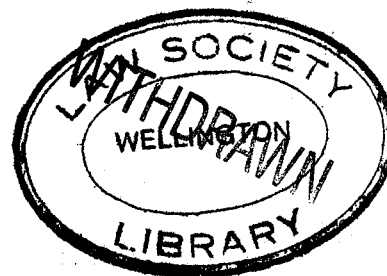


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REFORM OF PERSONAL PROPERTY
SECURITY LAW**

A report to the Law Commission by
Professor John H. Farrar
and Mark A. O'Regan

1988

Wellington, New Zealand



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The Commissioners are:

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- 4 AUG 1986

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FOREWORD

This report represents a major stage in reforming a vital but sadly deficient area of our commercial law – that relating to the way in which a lender can obtain security for a debt by taking an interest in the borrower's personal property. Such security is analogous to the situation where a person borrows money and gives the lender a mortgage over land. Personal property (all kinds of property other than land) comes in many different forms – normally moveable (for example, motor vehicles), and sometimes intangible (for example, rights under a patent or other intellectual property). The law provides in various ways for the recognition and protection of securities in relation to such property; in particular it regulates the position when the property is sold or the owner of the property becomes insolvent and questions of priorities between the holders of various types of security must be resolved.

The present law relating to personal property security is complex and difficult, but there is widespread agreement among those who must operate in the field that it is in great need of fundamental reform. That law is presently found both in judge made common law rules – including the "nemo dat" rule (that one person selling property to another can transfer only the title that he or she has, and that the purchaser must lose out to any prior owner with better title) and the various exceptions to that rule designed to protect innocent purchasers who pay the full price in a belief that they are obtaining good title – and in legislation, mainly the Sale of Goods Act 1908, the Chattels Transfer Act 1924, and Part IV of the Companies Act 1955.

The Law Commission's involvement in this area is perhaps inevitable, given its statutory responsibility to clarify the law and make it "as understandable and accessible as practicable" (Law Commission Act 1985, s.5), but has been unavoidable since the Minister of Justice's 1986 reference to the Commission of a review of the Companies Act 1955. Preliminary consultations quickly confirmed that Part IV of the Companies Act – dealing with registration of charges (that is, property security given by companies) – ought properly to be considered in the wider context of personal property security laws, including the Chattels Transfer Act.

Further confirmation of that point resulted from a NZ Law Society seminar on chattels securities which was held in various centres throughout New Zealand in mid-1987 and prepared and led by Professor John Farrar, Dean of the Law School at the University of Canterbury, Christchurch, and Mr Richard Scragg, a Christchurch lawyer. Professor Farrar subsequently submitted a memorandum to the Law Commission which argued for fundamental reform and a thorough investigation of Article 9 of the American Uniform Commercial Code (the chapter in the Code which deals with secured

transactions and in personal property) and recent Canadian legislation modelled on Article 9. The Commission accepted the need for such an investigation and retained Professor Farrar and Mr Mark O'Regan, a Wellington partner in the law firm of Chapman Tripp Sheffield Young, practising in this area of the law, to visit North America, review the US and Canadian systems in operation, and report back to the Commission.

Professor Farrar and Mr O'Regan visited North America in February/March 1988 making enquiries in five jurisdictions: Michigan and Illinois in the USA; and Ontario, Saskatchewan and British Columbia in Canada. As their report indicates, they were most favourably impressed with the simplicity and speed of the registration systems they saw in those jurisdictions. Their favourable conclusions were made known to and generally applauded at a series of insolvency law seminars held in Auckland, Wellington and Christchurch during April 1988. Those conclusions were also confirmed by the submissions made in response to the Law Commission's discussion paper on reform of the Companies Act 1955 which included questions relating to Part IV and the possibility of comprehensive reform along the lines suggested in this report.

Since the Farrar/O'Regan report was submitted to the Commission, the British Columbia Ministry of Finance & Corporate Relations has released a draft Personal Property Security Act for public review and comment (Appendix L to the report), with the intention of having an Article 9 based system in place in the Northern Hemisphere spring of 1990. The present British Columbia law is quite similar to the present New Zealand law and it is of interest that the British Columbia government sees their proposed change as leading to a removal of many existing impediments to investment in that province, and to facilitating development of secured financing arrangements - thus generally enhancing business activity. The Farrar/ O'Regan report also records that there is reason to believe that a similar move may be recommended in the United Kingdom.

The Law Commission is extremely grateful to Professor Farrar and Mr O'Regan for the professional and conscientious way in which they carried out their research in North American and for their prompt production of a detailed and valuable report. The Commission agrees with the central thrusts of the report. In particular the Commission believes that -

- a) the present law is complex, uncertain, anomalous, and inflexible;
- b) there is an overwhelming case for reforms which will result in a comprehensive system for appropriate legal recognition and ranking of the various rights and interests in personal property - a system that is easily understood, efficient, and cheap; and
- c) the next stage in the reform process is the preparation of draft legislation - based on contemporary North American

models with appropriate adaptations for New Zealand conditions – to replace both Part IV of the Companies Act 1955 and the Chattels Transfer Act 1924.

Accordingly the Law Commission will move quickly to prepare draft legislation, and is hopeful that a final report – comprising a Bill together with a commentary – can be submitted to the Minister of Justice later this year, in advance of the final report on the wider Companies Act review.

Although the Commission is satisfied that there is an informed consensus in favour of the recommendations in the report, it would welcome written submissions – in particular, on the detail of Saskatchewan and draft British Columbia models (Appendices D and L). Because of the timetable proposed for a final report on this topic, any such submissions should be prepared and forwarded as a matter of urgency.

Law Commission
Wellington

May 1988

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SUMMARY OF REPORT

1. This report is about the problems of competing claims to personal property (that is, property other than land) and the need for an effective legal regime to deal with them. We favour comprehensive amendments to the relevant provisions of the Sale of Goods Act 1908 and a greatly improved system of registration of security interests in personal property. Although we considered the alternative of no registration we rejected it as a viable alternative because:

- (a) the social costs are too great;
- (b) the cost of title insurance is likely to exceed the cost of a system of registration which in North America operates efficiently at low cost to the public and produces a net profit for the public revenue, and
- (c) almost all developed systems in common law jurisdictions have opted for a system of registration.

We therefore recommend a system of registration of all consensual security interests (and certain other interests) in personal property in a national, computerised registry. This would be subject to certain exemptions. These reforms would solve the problems of consumer protection, facilitate the provision of consumer credit and, with the greater sophistication which they have over the existing law, facilitate commercial as well as consumer financing operations.

2. The report is the result of (i) a study of the Chattels Transfer Act 1924 and company charge provisions of the Companies Act 1955 made by John Farrar and Richard Scragg, (ii) a study of Australian motor vehicle and company charges laws made by John Farrar, and (iii) a visit which we both made to the United States and Canada at the request of the Law Commission to investigate the suitability for New Zealand of the system adopted in Article 9 of the Uniform Commercial Code and in legislation of certain Canadian provinces which is based on Article 9.

The problem and the solution

3. The inadequacy of the Sale of Goods Act 1908 to protect the innocent consumer from sales without title and the Chattels Transfer Act 1924 and the company charges provisions of the Companies Act 1955 to provide an efficient and fair system of registration of security interests in personal property have been well documented on many occasions, and we have sought in the Report to highlight those inadequacies which, we believe, are so serious as to warrant urgent action. Although our visit to the United States and Canada was short, it was carefully planned and we were able to consult with a

broad cross section of parties involved in the adoption of the reforms in those jurisdictions and the day to day use of the system which resulted from those reforms. We were impressed by the uniformly favourable reports which we received of the Article 9 model, especially those of the practitioners and finance company executives who are required to operate on the system on a day to day basis.

4. The Article 9 system or legislative regimes based on it have now been adopted in all but one of the states of the United States and in three provinces and one territory of Canada. Because of the similarity of the problems inherent in the current New Zealand law and those which faced the reformers in Ontario and Saskatchewan, we believe that the experience of the Canadian provinces which have adopted Article 9 systems should provide the base from which appropriate legislation for New Zealand conditions can be prepared.

5. The most obvious deficiency in the current New Zealand law is its lack of coherence, and the uncertainty which results from that. Under the New Zealand system, the legal requirements for the grant of a security interest in any personal property will depend on:

- 5.1 the nature of the debtor - whether it is a corporate or non corporate body;
- 5.2 the nature of the personal property over which security is given;
- 5.3 the form of the documentation - whether it is expressed as being a charge, hire purchase, finance, lease or other legal form of security interest.

The object of any reform should be the creation of a system which is consistent, easily understood, inexpensive to maintain and, above all, which creates an environment which leaves the greatest possible freedom to creditors and debtors to regulate their affairs as they see fit, while ensuring that there will not be any unpredictable consequences of using one legal form over another as is now the case.

Consumer protection

6. A primary object of such a system would be the protection of parties dealing with property which is the subject of a prior security interest, which gives rise to the need to reform the provisions of the Sale of Goods Act governing the Nemo Dat rule. However, we believe that, apart from those changes, any legislation to reform the law relating to personal property security should not contain specific consumer protection provisions which overlap with those already provided in the Credit Contracts Act 1981 and the Fair Trading Act 1986. Consumer protection measures should be dealt with in specific legislation which applies to all types of credit transactions, not just those involving the granting of a security interest in personal property, and we believe the only way to maintain a consistent and coherent consumer protection regime is to

ensure that consumer protection provisions are contained in their own comprehensive statute with its own distinct policy.

Basic concepts

7. As we describe later in the Report, the basis of a sound system of regulation of personal property security is that:

- 7.1 all secured transactions, regardless of their legal and technical form, should be regulated in the same manner;
- 7.2 any purchaser in good faith of personal property should not be deprived of title because of the existence of a security interest of which the purchaser was unaware and did not have any means of becoming aware;
- 7.3 in order to ensure that such purchasers can become aware of a security interest, and conversely secured parties can protect their secured interest, a simple and cheap registration and information system should be established.

8. The Article 9 system is based on two fundamental concepts, namely:

- 8.1 attachment;
- 8.2 perfection.

In essence, attachment takes place when a debtor having rights in certain property grants a security interest in that property to a creditor, and the creditor gives value. Perfection is a further step which is necessary to ensure that the priority of the creditor is preserved against other security interests in the property and certain other interests. Article 9 provides for perfection to be achieved either by the creditor taking possession of the secured property or the creditor registering notice of the security interest. The registration system is simple and cheap and, in all Canadian jurisdictions and many United States jurisdictions, computerised to ensure ease of searching.

Registration

9. We saw the registration systems in operation, and were impressed by the efficiency of them, and the cheapness of registration and searching. In both Ontario and Saskatchewan we were informed on an informal basis that the authorities would be prepared to share their computer software with New Zealand if we wished to establish similar registration systems here, and we, therefore, believe that the establishment of a computer based registry would not be a major undertaking. In all of the registries we visited we were informed that the registries operated at a profit and were revenue earners for their governments, despite the fact that the cost of registration (in the vicinity of NZ\$6-10) was considerably cheaper than the present \$60 registration fee for

company charges in New Zealand. In Saskatchewan, which was the most modern of the registries which we investigated, provision was made for searches to be made by telephone to the central registry in the provincial capital, and provision was also made for search certificates (effectively guaranteed searches). In addition the registry, although recording security interests by reference to the debtor, had a cross referencing system which allowed for searches to be made of property which could be identified by serial number (in particular motor vehicles) by reference to the secured property as well as by reference to the debtor. A copy of a search from the Saskatchewan registry is attached to this Report (Appendix E).

Motor vehicles

10. There are a number of differences between the system adopted under Article 9 and the Canadian systems, the most significant one of which is the provision made for motor vehicles in the Canadian system, whereas, as already outlined, the United States system for motor vehicles is almost uniformly based on a title registration system which incorporates notation of security interests on the certificate of title.

11. Because of the tight deadlines in preparing this report for the Law Commission and having it published, we have been unable to consider in detail the provisions of the Motor Vehicle Securities Bill which was introduced to the House just before this report was finalised. However we shall be making detailed submissions to the Commerce and Marketing Committee of Parliament on the bill in due course. While we applaud the adoption of a system which creates consistent rules for all types of "security interest", it appears to us to be a great pity that this legislation deals only with security interest in motor vehicles and does not attempt to provide a comprehensive reform to the well acknowledged problems of the Chattels Transfer Act and Companies Act registration systems. To some extent it compounds those problems by creating another regime which is dependent on a distinction between security interest over motor vehicles and security interest over other personal property, as well as maintaining the current distinctions between corporate and non-corporate debtors.

12. We believe that a good case could be made for the adoption of a title system for motor vehicles in New Zealand, and it may be that if a registry is created under the Motor Vehicles Security Bill, this could provide the basis for a title registry. We believe that this would provide considerably greater protection for consumers, since the so-called "ownership" papers, which are presently no more than a record of the person entitled to the use of the motor vehicle, would become exactly what the great majority of consumers believe they are - that is, evidence of the person having title to the motor vehicle. In addition, third parties would have a simple and cheap way of recording their security interest in motor vehicles, and consumers would be placed on notice of those security interests without the need to search a register which may be unknown to them or inaccessible to them, especially in the case of sales of motor vehicles taking place on weekends.

13. We believe therefore that if it is desired to have a separate regime for motor vehicles, that regime should be a title system. If it is intended that only security interests in motor vehicles should be registered then we believe that they should be treated in the same way as security interests in other forms of personal property, and that registration should therefore be on a comprehensive register for all forms of personal property securities. The only special provision which would need to be made in the case of motor vehicles would be for the normal debtor-based registration system to have additional provision for the incorporation of an identification number for the motor vehicle on the registration system so that the register could be searched by reference to either the debtor or the motor vehicle. We do not however believe that the registration number of a motor vehicle would be sufficiently permanent to be the basis of this identification number, and that there would need to be some other number which is indelibly engraved on the motor vehicle and unable to be changed by a mere change of registration plates. This type of identification is used in both the United States and Canada.

