security shall be registered in the Personal Property Registry.*

(6) *The mortgage deed or other instrument under subsection (5) need not be registered elsewhere under the provisions of any other law respecting the deposit, registration or filing of instruments affecting real or personal property.*

68 *Section 95(b) is amended*

(a) *in subclause (i) as to section 27(1.1) of the Sale of Goods Act by adding “, other than negotiable documents of title to goods,” after “documents of title to goods”;*

(b) *in subclause (ii) as to section 27(2.1) of the Sale of Goods Act by striking out “, other than negotiable documents of title to goods,”.*

69 *Section 97 is amended*

(a) *by adding the following after clause (a):*

(a.1) *by repealing section 2(a) and substituting the following:*

(a) *to a security agreement to which the *Personal Property Security Act* applies except as provided by this Act or the *Personal Property Security Act*,*

(b) *in clause (b) as to section 4 of the Seizures Act*

66 Consequential amendments.

67 Consequential amendment.

68 Consequential amendment.

69 Consequential amendments.

(i) in subsection (2) by adding “or the person had notice that the writ had been delivered to the sheriff and remained in his hands unsatisfied” after “registered”;

(ii) by adding the following after subsection (2):

(3) Nothing in subsection (1) affects an interest in goods acquired as consumer goods by a buyer or lessee who

(a) gave new value as defined in the *Personal Property Security Act* for the interest acquired, and

(b) bought or leased the goods without knowledge that the writ had been delivered to the sheriff and remained unsatisfied and without knowledge of the registration of the writ.

(4) Subsection (3) does not apply to an interest acquired 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.

(c) in clause (c)(ii) by striking out “(2), (3) and (4)” and substituting “(2) and (4)”;

(d) by adding the following after clause (c)(ii):

(iii) by repealing subsection (3) and substituting the following:

(3) On receipt of the notice and any applicable fees, the proper officer shall make an entry of it in the register or other record in which the mortgage, encumbrance or security interest is registered.

(e) in clause (d) as to section 19(2) of the *Seizures Act*

(i) as to clause (a) by striking out the portion after “against the tenant”;

(ii) as to clause (b.1) by striking out “a security interest in proceeds of those goods” and substituting “as proceeds”.