Consumer goods

14. The Article 9 system makes specific provision for security interests over consumer goods, allowing for perfection of security interests without the need for registration. The rationale for this is presumably the same as that of the present exception in the Chattels Transfer Act for hire purchase agreements relating to "customary chattels", which are exempted from the registration requirements of the Chattels Transfer Act. We believe that a good case could be made for perfection of security interests in consumer goods without registration, which would not only greatly reduce the volume of registrations on a personal property security register but would also recognise that the amount involved in such transactions would be sufficiently low to require creditors to self insure against unauthorised dealings in consumer goods subject to security interests. Provision would need to be made for a security interest in consumer goods to be deferred in priority to the interests of a purchaser in good faith for value without notice of the security interest. It would also recognise the reality that any disputes relating to consumer goods are likely to be referred to a small claims tribunal rather than the ordinary courts because of the amounts involved, and the exception for consumer goods could be limited to goods having a value which is not more than the amount in respect of which the small claims tribunals have jurisdiction.

Special provisions

15. As we indicate in the Report, Article 9 and the Canadian derivatives of it have special provisions for financing of dealer stock in trade (inventory), which largely overcome the difficulties presently inherent in the "floating charge" concept, and in particular the extension of a security interest in inventory to cover the proceeds of sale or disposition of items of inventory.

Special provision is also made for goods which are fixtures or which become mingled with other goods, and accessions. In general the rules provide for a clear statement of the rights of competing interests in such goods and minimise the need for litigation to determine the rights of competing secured creditors.

Urgency

16. We believe that the time has come to stop talking about the inadequacies of the current law relating to personal property securities which have been recognised for over 20 years, and to take immediate action to reform the law to overcome those inadequacies. We are convinced that a system based on Article 9 is the model which should be used for law reform, and we believe that the preparation of draft legislation is something which a small committee of experts drawing on the Canadian experience could achieve within a few months. We also believe that the necessary computer registry could be established in the same time frame as that which is proposed for the establishment of a specific register for motor vehicle securities under the Motor Vehicle Securities Bill (which we understand is intended to be established by October 1989), especially since the computer hardware and software is already in use in Canadian jurisdictions.

17. The basic structure of this report is a discussion of the existing systems in New Zealand and the problems which they give rise to followed by a discussion of ideas for reform, concentrating on Article 9 of the Uniform Commercial Code and its adoption in the Canadian provinces. We also consider motor vehicle title systems in the U.S.A. and then the Australian reforms and current thinking in the United Kingdom. We conclude with proposals for reform of the Nemo Dat rule and a programme for the adoption of a Personal Property Security Act. We recommend that work commence immediately on the preparation of legislation based substantially on the Saskatchewan Act, modified where necessary by reference to the British Columbia bill, and that the Commission recommends to the Government that this legislation be introduced into the House in conjunction with the Companies Bill which will result from the Commission's report on the reform of company law.

PREFACE

The topic of reform of chattel security and company charges law has been on the agenda of the New Zealand Law Reform bodies for well over twenty years. It received some attention from the Contracts and Commercial Law Reform Committee and is on the agenda of the Law Reform Division of the Justice Department. Last year the New Zealand Law Society commissioned John Farrar to give a series of seminars entitled "Chattel Securities - Revision and Update". These seminars were given with Richard Scragg, then a Christchurch practitioner. During these seminars it became clear that there was a consensus amongst the legal profession attending the seminars that comprehensive reform of chattel security law and company charges was necessary and long overdue. The matter was considered in connection with company charges as part of the Law Commission's Review of the Companies Act 1955 and is touched on in the discussion paper. John Farrar was a member of the committee advising the Law Commission on this reference. As a result of the deliberations of the Contract and Commercial Law Reform Committee and the Law Commission it became obvious that there was a need to examine in more depth the law and practice of systems which have adopted Article 9 of the U.S. Uniform Commercial Code. This is the part of the Uniform Commercial Code which deals with secured transactions in personal property. Article 9 has been adopted in almost all of the States of the United States and modified versions have been adopted in Ontario, Manitoba, Saskatchewan and the Yukon territory in Canada. At the moment there is a likelihood that British Columbia will also adopt such a system and there have been discussions along the same lines in the past in Alberta. The Law Commission, therefore, sent us on a short visit to the U.S.A. and Canada to examine these developments. Our consultations were as follows:

1. We had a meeting with the Ontario Law Reform Commission where Dr Allan Leal QC, the Deputy Chairman and a former Chairman of the Commission, gave us the background to the adoption of the Personal Property Security Act in Ontario. The meeting was also attended by the Chairman, James Breithaupt QC and members of the Commission staff.
2. We had a meeting with some of the original members of the Catzman Committee whose report and draft bill led to the adoption of the Personal Property Security Act and members of the Minister's Advisory Committee. We met with Fred Catzman QC and Mr Donald MacKenzie, both of whom were members of the original committee, Messrs Bradley Crawford of McCarthy & McCarthy and James Heal of Blake Cassels and Graydon who are also members of the Advisory Committee. Later that day we also met with Messrs Peter Beattie QC and John Murphy of McCarthy & McCarthy.
3. We had meetings with Messrs Anthony Morin, Michael Feldman and Michael Rotsztain of Tory Tory DesLauriers & Binnington. Mr Morin was a commercial lawyer and Messrs Feldman and Rotsztain were insolvency lawyers.

4. John Farrar had a meeting with Professor Richard McLaren of the University of Western Ontario, author of a standard text (and member of the Advisory Committee) on the Ontario Act.
5. We had meetings with the legal staff of the Canadian Imperial Bank of Commerce. These were Messrs Derek Hayes, the Senior Vice President and General Counsel, John Gillies, a solicitor in the legal division and Brian Quinlan, the Assistant General Counsel.
6. We had a meeting with staff of the Royal Bank of Canada. These were Messrs John Burnett QC, Senior Vice President and General Counsel, Edwin Rowan-Legg, District Counsel for Ontario and Jess Huggate, Assistant General Counsel, Corporate/Investment Banking and Treasury (Toronto).
7. We had a meeting with Professor Jacob Ziegel of the University of Toronto Law School and Chairman of the committee which drafted the model Personal Property Security Act. Professor Ziegel is also a member of the Minister's Advisory Committee.
8. We had an informal meeting with Professor Michael Trebilcock also of the University of Toronto Law School and a New Zealander by origin. Professor Trebilcock specialises in commercial law and law and economics.
9. We had a meeting with Ms Rosemarie Gage, Registrar of Personal Property Security in Ontario. Ms Gage conducted us round the Registry.
10. We had a meeting with Mr Henry Ozolins, Registrar of Companies who conducted us round his Registry.
11. Mark O'Regan had a meeting with Mr Derrick Tay of Osler Hoskin & Harcourt.
12. John Farrar had a meeting with Professor Benjamin Geva of Osgoode Hall Law School, a specialist in secured transactions and banking law, and also with a representative of the Consumers Association.
13. We had a meeting with staff of Ford Motor Credit Company in Dearborn, Michigan. These were Messrs John Giffels, Associate Counsel, International Operations, Robert Aitken, Attorney, Jerry Sluggett, Senior Attorney (Litigation) and John Gregorovich, Legal Officer of Ford Credit Canada Limited. During the course of these discussions we were provided with a folder of materials relating to the procedures of Ford Motor Credit Company in complying with Article 9 of the Uniform Commercial Code and with similar materials relating to Canada.
14. We had a meeting with Professors George Stewart and John Wilson of the University of Windsor Law School and Professor Leon Lysaght of the University of Detroit Law School. This, like the meeting with Ford Motor Credit Company, gave us the opportunity for some discussion of comparative law.

15. John Farrar met with Professor Ronald Cuming QC of the University of Saskatchewan. Professor Cuming is a leading expert on Personal Property Security Law and was formerly a member of the Saskatchewan Law Reform Commission. He is presently consultant to the Government of British Columbia. John Farrar also met Ms Nancy Hopkins, a Saskatchewan practitioner whose practice includes agricultural security.

16. John Farrar met with Mr Arthur Close, Chairman of the British Columbia Law Reform Commission and with Dean Peter Burns QC, Dean of the University of British Columbia Law School and also a member of the Commission.

17. Mark O'Regan had discussions with Mr Jim Barnes of Baker & McKenzie, Chicago, and at his suggestion met Ms Louise Blakely, supervisor of the UCC Registry and Mr Dick Robinson, Registrar of Corporations at the Department of the Secretary of State in Springfield, Illinois.

In addition John Farrar has had a telephone conversation with Mr Simon Begg, a Melbourne practitioner and specialist in Personal Property Security Law in Australia. Mr Begg supplied us with some useful material on Australian law.

In the course of writing our report we have not only considered Article 9 systems in operation but have also considered the alternatives of no registration and the recent Australian reforms. Since we discovered the extent to which motor vehicle security law in the U.S.A. is dealt with by motor vehicle title systems we have included some discussion of such systems in the report. It should, however, be noted that there are no motor vehicle title systems in Canada and all motor vehicle transactions are included in a Personal Property Security Act system.

We would like to take this opportunity of thanking all the people mentioned above for their advice and hospitality. We took up a disproportionate amount of their time and were very impressed by their willingness to help us. There is no doubt in our minds that such consultations are essential if New Zealand is to embark on such a comprehensive reform. We consider nevertheless that this is the right way to proceed.

John H Farrar
Mark A O'Regan

I INTRODUCTION

The law relating to security over chattels and intangibles in New Zealand is in a mess. A distinguished American visitor described our chattel security law as a "quagmire" (Prof. S A Riesenfeld, *"The Quagmire of Chattels Security in New Zealand"*. See too Prof. David Mclauchlan, "Contract and Commercial Law Reform in New Zealand" [1984] 11 NZULR 36, 50). The principal reason for the mess is that New Zealand inherited the English Bills of Sale legislation (itself a mess) and the relevant provisions of the companies legislation (an incomplete security system) and adapted them to local needs, sometimes in a desultory way. (See G Cain, "The Chattels Transfer Act - Oddities and Oddments" (1959) NZLJ 87). There have been, from time to time, particularly in the last 20 years, radical proposals for reform in the Commonwealth. They have largely consisted of suggestions that we adopt something on the lines of Article 9 of the American Uniform Commercial Code, particularly as it has been adapted in certain of the Canadian provinces. There are now plans afoot to deal with the specific issue of security over motor vehicles in isolation based on recent reforms in some of the Australian states, a reconsideration of our company charges law by the Law Commission and, lastly, a re-opening of the whole debate in the United Kingdom.

There are various reasons why the law is in a mess. Essentially they can be divided into two categories - those relating to the facts and those relating to the law. There are certain innate characteristics about chattels and intangibles which make title and security difficult. Chattels are everything that land is not. They are of comparatively less value than land and are usually depreciating and destructable. Except in cases where they can be distinguished by some means such as recorded serial numbers they cannot necessarily be identifiable one from another of the same genus. They are mobile and can usually be sold without formality (see David Allen et al *"Credit and Security in Australia"* p.76). Intangibles suffer from the fact that they exist only in contemplation of law. While they are difficult to conceive in physical terms, security interests over them carry the problem of abstraction one stage further. The attempt to accommodate book debts within the Chattels Transfer Act 1924 scheme has not been particularly successful. Secondly, turning to the law itself, there are three principal reasons for difficulty. These are:

- (a) the lack of any functional basis for the law;
- (b) conceptual difficulty and confusion;
- (c) the incompleteness and incoherence of the statutory registration schemes.

The starting point for any consideration of chattel security must, therefore, involve getting back to basics.

II THE FUNCTIONS OF SECURED TRANSACTIONS LAW

The role of law in relation to the economics of property relationships is to provide a definitive framework for those relationships to facilitate exchange and financing transactions. In addition the law of contract is concerned with facilitating the voluntary movement of property rights into the hands of those who value them the most (see Richard A Posner "*Economic Analysis of Law*" 3rd edition p.29). Most dealings in property represent voluntary exchange and there is a close interaction between contract law and property law. Nevertheless property law on some occasions recognises the validity of a forced transfer of property rights. Although the basic rule is *nemo dat quod non habet* - no-one can give what he has not got, there are exceptions in the case of bona fide purchasers.

Although these rules have grown up without much immediate regard to economic considerations it is possible to identify certain economic functions of the law. Where as between a provider of credit and a third party the latter is better placed to avoid the loss there is economic justification for the basic rule. Conversely where it can be proved that it is cheaper for the credit provider to take precautions it is arguable that the rule should be reversed. A provider of credit may be able to monitor borrowers more easily than can a person purchasing goods from another. This would particularly be the case where the goods are consumer goods purchased from a retailer.

It can be argued that in the absence of some form of registration it is difficult for a third party to investigate the title to goods or intangibles. Another factor is the relative ability of the credit provider or third party to insure against the risk of loss. Market insurance against fraud is more likely to be available to the credit provider than is title insurance to a third party. Alternatively a credit provider can self insure in the sense of building a risk premium into its costs. On the other hand the availability of insurance against fraud may give rise to a moral hazard in that the provider of credit will have less incentive to monitor customers.

A system of chattel security and company charges law should aim to provide a clear statement of the rights of parties engaged in secured transactions and an efficient range of remedies. It is taken as axiomatic in Common Law systems that this necessitates a system of public registration. The purpose of a system of public registration is to ensure that third parties are put on notice of what would otherwise be a hidden security interest. Registration provides the machinery for a secured party to give public notice of his or her security interest and preserve its efficacy against third parties. Failure to register entitles the third party to ignore the security interest, even in some systems where there is knowledge of the unregistered security interest (R M Goode "*The Modernisation of*

Personal Property Security Law" (1984) 100 LQR 234, 238-9). This has been the dominant theory for over one hundred years and is the basis of the Torrens system of Land Transfer. It is not necessarily adopted in some of the member states of the E.E.C. whose systems follow a "Possession vaut titre" (Possession is equivalent to title) regime. We discuss this later but suffice it to say here that the absence of registration in such systems is compensated to some extent by a sophisticated concept of good faith which seems a problematic basis for a modern system.

Another function of a registration system is that it may enable an intending credit provider to obtain information regarding the customer's credit worthiness. This was a principal rationale of the English Bills of Sale legislation. This legislation does not provide for indefeasibility of a security interest. The companies legislation on the other hand attempts to serve both functions albeit in an imperfect way.

There are different systems of registration possible. First, there can be a Register of Title to Goods. No system in the world has a comprehensive system of registration of title to goods. This would be too costly and impractical. The earliest title register was in respect of merchant ships, chattels of high value, and this was one of the influences on the development of the Torrens system of land title registration. Many jurisdictions in the United States have a title system in respect of motor vehicles. New Zealand and most jurisdictions in the commonwealth have a system of registration of motor vehicles which does not rest on title but on the right to possess.

The second kind of register is a register of security interests. The present systems in force in New Zealand are examples of this. Both are based on instrument filing (i.e. a copy of the entire security document must be filed) rather than notice filing (where public notice of the existence of the security interest only is given) and both are debtor based (i.e. indexed by reference to the debtor) rather than asset based (i.e. indexed by reference to the secured property). Recent reforms in Australia have introduced a system of asset based registration of security interests in respect of motor vehicles.

All systems of registration should arguably be justified on a cost benefit analysis. It has been suggested that the main criteria should be:

1. That the costs should be less than the losses sought to be avoided.
2. The costs should be less than the cost of the prevention possibilities open to the cheapest cost avoider.
3. The net benefits of a statutory registration system should exceed those of a private scheme.

It is difficult to obtain the information necessary to answer these questions. The cost of maintaining the existing registries

are not separated from the costs of running the High Court registries and companies registries. The present level of fees in New Zealand suggests a costly system or hidden taxation. The fees are much higher than in the U.S.A. or Canada and the differences are not solely accountable by economies of scale. The information necessary to provide an intelligent answer to the second factor listed above is simply not available and there has never been any private scheme in operation in New Zealand. The weaknesses of overseas private schemes to solve all the problems in this area were demonstrated by the House of Lords decision in *Moorgate Mercantile Co Ltd v Twitchings* [1977] AC 890.

(Much of the above discussion is based on a forthcoming Australian work, Duggan, Begg and Lanyon, "Regulated Credit - The Credit and Security Aspects", an intellectual debt which we gratefully acknowledge.)

An efficient system of secured transactions law will facilitate the debtor's goal of wishing to borrow money or obtain goods or services on credit. Although some creditors will be willing to extend credit unsecured many will not and will seek either a guarantee or security. Those which are prepared to lend unsecured will usually expect a risk premium, meaning more expensive credit for the debtor. The creditor's goal will be to obtain repayment plus a profit on the transaction. Security serves as a monitoring device and reduces monitoring costs for a creditor (T Jackson and A Kronman "Secured Financing and Priorities Among Creditors" (1979) 88 Yale LJ 1143 but compare A Schwartz "Securing Interests and Bankruptcy Priorities: A Review of Current Theories" (1981) 10 J Legal Stud. 1). The guarantee or other collateral facilitates rapid credit decisions and is the creditor's safeguard against the risk of default. "Security is desirable because it makes available summary legal procedures that bypass the slowness with which the mills of justice grind" (Homer Kripke "Law and Economics: Measuring the Economic Efficiency of Commercial Law in a Vacuum of Fact" (1985) 133 UPaLRev 929 at 948).

In addition to the above goals the law sometimes seeks to maintain a balance between the parties, prohibiting the creditor from taking advantage of the debtor's weakness. Such intervention is justified on the basis of market failure. The modern tendency overseas, however, is to separate consumer protection legislation from chattel security and company charges law. The two systems of security law and consumer protection are regarded as being parallel systems.

III BASIC LEGAL CONCEPTS

1. Basic classifications

Real rights and personal rights

A person has a real right in chattels when he or she has an absolute or limited interest in them, that is, he or she is the owner or in possession as bailee. If the owner of goods agrees to sell them the buyer merely acquires a personal right. As far as goods are concerned a person cannot have a real right in the goods in any event unless they have been identified. Our law, unlike U.S. law, does not recognise property in an unascertained part of an ascertained bulk. However, it is possible to have ascertainment by exhaustion: *Wait & James v Midland Bank Ltd* (1926) 31 Com.Cas. 1972; *Karlshamns Olijefabriek v Eastport Navigation Corp* [1982] 3 All ER 208.

The principal significance of real rights lies in insolvency of the debtor. In effect a creditor with a real right contracts out of insolvency whereas a creditor with merely personal rights has to prove as an unsecured creditor. This assumes crucial significance in the case of the so-called Romalpa or reservation of property clauses which we deal with later. Normally, ownership is transferred by consensual transfer. However, it is possible in the case of goods for a person to acquire a good title under one of the exceptions to the Nemo Dat rule which we deal with later.

Possessory and non-possessory rights

It is sometimes said that possession is 9/10ths of the law. Although this is a layman's addage there is some legal justification for it. Possession is itself a real right, exercisable against everyone except a person having a better right to possession (R M Goode "*Property Rights and Insolvency in Sales Transactions*" p.5). At common law a person who is not the owner but holds possession is treated by the law as the owner and is entitled to legal protection against everyone except the true owner or a person deriving title through him. In other words the common law adopts a relativist approach. There are three principal forms of possession of goods at common law. First, there is actual physical possession; secondly there is possession of articles giving physical control e.g. the keys to a warehouse where the goods are stored; and the third is possession through a bailee who agrees to hold the goods to the bailor's order. This is called constructive possession. Sometimes the term attornment is used. Attorning is when A holds goods for B who sells them to C and instructs A to hold them to C's order. A then "attorns" to C. Possession is also relevant to the classification of securities. Some securities are possessory and some are non-possessory. Possessory securities are the pledge or the possessory lien. The basic non-possessory securities are the chattel mortgage, the instruments by way of bailment (conditional sale, hire purchase and lease agreements) and the equitable charge

(see D W McLauchlan "The Concept of 'Charge' in the Law of Chattel Securities" (1975) 8 VUWLR 283 at p.285. We shall have more to say about this later.

Equitable interests and mere equities

Equitable interests were originally mere rights in personam but now have almost proprietary status, ie, they are enforceable against anyone other than a bona fide purchaser for value without notice. Mere equities on the other hand are purely personal equitable rights e.g. the right to have transactions set aside for fraud or to claim rectification. They are not rights in property and even a bona fide purchaser for value of an equitable interest without notice of a mere equity takes free of it.

2. Different species of securities over chattels and intangibles

Legal mortgage

A legal mortgage of chattels takes the form of an absolute assignment of ownership to the mortgagee with a proviso for the reassignment of the property when the debt has been repaid. It is analogous to the mortgage of unregistered land at common law.

Equitable mortgage

There are two types of equitable mortgage. First, an equitable mortgage of legal property which exists where there is an express contract to create a legal mortgage or an informal attempt to create a legal mortgage. Secondly, there is an equitable mortgage of an equitable interest, e.g. a second mortgage or a mortgage of future chattels (see further D W McLauchlan, "The Concept of 'Charge' in The Law of Chattels Securities" (1975) 8 VUWLR 283, 286). It is interesting to note that it was only possible in equity to give a mortgage of future chattels. At common law a contract to assign future chattels conferred contractual rights but did not operate as an assignment, present or future. This general proposition was subject to certain qualifications, the main one of which was that the contract could pass the legal title on the performance of a later new act. Although the Sale of Goods Act 1908 has superseded this in relation to contracts for sale of goods the principle still applies in the case of a mortgage. There is some interesting law on what constitutes a new act for this purpose. It seems that no new act can be selected which is not one of the ordinary steps involved in the passing of title (E J Sykes, "The Law of Securities", 4th edn, 538-539). Another interesting point is that there is scarcely anything which corresponds to an equitable mortgage of land by deposit of title deeds. There are no recognised title deeds to chattels as such. Certain documents are sometimes referred to as documents of title e.g. bills of lading and dock warrants but these are exceptional. Even in the case of such documents it is only the bill of lading which is quasi negotiable and even here there must be an endorsement.

Equitable charge

An equitable charge differs from an equitable mortgage although the distinctions are sometimes rather tenuous. In the case of chattels the matter seems to be one of intent. In a charge the debtor only intends to give limited rights exercisable on default over his property (Sykes, *op cit.* 543). The essence of a charge is that it is a mere encumbrance attaching to the property and does not transfer any recognised ownership interest to the creditor (McLauchlan, *op cit.* 289). However, recent cases on the floating charge which we consider below indicate that there is some kind of equitable interest before crystallisation and it would appear that if this is so in the case of a floating charge, then *a fortiori* it is so in the case of a fixed charge. Indeed there has been a tendency in the legislation to assimilate mortgage and charge.

Floating charge

A floating charge is a species of equitable charge which does not affix until crystallisation when it becomes a fixed equitable charge. Crystallisation occurs on the appointment of a receiver, winding up, cesser of business and the happening of an express crystallisation act or event. At the very least a floating charge gives rise to a bundle of equities before crystallisation and it is arguable that these amount to some kind of equitable interest, defeasible by reference to the company's power to carry on business in the ordinary course.

Pledge

A pledge is a transaction whereby possession of goods (or in some cases documents of title to goods) are delivered to the creditor by way of security. The essence of the security is possession but the creditor does receive what is sometimes termed a "special property" which empowers him to sell the goods in the event of default (*Re Morrit* (1886) 18 QBD 222, 232, 234; McLauchlan *op cit.* 287). Since the pledge is dependent on possession a loss of possession means a loss of the pledgee's rights unless possession has been given for a limited or special purpose (McLauchlan, *op cit.* 287). The pledge is in fact the legal opposite of chattel mortgage. In the case of a pledge there is a transfer of possession but not ownership. In the case of a chattel mortgage there is a transfer of ownership but not possession. However some writers emphasise that possession itself is an ownership right (Sykes, Goode).

Lien

There are two main types of lien. First, there is the common law lien which depends on possession and arises by operation of law. Secondly, there is an equitable lien which does not depend on possession but takes effect as a charge. The difference between a common law lien and a pledge is that a pledge arises by reason of contract whereas a common law lien arises by operation of law. However, recent cases have recognised that it is possible to have a

contractual lien (*Waitomo Wools (NZ) Ltd v Nelsons (NZ) Ltd* [1974] 1 NZLR 484 (CA)). It is debatable, however, whether this is a lien or a right analogous to a lien. In addition certain liens are conferred by statute.

Hypothecation

Hypotheca was a species of security in Roman law. In essence it involves security rights which only arise on default. Salmond described it metaphorically as merely a shadow cast by the debt upon the property of the debtor. Although the term hypothecation is used in the common law e.g. letters of hypothecation in banking law, Sykes argues that the concept of hypothecation is embodied in the charge (Sykes, *op cit.* 19). This may overstate the case in the sense that not all charges are hypothecations. Thus a floating charge, and a *fortiori* a fixed equitable charge over chattels, creates an interest before default.

Rights arising by reason of bailment

A pure bailment does not give rise to a security right. The matter is complicated in New Zealand because the Chattels Transfer Act 1924 includes instruments by way of bailment. This is unlike many other systems of law. However, there are two types of bailment which conventionally are not regarded as securities but which commercially amount to security. These are hire purchase and conditional sale. The nature of hire purchase properly so called is a contract to hire (a species of bailment) coupled with an option to purchase. A conditional sale is a species of sale of goods where the property does not pass until the price has been paid. We shall have more to say about these when we discuss the Chattels Transfer Act.

Reservation of property or title

In the last ten years there has been an increase in so called reservation of property or title clauses. Although the term reservation of title is most commonly used title is, however, only used in the Sale of Goods Act in the context of the exceptions to *Nemo Dat*. There are two types of reservation of property clause - the simple and the complex. A simple reservation of property clause is in fact a type of conditional sale usually without a prolonged period of credit. A complex reservation of property clause is one which attempts to extend beyond the original property sold to the proceeds of a sub sale in the hands of the original buyer or to mixed goods. There are problems with complex clauses as they may give rise to an unregistered charge. Attempts have been made to couple a reservation of property clause with an equitable right to trace. The attraction of this is that, if effective, it gives rise to rights which are akin to security without the necessity of registration under the Chattels Transfer Act or Companies Act.

Securities over choses in action

There are three types of security which can be granted over

chooses in action - a mortgage, charge and in some cases a possessory security. A mortgage and charge take effect by way of assignment. The nature of assignment, however, is that it is by way of mortgage or charge.

This list is not exhaustive. The law relating to each device can and does differ in significant respects. The steps required to create a security interest differ from device to device as do the steps taken to perfect the security interest. Some, but not all, of these distinctions can be justified on historical and legal conceptual terms but few on functional grounds. There is no reason why corporate securities should differ markedly from non-corporate securities except where the corporate form itself is material. To say for instance that only a company can create a floating charge begs the question of why. Nevertheless this substantially irrational and nonfunctional system still obtains in New Zealand, the United Kingdom and Australia and its irrationality and lack of functional awareness is classically highlighted in the case of priorities.

IV CONFLICTING CLAIMS TO CHATTELS AND INTANGIBLES

There are three types of situation where conflicting claims arise in relation to chattels and intangibles and where the law has to determine priorities. The first is where both parties claim an absolute interest in the asset. In this situation the winner usually takes all and the rule is encompassed in the common law rule of *nemo dat quod non habet*. There is no question of subordination. Only defeasability under one of the exceptions to the rule. The second is where one party claims the absolute interest and the other a limited interest. Here the sole question is where the absolute interest is subject to the limited interest. A typical situation would be a common law lien or the subjection of a book debt to an equity such as the right of set off or charge. The third arises where each party claims a limited interest. Here the question is strictly one of priorities. The recognition of one claim does not necessarily destroy the other but usually merely subordinates it (R M Goode "*Commercial Law*" 68-69).

1. Validity and the Nemo Dat rule

Where property in goods has not passed to a buyer, subject to certain exceptions, he or she cannot confer a good title on a sub-buyer - *nemo dat quod non habet*, no one can give a better title than he or she possesses. This general rule is contained in s.23(1) of the Sale of Goods Act 1908 which provides that, subject to the provisions of the Act, "where goods are sold by a person who is not the owner thereof ... the buyer acquires no better title to the goods than the seller had ...". However, the rule is subject to certain exceptions which are necessary in the interests of justice. In *Bishopgate Motor Finance Corp v Transport Brakes Ltd* [1949] 1 KB 332, 336-7 Denning LJ said:

"In the development of our law, two principles have striven for mastery. The first is the protection of property. No one can give a better title than he himself possesses. The second is the protection of commercial transactions. The person who takes in good faith and for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by common law itself and by statute so as to meet the needs of our times."

In essence the law is faced with a conflict between two proprietary interests - the interest of the true owner and the interest of a bona fide buyer without notice. The Nemo Dat rule is ancient - indeed a similar rule is found in Roman law as the Latin maxim would suggest - but the exceptions to the rule are modern and "*Salmond on Jurisprudence*" 12th edition, edited by P J Fitzgerald p.441 states that "we may anticipate that the future course of legal development will show further derogations from the early principle". The exceptions are of two kinds; (a) those due to the separation of

ownership from possession and (b) those due to the separation of legal from equitable ownership. In this section we are primarily concerned with (a) although aspects of (b) are occasionally relevant. Continental systems go much further than common law systems in recognising the doctrine that the possessor of a chattel can confer a good title to it. Thus Article 2279 of the French Civil Code lays down the principle 'en fait de meubles la possession vaut titre' - in the case of moveables possession is equivalent to title. In all continental systems, however, the rule is subject to exceptions. (See (Salmond op cit p.442). UNIDROIT in its draft convention providing a uniform law on the acquisition in good faith of corporeal moveables laid down a similar principle (see (1975) Uniform Law Review 68). See in particular the text of articles 5-11 of the convention. See too Sir Tom Smith QC "Property Problems in Sale" (1978), chapter VI.)

The exceptions to the Nemo Dat rule are contained in the wording of ss. 23(1) and (2), 25, 26, 27 and 28 of the Sale of Goods Act. The wording of s.23(1) protects a person who buys from someone selling goods with the authority or consent of the owner and also deals with the situation where the owner is, by his or her conduct, estopped from denying the seller's authority to sell. Section 23(2)(a) provides that nothing in the Act shall affect the provisions of the Mercantile Law Act 1908 which deals with the authority of a mercantile agent to dispose of goods and s.23(2)(b) deals with the validity of a sale under a special common law or statutory power of sale or under the order of a Court of competent jurisdiction. Section 24 provides that the law relating to market overt does not apply in New Zealand. (At common law sales in market overt were protected. Only certain sales fell under this heading.) Section 25 deals with a sale under voidable title. Section 26 deals with the reversion of property in stolen goods on the conviction of an offender and s.27 deals with a sale by a seller or buyer in possession after a sale. Section 28 deals with the effect of writs of execution. We will now deal with the more important exceptions.

2. Estoppel

The basis of this exception is the wording in s.23(1) "Unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell". There are two species of estoppel for this purpose - estoppel by representation and estoppel by negligence.

2.1 *Estoppel by misrepresentation.* In order to constitute an estoppel by misrepresentation it must be proved: (1) that there was a representation of fact; (2) that it was not ambiguous; and (3) that the injured party relied on it.

While these principles are reasonably straightforward their application to the facts is often quite complex.

2.2 *Estoppel by negligence.* In order to constitute estoppel by negligence there must be shown to have been a breach of a duty of care. Normally there is no duty of care on an owner of property to see that it does not get lost or stolen.

The Ontario Law Reform Commission in its Report on Sale of Goods (1979 Vol. II p. 316) recommended that the exception should be broadened to include cases where the owner of goods has failed to exercise reasonable care in the entrustment of the goods and the buyer has exercised reasonable care in buying the goods and has acted in good faith. It is thought that a similar amendment should be made to New Zealand Law.

3. Sale by mercantile agent

Section 23(2)(a) provides that nothing in the Act shall affect "the provisions of the Mercantile Law Act 1908, or any other enactments enabling the apparent owner of goods to dispose of them as if he were the true owner thereof ..." Section 3(1) of the Mercantile Law Act 1908 provides that "Where a mercantile agent is, with the consent of the owner, in possession of goods ..., any sale, pledge or other disposition of the goods made by him, when acting in the ordinary course of business of a mercantile agent shall ... be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the person acting under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has no authority to make the same".

There are problems with this section in determining who is a mercantile agent, whether the sale was in the ordinary course of business and whether the third party took in good faith and without notice of the lack of authority.

The Ontario Law Reform Commission recommended a reform which deals with goods entrusted to a merchant who deals with goods of the kind entrusted. This is a similar reform to the general reform mentioned above in that it uses the concept of "entrusting". The Ontario Report recommended that the Factors Act (the equivalent of our Mercantile Law Act) should be reviewed with a view to determining the desirability of its retention. It is submitted that the Ontario reforms represent a more modern view of the law and again should be adopted in New Zealand.

4. Sale under voidable title

Section 25 of the Sale of Goods Act 1908 provides that where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title. The classic problem falling within this section is whether a contract is void or voidable for mistake. Some cases of mistake of identity turn on subtle distinctions. It seems that the contract between the owner and the original buyer will be void if: (1) the buyer's identity was a vital factor for the owner in deciding to enter into the contract; and (2) the owner was intending to deal with someone other than the actual buyer. The case law is thoroughly confusing and the confusion has not necessarily been resolved by the Contractual Mistakes Act 1977. See D W McLauchlan [1983] 10 NZULR 199. The

Ontario Report recommended that for the purposes of this exception the distinction between void and voidable titles should be abolished. The Act should contain a provision stating that a purchaser of goods shall be deemed to have a voidable title notwithstanding that the transferor of the goods was deceived as to the identity of the purchaser or some other mistake effecting the validity of the contract of sale. With regard to the law in *Car & Universal Finance Co v Caldwell* [1965] 1 QB 525 whereby a rogue with a voidable title can confer a good title to a bona fide purchaser for value unless the sale is avoided prior to the dispossession, the Ontario Report recommended that the purported avoidance by the owner should have no effect on a third party unless the goods were recovered by the owner before they were delivered to the third party by the person in possession of the goods.

5. Sale by seller in possession

Section 27(1) of the Sale of Goods Act provides that -

Where a person, having sold goods continues or is in possession of the goods, or of the documents or title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents to title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

The effect of this subsection is that a buyer to whom property has passed may nevertheless be divested of his title. The result is the same as if the seller had the authority of the buyer to sell to the third party. There are two main problems in the interpretation of this section. First, the capacity in which the seller has possession and secondly the meaning of "sale, pledge or other disposition". The Ontario Report recommended that the power of a seller in possession to transfer a better title than he himself has should apply whether he is or continues in possession of the goods in his capacity as seller or otherwise.

6. Sale by buyer in possession

Section 27(2) of the Sale of Goods Act provides that -

Where a person having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall

have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of the title with the consent of the owner.

Provided that if the lien or other right of the original seller is expressed in an instrument duly registered under [the Chattels Transfer Act 1924], and if the person selling, pledging, or disposing of the goods or agreeing so to do is the mortgagor or bailee named in such instrument, then the person receiving the goods shall be deemed to have had notice of the contents of such instrument.

Whereas s. 27(1) deals with a sale by a seller in possession s.27(2) deals with the converse situation, that of a buyer in possession. This means that even though the seller retains property in the goods, if he delivers possession of the goods to the buyer, the buyer may divest him of his title by selling the goods to a third party.

There are a number of problems in the interpretation of this section which is not well drawn. The two main problems are the meaning of the words "shall have the same effect as if the person making the delivery or transfer were a mercantile agent" and the words "with the consent of the owner."

The Ontario Report recommended that the power of a buyer or seller in possession to confer better title than he himself has should not apply where a security interest governed by the Personal Property Security Act has been created in the seller or buyer out of possession or where prior to the disposition to the third party a notice has been filed under that act. The power of a buyer or seller in possession to pass better title should be contingent on the buyer or seller originally being in possession of the goods or a document of title with the consent of the other party to the transaction. The protection of the Act should be limited to a buyer or lessee who receives the goods in good faith and full value from the person in possession. On the other hand the scope of the section should be enlarged to cover a prospective buyer in possession of the goods.

It is recommended that consideration should be given to this section of the Ontario Law Reform Commissions Report. Although the report has not yet been enacted in any jurisdiction it was substantially the basis of the model Uniform Sale of Goods Act adopted by the provinces of Canada in 1982. There is much good sense in the Ontario proposals and they harmonize well with equivalent provisions of Article 2 of the U.S. Uniform Commercial Code and an Article 9 system. One last matter under this heading is the desirability of a compensation system for victims of Nemo Dat. While the problems will be cut down by the enactment of an Article 9 system they will not necessarily disappear. A compensation system has, however, a cost and it might be better simply to encourage voluntary title insurance. Reference is made to a compensation system in discussion of the Dugdale Report and the Australian reforms.

V CASELAW PRIORITY RULES

1. First in time prevails

The most basic priority rule at common law and in Equity is *qui prior est tempore portior est jure* - where there are competing interests the first in time prevails. However, the rule can be and often is displaced by one of the special rules which will be mentioned below.

2. Bona fide purchaser with notice

An equitable interest can be defeated by a bona fide purchaser for value without notice of the legal interest in the property. On the other hand a person who acquires a legal interest without giving value takes subject to equities whether he has notice or not. Where the subsequent purchaser merely acquires an equitable interest himself he takes subject to the preceding equitable interest unless he has a better equity.

There are four kinds of notice:

- (a) actual notice or knowledge;
- (b) constructive notice in equity - a person is deemed to have notice of everything which he would have discovered by normal and prudent inquiries;
- (c) imputed notice - where a person's solicitor or agent discovers or ought to have discovered some fact while acting for the purchaser in that particular transaction, the purchaser may be deemed to have notice of the fact;
- (d) constructive notice arising through registration.

3. The rule in Dearle v Hall

Where there are successive mortgages or assignments of an existing equitable interest priority depends on the order in which the lenders or assignees give notice of their interests to the trustees or other persons responsible for the distribution of the property. Originally the rule only applied to mortgages and assignments of equitable interests in pure personalty, including land held on trust for sale. It now applies to all dealings with equitable interests. A mortgagee or assignee who had notice of an earlier mortgage or assignment when his own was created cannot claim priority by being the first to give notice.

Where, however, there is a statutory assignment of a chose in action under s.130 of the Property Act 1952 then the rule does not apply where there is a prior right to trace under an effective reservation of property of the *Romalpa* type. This is because the latter arises by operation of law (or Equity) and the statutory assignment takes effect subject to all prior equities. A 'right' to trace would be an equity for this purpose, a *fortiori* if there is merely an equitable assignment. (See the excellent article by David McLauchlan, "Priorities - Equitable Tracing Rights and Assignments of Book Debts" ((1980) 96 LQR 90.)

VI STATUTORY MODIFICATION OF THE CASELAW PRIORITY RULES

The priority rules of common law and equity have been modified by statutory provisions. The aim of these is to provide a means of protection of a security interest against third parties by registration. Two of the statutes, the Land Transfer Act and the Chattels Transfer Act go further than this and provide that registration is a distinct priority point (Land Transfer Act 1952, s.37; Chattels Transfer Act 1924, s.22; L G S Trotman "*Corporate Debts Securities - a Restatement and Critical Evaluation of Existing Priority Rules*", 6). The Companies Act 1955 on the other hand is an incomplete system and registration has only a limited effect. The legislation simply provides that the registration means that the charge is not void as against the liquidator or the creditors. Priority depends not only on registration but on the date of creation. In other words it is necessary to examine the common law and equitable rules as well as the statutory provisions.

Even in the case of the Land Transfer Act and Chattels Transfer Act, however, there are problems. In the case of the Land Transfer Act a floating charge can only be noted on the register by means of a caveat where it contains a covenant for further assurances and not otherwise and in the case of the Chattels Transfer Act there are a number of problems, some of which concern the relationship with the Companies Act.

VII THE STATUTORY SCHEMES -
THE CHATTELS TRANSFER ACT 1924

The Chattels Transfer Act 1924 is concerned with the separation of ownership and possession of goods. It mainly deals with loans made on the security of goods and excludes from its scope certain purchase money security interests which take the form of hire purchase. Purchase money security interests which take the form of a chattel mortgage are covered by the Act. The Act applies to all consensual instruments in writing and the principal instruments covered by the Act are -

- (a) Instruments by way of security.
- (b) Hire purchase agreements.
- (c) Bailments (including chattel lease or lease purchase agreements). The term instrument by way of security is essentially synonymous with the terms chattel security and chattel mortgage. The term Bill of Sale is also used to refer to instruments by way of security and the term stock mortgage relates to instruments by way of security over sheep and cattle.

Registration

The Act establishes a system of registration of instruments in certain High Court offices. Essentially it is a system of local registration. Section 5(1) and (2) of the Chattels Transfer Act 1924 provide as follows:

- (1) Registration of an instrument shall be effected by filing the same and all schedules endorsed thereon, or referred to therein, or a true copy of such instrument and the schedules, and a certificate in the form numbered (1) in the First Schedule hereto or to the like effect, in the [[High Court]] Office of any Registrar in the provincial district within which the chattels comprised in the instrument are situated at the time of the making or giving thereof (other than a [[High Court]] Office in respect of which a direction under subsection (1A) of s.23A of the Judicature Act 1908 is in force):

Provided that all instruments affecting chattels in the Chatham Islands or other islands not included in any provincial district shall be registered in the [[High Court]] Office at Wellington:

Provided also that all instruments affecting chattels in the counties of Cheviot and Amuri shall be registered in the [High Court] Office at Christchurch as if the said countie: were in the Provincial District of Canterbury and not in the provincial District of Nelson.

- (2) For the purpose of registration:

- (a) That part of new Zealand which is for the time bein

included in the Southern Land District shall be deemed to be a separate provincial district:

(b) That part of New Zealand included in the Judicial District of Gisborne at the time of the abolition of that district by s.18(1) of the Judicature Amendment Act 1972 shall be deemed to be a separate provincial district:

(c) That part of New Zealand included in the Judicial District of Westland at the time of the abolition of that district by s.18(1) of the Judicature Amendment Act 1972 shall be deemed to be a separate provincial district.

Thus there is an abstruse system of local rather than central filing and no system of transmission of data to a central registry. Registration is notice to everyone of the instrument registered and its contents but not to the grantee of any prior registered instrument covering the same chattels or any of them (ss.4(1), (3)). This system provides protection for -

- (a) the person who has lent money on the security of chattels;
- (b) the vendor under a hire purchase agreement from seizure of the security or property by -
 - (i) The Official Assignee
 - (ii) An assignee acting on behalf of creditors
 - (iii) An execution creditor
 - (iv) A bona fide purchaser for value
 - (v) A bona fide mortgagee for value
- (c) also protected are -
 - (i) creditors
 - (ii) prospective purchasers of secondhand chattels who can search the chattels register without charge and determine if the goods in which they are interested are encumbered.

The main defects of the registration system are then that it is a local system of registration of documents and there is no central registration throughout New Zealand. There is no use of computers. Protection in fact relates only to transactions in the district where the search is made. Customary hire purchase agreements are exempt from registration. Anyone buying chattels on the customary list at *secondhand* requires evidence that the vendor of the goods has himself acquired title to the goods he wishes to sell for he could be buying them under a customary hire purchase agreement and such agreement would not be registered.

Registrable instruments

The Chattels Transfer Act is principally concerned with chattels which are defined in s.2 as any personal property which can be completely transferred by delivery. By an amendment in 1939

chattels include certain book debts (Statutes Amendment Act 1939, s.6(5)(a) and (b)). Section 2 contains an elaborate definition of instrument by inclusion and exclusion. It includes inventories, receipts, declarations of trust and powers of attorney to take possession of chattels as security but excludes inter alia transfer of chattels in the ordinary course of business of any trade or calling. It also excludes company debentures, secured upon the capital stock or chattels, and company mortgages or charges. Some but not all of these are registrable under the Companies Act 1955. Key concepts used in the legislation are grantor and grantee which are inappropriate to hire purchase and bailment with the result that the application of the Act to such transactions is confused.

Registration formalities

The formalities of registration are unnecessarily elaborate and require a certificate in the form of the first schedule. Searching is in the name of the grantor which create confusion in the case of non-customary hire purchase agreements and bailments and the cards in the larger registries are frequently out of order.

There is a basic period of 21 days for registration. Failure to register in this time necessitates an application to the High Court for rectification of the register under s.13. Registration must be renewed within five years of the previous registration and this requires the filing of an affidavit of renewal in the form set out in the first schedule.

Consequences of non-registration

The consequences of non-registration of an instrument are complicated. A non-registered instrument is not totally void but is deemed to be fraudulent and void as against:

- (a) the assignee in bankruptcy of the estate of the person whose chattels or any of them are comprised in any such instrument;
 - (b) the assignee or trustee acting under any assignment for the benefit of the creditors of such person;
 - (c) any sheriff, bailiff, and other person seizing the chattels or any part thereof comprised in any such instrument, in execution of the process of any Court authorising the seizure of the chattels of the person by whom or concerning whose chattels such instrument was made, and against every person on whose behalf such process was issued;
- provided the chattels covered by the instrument are in the possession or apparent possession of the grantor or the person against whom the process is issued.

The meaning of apparent possession and its relevance in s.14 is problematic. See J H Farrar and R Scragg, *"Chattel Securities - Revision and Update"* (NZLS 1987).

In addition to s.18, s.19 provides that an unregistered instrument is not to affect a bona fide purchaser for value. U1

the expiration of the time or extended time for registration no unregistered instrument comprising any chattels whatsoever shall, without express notice, be valid and effectual as against any bona fide purchaser or mortgagee for valuable consideration, or as against any person bona fide selling or dealing with such chattels as auctioneer or dealer or agent in the ordinary course of his business.

Under this provision the grantee of an unregistered instrument by way of security is in danger of having his interest defeated in favour of a subsequent purchaser, or ranked later in priority after a second mortgagee. It appears a second mortgagee will take priority over an earlier unregistered instrument even though the instrument creating the second mortgage is also unregistered (G Cain, "The Chattels Transfer Act: Oddities and Oddments" (1959) NZLJ 87). Section 22 of the Act deals with prior registration of an instrument subsequent in time.

Section 19 protects any auctioneer, dealer or agent who, by assisting the grantor to dispose of the goods, has made himself liable to an action by the grantee for conversion. The 21 days for registration of an instrument must have expired for the interest of the grantee of an unregistered instrument by way of security to be defeated. The persons listed in s.19 must act bona fide and without notice of the unregistered instrument to gain the section's protection.

In addition to ss. 18 and 19 there are further provisions which can affect the validity of an instrument. These are s.23 (inventory), s.24 (after acquired chattels), s.25 (defeasance), and s.34 (successive securities). Section 23 requires that every instrument must have a schedule of the chattels comprised therein. Failure to provide such a schedule avoids the instrument as against the persons mentioned in ss. 18 and 19. The question of adequacy of identification gives rise to problems. Section 24 provides that an instrument shall be void as against the persons mentioned in ss. 18 and 19 in respect of any chattels which the grantor acquires after the execution of the instrument. This is subject to a proviso in respect of a purchase money security interest where the grantor is deemed to have acquired the chattels contemporaneously with the execution of the instrument. Section 25 outlaws defeasance and other similar clauses which are not contained in the body of the instrument itself. Section 34 avoids successive securities over the same chattels securing the same debt. The object of this is to avoid attempts to by-pass the registration requirements for such securities, by multiple securities.

Priorities

Under s.22 where there are two or more instruments executed in respect to the same chattels priority is determined by the time of their registration. This is subject to a proviso that where the grantee under a second or subsequent instrument claims priority by virtue of prior registration he must prove that at the time of the

execution of the instrument he had no notice of any existing unregistered instrument. The proviso requires proof of a negative and mars the clear effects of the general rule.

The cross referencing between the Chattels Transfer Act and the Companies Act has given rise to problems which we will consider under Company Charges.

Variation of priorities and subordination

It is not clear from the wording of the Chattels Transfer Act whether it is possible to have contractual variation of priorities or subordination. It is arguable that an attempt to do so is not registrable and may be void as a defeasance clause under s.25 or as an attempt at successive securities under s.34. On the other hand in the Land Transfer case of *Re Goldstone's Mortgage* [1916] NZLR 1 the Supreme Court held that where a third mortgage contained wording amending the terms of the first mortgage it was a registrable instrument. The mortgage had endorsed on it a consent by the second mortgagee to such variations and to the third mortgage taking priority over the second mortgage. The Registrar General of Land had refused to register the third mortgage unless the consent was deleted. The Supreme Court held that although the endorsed consent did not itself require registration it did not prevent the registration of the third mortgage.

Registration of non-customary hire purchase agreements

Customary hire purchase agreements as defined in s.57 and the seventh schedule to the Chattels Transfer Act 1924 are exempted from registration. There has been some doubt as to whether registration is necessary for hire purchase agreements which do not qualify as "customary". The issue can only be resolved by first, deciding whether the non-customary hire purchase agreement falls within the definition of "instrument" in s.2 of the Chattels Transfer Act 1924 then secondly, if it is an instrument, whether it requires to be registered for the full protection of the party. The first question has been settled by the judgment of Turner J. in *Motor Mart Ltd v Webb* [1958] NZLR 773. "Instrument" in the Chattels Transfer Act 1924, s.2, is defined to include any document which purports to transfer the right to the possession of chattels, whether permanently or temporarily, whether absolutely or conditionally, and whether by way of bailment or lease. At p.786 the learned Judge referred to the two types of hire purchase agreement in the following terms:

"In the *Helby v. Matthews* type of agreement, the owner always bound throughout - the hirer has an option to purchase. While the state of uncertainty as to the ultimate outcome subsists, and it is still uncertain whether the parties will ever be vendor and purchaser, their relationship is that of bailor and bailee: *Helby v. Matthews* [1895] 471; *Karflid Ltd v. Poole* [1933] 2 KB 251; and, in *N*

Zealand, Woods v. Latham [1907] 27 NZLR 50; 9 GLR 650. In the *Lee v. Butler* [1893] 2 QB 318 type of agreement, the purchaser is always bound; the vendor, however, is not bound to transfer the property except in the event of the last payment being duly made. While the state of uncertainty as to the ultimate outcome subsists, and it is still uncertain whether the parties will ever be vendor and purchaser, their relationship I think is that of bailor and bailee."

As there is an element of bailment in both types of agreement, they are instruments and are registrable. Either type of hire purchase agreement is good between the parties whether it is registered or not; but the extent of the protection of the owner or vendor against dealings by the prospective buyer with third parties is by no means free from doubt. It may be that registration of a true hire purchase agreement (as distinct from a conditional sale agreement) is unnecessary. Failure to register has two consequences. First, to the extent that the chattels are in the possession or apparent possession of the grantor, the agreement is void against the Official Assignee and creditors; Chattels Transfer Act 1924, (s.18). However, a true hire purchase agreement is nothing more than a bailment with an option to purchase. Under a bailment, the grantor is the bailor. The purchaser, in whose possession the chattels will usually be, is the grantee. As s.18 affects only the insolvency of the grantor, it will have no application upon the purchaser's insolvency. The second disadvantage of failing to register is the application of s.19 of the Chattels Transfer Act 1924. However, it is submitted that the bailor (lessor) of goods can never be deprived of his rights of ownership by transactions subsequently entered into by the bailee (lessee) with third parties, unless there is some form of agency with the owner (bailor). In other words until there is a valid exercise of the option, the vendor's title to the chattel is unaffected and he need not rely on the agreement to prove that he is the real owner: *Carmine v Howell* (1924) 19 MCR 103; *Bowmakers v Barnet Instruments* [1945] KB 655; [1944] 2 All ER 579; *Galyer v Massey Harris Co* [1944] 33 NZLR 1392.

The position regarding a conditional sale type of hire purchase agreement is different. As a conditional sale it falls within the Sale of Goods Act 1908 and, therefore, within s.27(2) thereof which enables the conditional purchaser to confer a good title on a purchaser in good faith and without notice. If the agreement is registered, however, then the case falls within the proviso to s.27(2) which gives the subpurchaser constructive notice of the contents of the instrument and the effect appears to be the same as under s.57(5) of the Chattels Transfer Act in relation to customary hire purchase agreements, namely that no title can be conferred on the subpurchaser.

The result of this appears to be as follows:

- (1) both types of agreement are registrable;
- (2) the true hire purchase agreement probably does not suffer any disadvantages by non-registration;

- (3) the conditional sale type must be registered to avoid the effects of s.27(2) of the Sale of Goods Act 1908.

In the light of this the simplest course may be to register all hire purchase agreements which are not customary. It is very unsatisfactory for the law to remain in this state.

Stock in trade

It is sometimes desired to give security over stock, replacement stock, crops which have yet to be sown, or future clips of wool. If the provisions as to inventory and after-acquired chattels applied to such securities, it would not be possible to give a valid security over such chattels. Replacement machinery and farming equipment are in a similar position. Accordingly, it is provided that s.23 (inventory), s.24 (after-acquired chattels) and s.25 (defeasance) shall not render an instrument void as to:

- (a) stock, wool and crops; or
- (b) fixtures, plant or trade machinery substituted for similar equipment described in the instrument; or
- (c) tractors, engines, machines, vehicles and farming equipment described in the instrument and used upon the land described in the instrument;
- (d) any chattels which the grantor under an instrument by way of security is required by the instrument to hold, until sold or while not leased or hired, on the property specified in the instrument if -
 - (i) the chattels are by their nature or description reasonably capable of identification and
 - (ii) the grantor sells, hires out or disposes by hire purchase chattels of that nature (s.26, as amended by the Chattels Transfer Amendment Act 1974, s.3(1)).

In such cases the proceeds of any sale, bailment or exchange of those chattels received by the grantor form part of the grantee's security, to the extent that:

- (a) the instrument expressly states that the proceeds form part of the grantee's security; and
- (b) for so long as any such proceeds being money are kept by or on behalf of the grantor in a separate and identifiable fund: Chattels Transfer Amendment Act 1974, s.3(2).

Prior to the enactment of this amendment a trader could not give a satisfactory security over his stock in trade because, owing to its changing nature, it could not be adequately described. This amendment is designed to clarify the position of a dealer raising money to enable him to buy stock in trade required for his business.

As a corollary to this new latitude afforded to traders, protection was given to customers of such traders. It would be inequitable and commercially disastrous to expect customers to inspect a chattels register before purchasing from a shop. As a result of this, the Chattels Transfer Amendment Act 1974, s.2, added a new s.18A to the principal Act. The new section is headed "Protection to retail customers". In the first place the section gives protection to a person who has hired chattels in good faith and for valuable consideration from another whose business it is to hire out chattels of that kind. If the latter person has given some form of security or an instrument entitling a third party to seize and sell the chattels so hired, the third party cannot seize the chattels but must observe bailee rights under the bailment. The third party is bound by its terms but he is entitled to moneys payable under the bailment and to all other rights of the original bailor. The bailee's rights are the same whether the bailment is registered or not. There is, however, no protection under this section for a bailee who is entitled or obliged to purchase the chattels. In the second place a person who buys chattels in good faith and for valuable consideration from a retailer, who has given a security over the chattels to a lender, takes such chattels free from the security interest (whether registered or not) so given by the retailer. A security interest in chattels is one which secures the payment of money or the performance of an obligation as, for example conditional contracts for the sale of chattels, hire purchase agreements or bailments securing the payment of money. See generally D McLauchlan, *Legislation Note* (1976) 8 NZULR 83.

Book debts

The provisions relating to book debts are set out in the Statutes Amendment Act 1939 (s.6) which is to be read with the Chattels Transfer Act 1924. Book debts for this purpose means debts owing to any person in the course of his trade or business, but do not include any debt secured or charged on land, or any debt owing to any person or in respect of any milk, cream, or butterfat supplied by him to any butter factory, cheese factory, condensed-milk factory, or milk-powder factory: s.6(4).

Each book debt is treated as a separate chattel and must be described by setting forth the amount of the debt and the name of the debtor or firm of debtors so far as is reasonably necessary to show by whom the debt is owing: s.6(3). These are much more limited than the equivalent provision in s.102(2) of the Companies Act 1955.

Crops

No security can be given over any crop (other than flax) which cannot be harvested within one year from the date of execution of the instrument: s.36. A security may be given over crops to be sown on the lands mentioned in the instrument or to be sown thereon or after they have been harvested, no matter where they are stacked

or stored: s.35. The phrase "lands mentioned in the instrument" means lands mentioned in such a manner that persons reading the instrument may at any time be able to identify them: (*Pyne, Gould, Guinness Ltd v Meredith & Co and John Mill & Co Ltd* [1926] NZLR 241; [1926] GLR 136).

The rights of a landlord or mortgagee of the land on which the crops are growing are not prejudicially affected by the instrument unless he has consented to it in writing: (s.37). A registered instrument over crops is not extinguished by the subsequent sale, lease or mortgage of the land: (s.37). But the existence of such a registered instrument over a crop gives the grantee thereunder no right to block the sale of the land. A mortgagee selling the land under his power of sale would have first priority over the proceeds for the settlement of his claim and the grantee would be restricted to getting paid out of the balance of the proceeds.

The defeasance, after-acquired chattels and inventory clauses do not apply to this form of security (s.26).

Stock

Stock is personal property completely transferable by delivery and is, therefore, classified as chattels for the purposes of the Act. The stock must be described by some brand, earmark or other mark or by their sex, age, name, colour or other mode of description. The Act refers to the "name" of stock, but in the larger dairy herds the cows usually have numbers branded on them and this number, with the registered brand and earmark, is used for identification purposes. The description must be sufficient to render the stock reasonably capable of identification.

The requirement that the description of stock will make them "reasonably capable of identification" (s.25) depends largely on the stock in question; a description of a farmer's dairy herd by sex and age makes such stock reasonably capable of identification; a covenant "to ear mark" will be taken to have the same meaning *mutatis mutandis* as the covenant "will brand" in the sixth schedule and creates a duty to brand present and future stock and imposes a perpetual duty to brand while the security remains valid (*Official Assignee of Bailey v Union Bank of Australia* [1916] NZLR 9; [1916] GLR 78.) In the same case, on appeal, it was held that if the earmarks on the cattle are not the same as that specified in the instrument, the description is insufficient for the purposes of s.25 and invalid against the Official Assignee, but that the grantee can nevertheless rely on the provisions in s.26 that an instrument comprising stock shall be deemed to include all the stock he has covenanted to brand which are depasturing on the land described in the instrument (*Union Bank of Australia v Official Assignee of Bailey* [1916] NZLR 873; [1916] GLR 449, CA). The fact that a brand is unregistered is irrelevant (*Honore v Farmers' Co-operative Auctioneering Co Ltd and Official Assignee* [1923] NZLR 56). The land where the stock are depastured must also be described.

If the description is inadequate the instrument will be void to the extent and as against the persons mentioned in s.18 as regards such of the stock as cannot be reasonably identified. If the land on which the stock are depastured is not described, the instrument is not invalidated as between the parties, but even if the instrument is accepted for registration the grantee loses the benefit of registration (*Lee v Official Assignee* (1904) 22 NZLR 747; 5 GLR 269). If, however, the grantee properly gains possession of the stock before the commencement of the grantor's bankruptcy or seizure by an assignee for creditors or an execution creditor, he can exercise his rights over them. The grantee must remove them from "the apparent possession" of the grantor.

Unless the contrary is expressed, an instrument over stock shall be deemed to include:

- (a) the stock described therein;
- (b) the natural increase of such stock; and
- (c) all stock of the classes described being the property of the grantor and branded or marked as specified in the instrument or covenanted to be so branded or marked which are depasturing upon the land described therein (s.29).

Natural increase, after-acquired, and replacement stock, which fall within s.29, are included in the security. The provisions of s.29 as to natural increase apply to poultry but s.28, providing for branding and marking, does not. The provisions as to defeasance, after-acquired chattels and inventory (s.23) do not apply to instruments over stock.

Wool

A grantee may take security over the next ensuing clip from the sheep described in the instrument. The wool from the natural increase of sheep depasturing on the land mentioned in the instrument is also included in the security. The grantee is entitled to the wool, not only while it is growing, but afterwards when it is shorn wherever it may be (s. 38). No subsequent sale or mortgage of the sheep affects the grantee's security (s.39).

The grantor of an instrument by way of security over sheep may, with the written consent of the grantee, give a valid security to a third person over the next ensuing wool clip of such sheep (s.40). If the grantee is entitled to have the grantor execute a security over each clip of wool or is entitled to the delivery of the wool clips during the continuance of the instrument, then such grantee shall be deemed to have a lien or security over each clip without the execution of any special instrument. In all instruments over sheep as security, there is an implied covenant that the grantor will deliver the wool clip to the grantee each year during the continuance of the security (s.41). The provisions as to defeasance, after-acquired chattels and inventory do not apply to securities over wool (s.26).

VIII THE STATUTORY SCHEMES - THE COMPANIES ACT 1955

Corporate chattels securities generally follow the same basic form as for an individual but certain company charges must be registered at the Companies Registry and not at the High Court. All charges must be registered with the Company but only the charges listed in s.102(2) of the Companies Act 1955 are registrable with the Registrar of Companies. Securities which do not give rise to a charge are not registrable. In New Zealand only companies can create a floating charge. Subject to the 1974 amendment of the Chattels Transfer Act this is the only method of creating a security over stock in trade. Although there are some Victorian English cases which indicate that it might be possible to create a fixed charge over stock in trade the status of these today is problematic and as a result it is the general commercial practice to create a floating charge in these circumstances. There are problems with the floating charge. It is a species of equitable charge which is not a fixed charge until crystallisation. There are differing opinions as to what interest (if any) it creates before crystallisation and the cases have undergone some change as to what causes crystallisation. The widespread New Zealand practice of automatic crystallisation clauses is not free from difficulty and can work to the disadvantage of unsecured creditors. See generally *Re Manurewa Transport Ltd* [1971] NZLR and compare the Canadian case of *R v Consolidated Churchill Copper Corp Ltd* [1978] 5 WWR 652.

Registration of charges

Thus there are two systems of registration of charges under the Companies Act 1955; the first is in a register kept by the company itself, the second is in a register kept by the Registrar of Companies. The first was first introduced in s.43 of the English Companies Act 1862, the second in s.14 of the Companies Act 1900. The present law is contained in ss.110-112 and ss.102-108 respectively of the Companies Act 1955.

For historical reasons there is overlap but not identity of the charges covered by the two sets of provisions. Every charge falling within s.102 is registrable under s.110; in addition there are certain charges which fall outside s.102 but which fall within s.110. *Palmer's Company Law* (4th ed, para.46-01) mentions as examples of the latter, mortgages by deposit of certain commercial documents and charges on a concession. There may be sense, therefore, in searching the company's own register for the sake of completeness but in practice this is rarely done. Those dealing with the company tend to content themselves with a search of the company's file at the Companies Registry and an express enquiry of the company.

Registration in the company's own register

Section 111(1) of the 1955 Act provides that every limited company shall keep at its registered office a register of charges and enter therein all specific and floating charges, giving a short description of the property charged, the amount of the charge and (except in relation to bearer securities) the names of the persons entitled thereto.

Under s.110(1) copies of the instruments of charge must be kept with the register. Failure to enter a charge in the register does not invalidate the charge, but any officer of the company who knowingly and wilfully authorises or permits the omission of any entry required to be made is liable to a fine (s.111(2)). The small sanction probably accounts for the non-compliance with the Act by a number of companies. Under s.112(1) the register and the copies of the instruments of charge may be inspected by a member or existing creditor without fee. A member of the public may inspect the register but not the copies of the instruments on payment of a fee not exceeding 20 cents for each inspection. The register must be kept open during business hours but subject to reasonable restrictions imposed by the company in general meeting so that no less than two hours in each day shall be allowed for inspection.

Registration at the Companies Registry

Section 102(2) lists the following categories of charge:

- (a) a charge for the purpose of securing any issue of debentures;
- (b) a charge on uncalled share capital of the company;
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration under the Chattels Transfer Act 1924;
- (d) a floating charge on the undertaking or property of the company;
- (e) a charge on land, wherever situate, or any interest therein;
- (f) a charge on books debts of the company;
- (g) a charge on calls made but not paid;
- (h) a charge on a ship or any share in a ship;
- (i) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

The concept of a registrable charge

"Charge" for this purpose includes a mortgage (s.102(1)). In *Paintin and Nottingham Ltd v Miller, Gale and Winter* [1971] NZLR 164, 179, Turner J. said that the word "charge" must signify the giving of a security by way of mortgage, lien or encumbrance to like effect over property, the ownership of which is and remains in the grantor. It has been suggested that ownership here is used in the sense of a retention by the grantor of some residue of proprietary rights such as an equity of redemption. (See D W McLauchlan [1978])

NZLLJ 137, 143). The charge must be created by the company.

Where a charge such as a lien arises by operation of law it is not created by the company and not registrable under the section (*London & Cheshire Insurance Co Ltd v Laplagrene Property Co Ltd* [1971] Ch 409). Thus an unpaid vendor's lien is not within the section. An express contractual lien in a situation where it would arise by operation of law is created by the company but is not a charge within the section (*Waitomo Wools (NZ) Ltd v Nelson (NZ) Ltd* [1974] 1 NZLR 484 (CA). See also *George Barker (Transport) Ltd v Eynon* [1974] 1 All ER 900).

A variation of charge may be registrable. If it varies the principal or the rate of interest then it is arguable that it should be registered. If it merely varies particular covenants other than those in respect of payment of principal and interest then it is not registrable (*Re Goldstone's Mortgage* [1916] NZLR 489, 504-503). The practice of some assistant registrars of refusing to register deeds of modification which comply with these principles seems out of line with the Justice Department's own stated practice. In any event companies with trust deeds and deeds of participation required by the Securities Act 1978 s.46 must register any amendment of the registered deed by virtue of s.47 of that Act.

Corporate chattel securities

Any charge which would have been registrable as a chattel security by an individual and which is created by a company must be registered with the Registrar of Companies (s.102(2)(c)). This raises the complicated question of what is a registrable chattel security. Under s.2 of the 1924 Act this means and includes inter alia any bill of sale, mortgage, lien, or any other document that transfers or purports to transfer the property in or right to possession of chattels, whether permanently or temporarily, whether absolutely or conditionally, and whether by way of sale, security, pledge, gift, settlement, bailment or lease. Chattels means any personal property transferable by delivery and includes certain book debts but not negotiable instruments and other choses in action including shares and debentures.

It has been held by the Court of Appeal in *Paintin and Nottingham Ltd v Miller, Gale & Winter* [1971] NZLR 164, that a conditional hire purchase agreement, though an instrument registrable under the 1924 Act, is not a registrable charge under s.102 of the 1955 Act. Thus not all registrable instruments for the purposes of the Chattels Transfer Act are necessarily registrable under the Companies Act. It is only if they create a security by way of mortgage or encumbrance to the like effect over property, the ownership of which is and remains in the grantor, that this is so. There are further exceptions. Transfers in the ordinary course of business and customary hire purchase are the main ones. Chattel securities exempted from the Chattels Transfer Act do not require registration at the Companies Registry. This means that in New Zealand there are three categories in relation to companies.

Charges registrable under the Companies Act, instruments which are not charges but which require registration under the Chattels Transfer Act and instruments which do not require registration at all because they are exempted from the Chattels Transfer Act.

It has been held by the English Court of Appeal in *Stoneleigh Finance Ltd v Phillips* [1965] 2 QB 537 that to fall within the equivalent of s.102(2)(c) the transaction must in addition amount to a charge to secure the repayment of money. The Court will look to the substance of an agreement which will be ascertained by a consideration of the rights and obligations of the parties to be derived from a consideration of the whole agreement (per Lord Herschell in *Helby v Matthews* [1895] AC 471, 475. See also *Re George Inglefield Ltd* [1933] Ch 1).

Charges on book debts

Book debts are debts connected with and arising in the course of trade of any business, due or becoming due to the proprietor of that business and entered or commonly entered in books (*Shipley v Marshall* (1863) 14 CB (NS) 566). They are a species of chose in action. All charges on book debts by a company are registrable, not simply those registrable under the 1939 amendment to the Chattels Transfer Act 1924.

Assignments of book debts by way of security for a debt owing by the company are within s.102(2)(f) (*Saunderson & Co v Clark* (1913) 29 TLR 579). This is so whether or not the debt is entered in the books. A charge on future book debts is registrable (*Independent Automatic Sales Ltd v Knowles & Foster* [1962] 3 All ER 27. See also *Contemporary Cottages Ltd v Margin Traders Ltd* [1981] 2 NZLR 114. This contrasts with the position under the Chattels Transfer Act where such a charge would seem to be impossible because of the need to itemise full particulars of every debt in the instrument. It is possible in equity to have a fixed charge over future book debts (*Siebe Gorman & Co Ltd v Barclays Bank Ltd* [1979] 2 Lloyd's Rep 142; *Re Keenan Brothers Ltd* [1986] BCLC 242). A letter authorising moneys to be paid to the company's bank where the company was in debt, which was expressed to be irrevocable has been held to be within the section (*Re Kent & Sussex Sawmills Ltd* [1947] Ch 117). It has been held that cash at the bank is not a book debt although the relationship of banker and customer is that of debtor and creditor (*Watson v Parapara Coal Co* (1915) 17 GLR 791; *Re Brightlife Ltd* [1986] 3 All ER 673. See also *Re Stevens* [1888] WN 110; *Re Haigh's Estate* (1907) 51 Sol Jo 343; *Stanley Stamp Co v Brodie* (1914) 34 NZLR 129). Recent authority suggests that a right of retention under a financing agreement is not a charge on book debts since a debtor cannot take a charge over his own indebtedness to a creditor (*Re Charge Card Services Ltd* [1987] BCLC 17).

Floating charges

Floating charges have been discussed already. Section

102(2)(d) refers to floating charges on the undertaking or property of the company. *Gore-Browne on Companies* mentions that there is some doubt as to whether a floating charge over a particular class of assets is covered (*Gore-Browne on Companies*, paras.18-19). It is difficult to see how the doubt arises since it would appear to be clearly covered. Special problems arise in respect of priorities and in particular the effect of restrictive clauses on priorities (see later: registration and priorities).

Effect of non-registration

A charge created by a company in New Zealand which is not registered within 30 days of its creation is not totally void. It is void as against the liquidator and any creditor of the company so far as any security on the company's property or undertaking is conferred thereby, unless it is validly registered under any other Act (s.103(1)(a) and (2)). This means that it is not void as against the company or any purchaser or volunteer. In *Mercantile Bank of India Ltd v Chartered Bank of India* [1937] 1 All ER 231 letters of hypothecation over goods in India were held by Porter J. to constitute floating charges and should have been registered. However, since the charges remained valid against the company the chargee was able to convert the charges into fixed charges and perfect them by seizure before liquidation. This was held good against the liquidator. Until seizure the security in the charges was void as against other creditors. It is arguable that seizure and sale were necessary. (*Re J & D Contracting Pty Ltd* [1970] QWN 40).

It is the security, not the contract to repay, which is void. The latter continues and ranks in a liquidation as an unsecured debt. Section 103(2) makes the money immediately payable when the security becomes void. Until liquidation the chargee has all the remedies of a creditor against the company but cannot claim priority over a subsequent creditor whose charge is registered before his (*Re Monolithic Building Co* [1915] 1 Ch 643).

Registration and priorities

Under the case law rules, a subsequent legal charge ranks before an earlier equitable charge provided the holder of the legal charge is bona fide and without notice. Amongst equitable charges the first in time prevails. Registration has the following effect on those priorities. First, an unregistered charge which is void under s.103(2) loses its priority. Secondly, registration under s.102 gives rise to constructive notice of the charge, but priority is otherwise determined by the date of creation of the respective charges. There is constructive notice of the charge and its contents in the case of land, chattels and book debts, but not choses in action other than book debts. However, even in respect of the third category there may be actual or inferred knowledge of the contents including a restrictive clause (see Farrar [1974] Conv (NS) 397). Notice or knowledge or a restrictive clause postpones a later specific charge.

The following table attempts to apply the basic rules in diagrammatic form.

LC = legal charge	K = knowledge or notice
FC = floating charge	CN = constructive notice
FEC = fixed equitable charge	UR = unregistered
RC = restrictive clause	

The order of creation is indicated by the sequence; the order of priority by the numbers. 1-8 assume both charges are duly registered. The position in 7 is arguably based on the presence in the relevant case of a clause enabling a subsequent floating charge over part of the assets to be created ranking in priority: (*Re Automatic Bottlemakers Ltd*) [1926] Ch 412). Otherwise it is logically inconsistent with 6. It is the specificity of the charge not the specificity of its subject matter which influences priorities.

1	LC 1	FC 2
2	FC 2	LC 1
3	FC RC 1	LC (K or CN) 2
4	FC 2	FEC 1
5	FC RC 1	FEC (K or CN) 2
6	FC 1	FC 2
7	FC whole 2	FC part 1
8	FC whole + RC 1	FC part (K or CN) 2
9	LC UR void	FC 1
10	FC RC (UR) void	LC (K or CN) 1
11	FC (UR) void	FC 1

Mistakes and the conclusiveness of the Registrar's certificate

Under s.105(2) the Registrar must issue a certificate of registration and this constitutes conclusive evidence that the requirements of the Act as to registration have been complied with. This is so even if the particulars are defective (*National Provincial Bank v Charnley* [1924] 1 KB 431; *Re Mechanisations (Eaglescliffe) Ltd* [1966] Ch 20). The error in the particulars may even be in respect of the date of creation (*Re Eric Holmes (Property) Ltd* [1965] Ch 1052).

Rectification

Section 108 deals with rectification by registration out of time and for mistakes. Power is given to a High Court Judge to grant an extension of time or rectification proper on being satisfied that the error in question was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders or that on other grounds it is just and equitable to grant relief. It has been held that the Registrar has power to register out of time charges falling within the proviso to s.102(1) and s.104 (*Re Jim Boyd Motors Ltd* [1980] 2 NZLR 441). The power does not enable the Court to order deletion of the whole of the entry or to alter the date of registration of a charge which has been wrongly backdated.

Where cases fall within s.108 the Court may extend the time on such terms and conditions as seem just and expedient (*Re Heathstar Properties Ltd* [1966] 1 WLR 993). In fact the practice in New Zealand is to insert in the order the words "but this order to be without prejudice to the rights of parties acquired prior to the time when such debentures shall be actually registered" (See *Re Dalgety & Co Ltd* [1928] NZLR 731; *Re Cinema Art Films Ltd* [1930] NZLR 500; *Re Dudley Engineering Pty Ltd* [1968] 1 NSW 483; see *Anderson's Company Law Service* but cf. *Palmer's Company Law* Vol 1, para.46-10 for the different wording currently adopted in England). The purpose of this wording is to protect rights acquired against the company's property in the interval between the expiration of the 30 days and the extended time for registration.

Ordinary creditors are not protected by the wording unless liquidation intervenes between the order and actual registration (*Victoria Housing Estates Ltd v Ashpurton Estates Ltd* [1982] 3 All ER 665). Nevertheless they may be heard in opposition to the application (*Re Jack Harris Ltd* [1977] 1 NZLR 141, 142). Their opposition, however, is not fatal to an application. An order under s.108 will only be made after a winding up in the most exceptional circumstances (*Victoria Housing Estate Ltd v Ashpurton Estates Ltd* (supra) but see *Bloodstock Air Services of Australia Pty Ltd (in liq) v Roadrunner Equipment Pty Ltd* (1985) 3 ACLC 735).

IX FINANCING DEALERS' STOCK IN TRADE

Both the Chattels Transfer Act and the Companies Act allow security regimes which can be used for financing dealers' stock in trade. However, neither system (with the exception of the 1974 amendment to the Chattels Transfer Act) contains any provision which was specifically designed to deal with the financing of stock in trade. The term stock in trade covers goods in the possession of a manufacturer, wholesaler or retailer and held for the purpose of sale or lease. It includes raw materials, sold as such and goods in the process of manufacture. At retail level it includes both new and second hand goods. The distinguishing features of stock in trade are that the individual items turn over constantly in the course of business and the dealer needs to maintain a continuous line of stock to meet the customers' demands and because profit is linked directly with turnover stock is likely to be the operators largest single asset. This predicates medium to long term flexible methods of financing. In addition to security over the goods the financing arrangements might include security over intangibles, particularly book debts and the factoring of the debts.

Fixed and floating charges over stock in trade

Most dealers incorporate and are thus able to create a floating charge. There is some doubt as to whether it is possible to create a fixed charge over stock in trade. The debate is concerned with the possibility of a fixed charge over future assets or circulating capital. In the period between 1860-1880 the English courts seemed to be prepared to recognise a fixed charge over stock in trade whereas the modern tendency is a marked reluctance to accept it. The old cases appeared after the recognition in equity of fixed charges over future assets by the House of Lords in *Holroyd v Marshall* (1862) 10 HL Cas. 191 and were very numerous. Some examples are: *Re Marine Mansions Co* (1867) LR 6 Eq 601; *Leathem v Amour* (1878) 47 LJ (QB) 581; *Lazarus v Andrade* (1880) 5 CPD 318; *Taylor v M'Keand* (1880) 5 CPD 358; *Payne v Fern* (1881) 6 QBD 621; *Clement v Matthews* (1883) 11 QBD 808; CA; *Joseph v Lyons* (1884) 15 QBD 280, CA; *Hallas v Robinson* (1884) 15 QBD 288, CA; *Re Clarke* (1887) 36 Ch D 348, CA; *Taylor v Bank of New South Wales* (1886) 11 App Cas 596, JCPC; *Tailby v Official Receiver* (1888) 13 App Cas 523, HL; *Re Neal* [1914] 2 KB 910. Thus for instance in *Taylor v M'Keand* (1880) 5 CPD 358 a charge over present and future stock in trade with an express licence to deal was upheld. This line of cases tended to die out after the English Bills of Sale Act (1878) Amendment Act 1882 which required the goods charged to be identified in a schedule. Another contributing factor was undoubtedly the growth of an alternative in the form of the floating charge. However, it is unfortunate that these cases were frequently not cited in the floating charge cases and have been ignored in recent discussions in the floating charge cases. The cases are dealt with in a valuable unpublished paper by Peter Watts of Auckland Law

School entitled "Alternative Types of Charge over a Company's Business".

Fixed charges over future book debts have been recognised in some recent overseas authorities (see *Siebe Gorman & Co Ltd v Barclays Bank Limited* [1979] 2 Lloyd's Rep 142 and *Re Keenan Bros Ltd* [1986] BCLC 242 but compare *Re Armagh Shoes Ltd* [1984] BCLC 405 and *Re Brightlife Ltd* [1987] 2 WLR 197). The rigorous wording which is necessary to create a fixed charge in equity over future book debts which will not be regarded as a floating charge is likely to frustrate the widespread use of this device in practice.

It has been argued convincingly by Peter Watts that underlying the caselaw are important policy issues which the courts have been reluctant to discuss openly. He argues that it is statute law which is largely instrumental in changing the courts' attitude to fixed charges over stock in trade. There are three types of statutory provision which are relevant:

1. Those which confer priorities on tax and employee remuneration in a receivership or winding-up and which only apply over floating charges (see, for example, s.308 of the Companies Act). These provisions would be undermined by recognition of fixed charges over stock in trade.
2. Registration provisions which reinforce the position of a holder of a fixed charge.
3. Section 102(2) of the Companies Act 1955 whereby not all fixed charges created by a company are registrable under the Companies Act.

Only one of the recent cases which have examined the question has attempted to discuss the policy issues involved in any depth. This is the decision of the British Columbia Court of Appeal in *R v Federal Business Development Bank* [1988] 17 BCLR (2d) 273. This was a case involving priorities between a statutory lien for sales tax and a charge given to the defendant bank. The latter purported to be a fixed charge over the company's stock in trade and gave the company express permission to sell the stock in trade in the ordinary course of business until notified in writing by the bank. The majority of the Court of Appeal, while accepting the theoretical possibility of a fixed charge over future assets, nevertheless held that it was not possible to have a fixed charge with a licence to the chargor to deal with the assets in the ordinary course of its business. McLachlin J A said -

"Why did the courts reject the concept of a fixed charge with a licence to deal? In doing so, they undeniably limited the freedom of debtor and creditor to contract as they might choose in an age when freedom of contract was paramount. The answer, it may be suggested, lies in the effects which recognition of such a concept would have upon the rights of third parties and general commercial activity, as well as the perceived injustice of allowing the debtor to trade freely while remaining immune from the normal incidents of legal process [p.307] ... It would be unfair and inconsistent to

permit a debenture holder to grant to a debtor the right to carry on business, while insulating him from the usual incidents of doing business, such as seizure and sale by creditors and liens incidental to the business imposed by statute ... Any other conclusion would be contrary to ordinary commercial expectations and detrimental to the public interest [p.310] ... Suppliers of stock-in-trade would lose their usual rights of garnishment and seizure. It is not sufficient, in my view to tell them that they must be more careful or demand cash payment; such charges might materially reduce and constrict business and the flow of wealth and should not be adopted by the courts in the absence of cogent and compelling reasons [p.311]."

Wallace J A agreed. On the other hand Lambert J A was not impressed by the impact which the recognition of fixed charge over stock in trade would have on persons dealing with the company. Suppliers could keep close track of the account and, if they wish, insist on cash on delivery; buyers might, depending on the size of the transaction, take legal opinion or take out insurance. If the terms of a charge were too complex the business of the company might be frustrated. His Lordship was strongly opposed to the courts construing fixed charges as floating charges when it was contrary to the express wishes of the draftsmen.

It is thought that the policy reasons expressed by McLachlin J A would also apply to automatic crystallisation of a floating charge. Peter Watts argues convincingly that the statutory priorities should be replaced by a fair reform which affects both fixed and floating charges and provides contribution amongst chargees. He argues that a comprehensive regime along the lines of Article 9 would represent an improvement to the law and lead to the eventual demise of the floating charge.

Since 1974 it has been possible for an individual to create a fixed charge over stock in trade. The Chattels Transfer Act Amendment Act 1974 amended the 1924 Act by the introduction of s.26(1d), s.26(2) and s.18(a). Section 26(1d) makes it possible for sole traders and partnerships to give security over stock in trade and overcome the difficulties imposed by s.23 (schedule requirement) and s.24 (after acquired property). Section 18A protects the bona fide purchaser for value. These sections have been discussed in the previous chapter. In theory they facilitate fixed charges over stock in trade by both individuals and companies but in practice the reform did not prove popular until the advent of G.S.T. To some extent this was due to the conservatism of lending institutions who preferred the floating charge. Now since G.S.T. fixed charges over stock in trade are more popular since they give priority over G.S.T. claims by the Revenue.

Bailment transactions

Instead of taking a charge manufacturers sometimes make use of consignment plans and stocking or floor plans. Under a

consignment plan a master agreement is entered into which authorises the dealer to purchase goods from a supplier on behalf of and as agent for the financing creditor with the dealer taking possession of the stock. Ownership remains with the financing creditor but possession is delivered to the dealer. The creditor acquires legal title direct from the supplier. The dealer sells stock to trade customers as agent for the financing creditor and holds as agent and fiduciary the proceeds of such sales in trust for the financing creditor to the extent of the advance made to him by the financing creditor.

Under a stocking or floor plan the dealer himself acquires title to the stock under hire purchase from a finance house. The finance house normally enters into a master agreement with the dealer. In each case the finance house makes an advance to the dealer for the purchase of stock from a supplier or pays the supplier direct. The dealer can acquire title to the stock direct from the supplier and sell it to the finance house who then sells it back to the dealer on hire purchase terms or the finance house may take title at the outset, although possession is held by the dealer, and then sell to the dealer on hire purchase terms. The dealer is given possession by the finance house for the purpose of selling the stock in the ordinary course of business. The dealer under a stocking plan usually sells as owner (since the terms of hire with the finance house provide for title to pass to the dealer at the time of the dealer concluding a retail sale) but under consignment plan the dealer sells only as agent on behalf of the financing creditor as owner. In such schemes there is often a covenant to hold the proceeds on trust which, unless it is regarded as a covert charge on book debts, is not registrable. Both consignment and stocking plans have the same overall effect as a floating charge or a fixed charge under the 1974 amendment to the Chattels Transfer Act. Registration is possible under the Chattels Transfer Act but not the Companies Act but they are not usually registered under the 1924 act since there does not seem to be any real disadvantage in not registering them.

Reservation of property or title clauses

Reservation of property by a seller has always been possible under ss. 19 and 20 of the Sale of Goods Act 1908. Section 19 provides that property passes when the parties intend it to pass and s.21 enables a seller to retain a right of disposal. The latter is most common in export sales transactions. Since the decision of the English Court of Appeal in *Aluminium Industries Vaassen BV v Romalpa Aluminium Ltd* [1976] 1 WLR 677 in 1976 such clauses have become common in England and more recently in New Zealand and Australia. Since 1976 such clauses frequently have come before the English courts but as yet there is only one reported New Zealand case and one reported Australian case at High Court or Supreme Court level (*Len Vidgen Ski & Leisure Ltd v Timaru Marine Supplies (1982) Ltd in receivership* (1985) 2 NZCLC 99, 438; *Re Country Stores Pty Ltd* (1987) 11 ACLR 385).

The following principles emerge from the cases:

1. As we have seen a distinction can be drawn between simple and complex reservation of property clauses. A simple clause is one which merely reserves property in the goods sold until payment. A complex clause is one which goes further and purports to extend to proceeds of sale or new goods produced using the goods sold and other goods. A simple clause is valid under s.19 or s.21 of the Sale of Goods Act 1908 and is not registrable. A complex clause may, depending on the wording and the circumstances, give rise to the equitable remedy of tracing or be ineffective as an unregistered charge on book debts, bill of sale or floating charge. (*Clough Mill Ltd v Martin* [1984] 3 All ER 982, 985.)

2. Even a simple reservation of property clause can be defeated by sub-sale by the purchaser of the bona fide purchaser for value without notice. This will be either because the original purchaser is an agent with authority to resell or a buyer in possession under s.27(2) of the Sale of Goods Act 1908 (*Dayton Moneywright Scale Co Ltd v Mather* (1923) 18 MCR 86; *Re Interviu Ltd* [1975] IR 382; *Four Point Garage Ltd v Carter* [1985] 3 All ER 12). However, even in such a case it might be possible to claim a right to trace the proceeds. To do so will normally require the finding of a fiduciary relationship which would not be constituted by the simple relationship of seller and buyer (see *Len Vidgen Ski & Leisure Ltd v Timaru Marine Supplies (1982) Ltd (in receivership)* (1985) 2 NZCLC 99, 438).

3. As Sir Robert Goff LJ said in *Clough Mill Ltd v Martin* [1984] 3 All ER 982, 985:

"... it is of great importance to bear in mind that these cases have been concerned with different clauses, very often in materially different terms, that different cases have raised different questions for decision and that the decision in any particular case may have depended on how the matter was presented to the court, and in particular may have depended on a material concession by counsel. So this is a field in which we have to be particularly careful in reading each decision in the light of the facts and issues before the court in question."

4. Concepts like "bailment" or "fiduciary duty" must not be allowed to impose characteristics on the parties which are at variance with their expressed contractual intention. The starting point is always to be the contract itself (*Ibid*, 987).

5. As Donaldson MR indicated in *Clough Mill Ltd v Martin* (*Ibid*, 994) the object of the contract, for instance where it is intended to create a security for payment, is not necessarily determinative of the issue. What counts is the particular method adopted. This is orthodox commercial construction but clashes with the policy of insolvency law. The basic principle of insolvency administration is equal treatment of creditors. The courts are reluctant to recognize new forms of security or rights akin to security since this produces unequal treatment of creditors (See J H Farrar and N Furey [1977]

CLJ 27). The reasons why a simple reservation of property clause is valid are that the right is enshrined in the Sale of Goods Act and is ancillary to the contract of sale. These reasons are not the case with complex clauses or the right to trace and the onus is on the supplier to establish the necessary equity.

6. The fact that a contract allows a buyer to have extensive liberties towards the goods sold is not necessarily fatal to a reservation of property clause nor to the characterisation of the seller and buyer as bailor and bailee (*Clough Mill Ltd v Martin* [1984] 3 All ER 982, 993).

7. The courts will not necessarily regard a provision of a contract which in its terms is effective as being tainted by its proximity to another clause which is invalid as an unregistered charge (*Ibid*, 990).

It has been suggested that reservation of property gives rise to an instrument registrable under the Chattels Transfer Act 1924, although this point was not taken in the *Len Vidgen* case. This would be so unless it is regarded as a transfer of chattels in the ordinary course of any trade or calling within the exceptions to s.2(1). There is a full discussion of this in a note by Richard Scragg to be published in the 1987 edition of the *Canterbury Law Review*. Complex clauses will almost certainly fall outside this exemption and be registrable. Reservation of property clauses of the complex kind will be registrable under the Companies Act (if they fall within categories specified in s.102(2) of the Companies Act 1955). Frequently they will be registrable as corporate chattel security, fixed or floating charges or charges over book debts.

Key problems in the case of reservation of property clauses, apart from the question of the need to register are the existence of a fiduciary relationship for the purposes of equitable tracing, ownership and security interests over mixed goods at common law, and the distinction between a fixed and floating charge. An alternative to reservation of property is the use of the trust device. (See e.g. *Re Kayford Ltd* [1979] 1 All ER 604.)

Purchase money security interest

The priority given by Article 9 to a purchase money security interest is not clearly provided for under the Chattels Transfer Act. There is a limited provision in s.24 of the Chattels Transfer Act which provides that an instrument shall be void against the persons mentioned in ss. 18 and 19 in respect of after acquired property except in the case of a purchase money security interest. There are problems with the interpretation of this section as were highlighted in *Broadlands Finance Ltd v Shand Miller Musical Supplies Ltd* [1976] 2 NZLR 124. (See D McLauchlan, "Chattels Transfer Act The security that never was", (1977) NZLJ 118). There is no corresponding provision in the Companies Act. However, in *Re Connolly Brothers Ltd No. 2* [1912] 2 Ch. 25 the English Court of Appeal recognised the priority in equity of a purchase money security interest in land over a prior floating charge. Cozens

Hardy MR said that the courts would be shutting their eyes to the real transaction if they were to hold that the unencumbered fee simple was ever in the company so that it became subject to the charge of the debenture holders. The scope of this case and its application to property other than land are problematic. There is a need for legislation to clarify the matter.

The 1974 amendment to the Chattels Transfer Act and the law relating to floating charges goes some way to protect a bona fide purchaser for value. This is in spite of the doctrine of constructive notice under both regimes. However, neither system provides adequately for the resolution of problems of priority. This is particularly the case with the more complex priority questions which apply to intangible property and proceeds of sale. There is a tendency in the legislation and in the case law to look at the matter without regard to the underlying function of different types of security. The matter is resolved by the logic of the law rather than the 'living law' of commercial transactions.

X A SUMMARY OF THE DEFECTS OF THE PRESENT SYSTEM

Under the present system there is a multiplicity of forms each with their own regime which are not fully integrated by the statutory schemes. This creates law which is complex and almost as confusing to the profession as it is to lay people. There is a core of good sense in the New Zealand Chattels Transfer Act. This is largely the result of indigenous reforms - the assimilation of bailment and hire purchase, the recognition to some extent of purchase money security interests, flexible agricultural securities, facilitation of stock in trade financing, the protection of the bona fide purchaser for value without notice and the coverage of book debts. All these anticipate an Article 9 system but the reduction of them to statutory form is studiously repulsive and in some respects resembles an archeological digging of an early colonial site where each generation has left its own deposit with resulting complexity. This complexity and confusion leads to an increase in transaction costs, unnecessary risk in routine transactions and the possibility of real injustice.

Another substantial defect of the present system is the lack of a central computerised register for all chattel securities. The existence of two separate regimes is also intrinsically problematic. The Chattels Transfer system operates by a localised system of registration in the High Court. There are sometimes difficulties in determining the office at which to register an instrument under the Chattels Transfer Act and problems of taking security over goods which have yet to be brought into the jurisdiction. The Companies Act registration is based on the Commercial Affairs Division of the Justice Department. There is no co-ordination of the two systems. Both are manual systems with all the problems which arise from that and both require registration of a copy of the security document, causing enormous problems of storage for the registries. It would be interesting to know how many identical copies of the standard form of debenture of the major New Zealand banks are stored in expensive premises of the Commercial Affairs Division in Wellington and Auckland. Because both are manual systems, it is possible for the records to go astray or be destroyed or mutilated. Only one person can search the Companies register at a time. The existence of defined registration periods and the need for a registration out of time to be the subject of an application to the High Court is unnecessarily complicated and expensive.

The effects of registration under the two systems is not clear. Registration under the Chattels Transfer Act seems to be a priority point and yet this is eroded by some later provisions, one of which retains a concept of knowledge. The Companies Act system is an incomplete security system. Registration is not a priority point. Priority is determined by the date of the instrument. Non registration merely gives rise to invalidity of a charge as against the liquidator and creditors and it is difficult at times to determine priorities. To do so involves considering the fact of registration or non-registration and the common law and equitable priority rules.

In the case of corporate chattels securities there are difficulties which arise from the cross-referencing to the Chattels Transfer Act and there seems to be duplicated provision for book debts. There are problems of drafting with the attempt to incorporate hire purchase into the Chattels Transfer Act and then exclude customary hire purchase from the registration requirements. These provisions do not mesh with the companies provisions. There are subtle distinctions which arise with the two types of hire purchase and arbitrary category questions in determining what are customary hire purchase agreements. There are problems under both systems with determining the rights attaching to competing securities and there is no clear priority given to a purchase money security interest.

Neither system provides for the possibility of priority or subordination agreements although this problem is to some extent mitigated by the practice of some assistant registrars of companies of allowing documents to be filed which are technically outside the scope of the Companies Act. Neither system provides for variation of instruments. Neither system provides adequately for stock in trade financing. The 1974 amendments to the Chattels Transfer Act have not generally proved popular in practice. There are problems in creating a fixed charge over stock in trade. There are intrinsic problems with the floating charge which recent case law has highlighted - what interest is conferred before crystallisation, what constitutes crystallisation and what are the priority rules. Increasingly the protection afforded by a floating charge is being reduced by the inroads of reservation of property clauses and legislation giving priority to taxes and other preferred debts.

Reservation of property clauses are an area of continuing confusion and complexity. The registration requirements are far from clear under either system. There are problems under both systems with an attempt to take security over part of a chattel.

The list of registrable charges in the Companies Act needs up-dating and there needs to be some integration with the Chattels Transfer Act. Instead of a system based on constructive notice there should be a system of perfection based on the time of registration. There needs to be a statutory statement of priorities as in the Australian Companies Code or under Article 9 of the U.S. Uniform Commercial Code.

Lastly, there is a need for an integrated computerised system with terminals in all of the main centres. This should be coupled with the possibility of telephone searches.

XI REFORM OF THE LAW

Other jurisdictions

U.S.A.

Professor Grant Gilmore in his monumental work "*Security Interest in Personal Property*" Vol.I, chapter 9 p.288, described how by the 20th century there was a demand that all types of personal property be made available as security even though it was not possible or feasible for the lender to take it in pledge. In Vol.II, p.653 he stated "many lenders cannot take advantage of the copper-riveted security of pledge - either because the collateral, being intangible, is by its nature non pledgeable or because the economics of the loan arrangement are such that the debtor must be allowed to keep, use or even sell the collateral". This demand ran counter to long established rules of law which made sense against the background out of which they had evolved. Professor Gilmore argued that the development of the law to incorporate the change caused a disturbance which took more than 100 years to work out. In the course of this the law grew to a state of extraordinary complication in which a transaction relatively simple in itself had become fragmented. Article 9 represented an attempt at a synthesis of the fragments.

Work began in 1946 and 1947 on a draft of what later became Article 9 of the Uniform Commercial Code, a massive project to recast and modernize the commercial laws of the United States, much of which had hitherto developed from the English Common Law. Professor Allison Dunham was the reporter for the Article 9 draft. Professor Gilmore became associated with the project in 1948. The origins of what is now Article 9 seem to lie, at least in part, in an article by Professor Gilmore written with Professor Alan Axelrod entitled "Chattels Security" 57 Yale L.J. 517, 761 (1948). This article argued that the traditional line of chattel security devices should be abolished and in their place should be substituted a series of liens designed to cover particular financial situations. Professor Karl Llewellyn as Chief Reporter for the Uniform Commercial Code and Professor Dunham had independently arrived at similar conclusions. In discovering this coincidence of views Professor Llewellyn invited Professor Gilmore to serve with Professor Dunham.

In the course of drafting, Article 9 went through a number of transitions. The original idea was that all types of personal property should be recognised as available for security. However, it was envisaged that the various types of financing transactions would each require a separate statute. These would be drawn up on functional rather than legal conceptual bases. The five categories identified were:

- (1) inventory and accounts receivable financing;

- (2) financing on the security of long-term intangibles or contract rights;
- (3) industrial or business equipment financing;
- (4) agricultural financing;
- (5) consumer goods financing.

However, it was found that such an approach required a very elaborate classification with a considerable degree of repetition. Eventually the idea of six separate statutes was abandoned and Article 9 was re-drafted as one statute. Some of the original categorisation, however, survived the re-drafting process. The classification plays its principal role in the parts of Article 9 dealing with perfection of the security interest and the mechanics of filing, priority and default. We will shortly give an outline of the main features of Article 9.

In the course of drafting, opinions differed on whether consumer protection provisions should be included in Article 9. According to Professor Gilmore the "controversy over the consumer section was one of the most violent in the history of the Code's drafting. The decision to abandon the field was no doubt wise in view of the demonstrated impossibility of arriving at a satisfactory solution" (ibid Vol. I, p.293). The result is that in the main consumer protection is expected to be dealt with in separate specialised legislation.

Our main experience of Article 9 is through extensive discussions with members of the legal staff of Ford Motor Credit Company in Michigan, Professor L. Lysaght of the University of Detroit and a visit to the Article 9 registry in Springfield, Illinois.

Canada

In Canada, three provinces and the Yukon Territory have adopted systems based on Article 9. The first was Ontario. In 1960 a committee was set up under the chairmanship of Mr Fred Catzman QC which produced a draft bill four years later. The work was sponsored by the Attorney General of Ontario and the draft bill was published by the Ontario Queens Printer in 1964. The need for reform was explained by Mr Catzman in graphic terms. In his explanatory material accompanying the Draft Bill he said -

"The jungle of our personal property security laws has been a century in the making. From seeds planted in Victorian times, the assorted statutes now on our books have grown into a tangled mass, which has survived sporadic pruning and hacking. The urgent need is for a bulldozer to clear away the chaos, and for its replacement by a fresh and modern statute."

The Attorney General then referred the draft bill to the newly constituted Law Reform Commission of Ontario. The Commission produced two reports in 1965 and 1966 respectively. The Commission approved the concept but made suggestions for alteration of details

in the scheme. Their principal suggestions of keeping company charges outside the new scheme and having a period for registration have both proved to be mistakes which are in urgent need of reform. A Bill was introduced implementing the proposals as amended by the Ontario Law Reform Commission and was enacted as The Personal Property Security Act 1967. The Act, however, was not proclaimed in force until ten years later. This was because it was desired to introduce a computerised system and the planning took longer than anticipated. However, Ontario now has a centralised computerised registration system which we have seen in operation. The Ontario system is substantially based on Article 9 and in fact represents an attempt to translate U.S. terminology into the terminology of a commonwealth system. We have had lengthy discussions with some of the members of the original Catzman committee and its successor; members of the Ontario Law Reform Commission; leading Ontario lawyers and bankers; Professors McLaren, Geva, Trebilcock and Ziegel; Ms Rosemarie Gage, Registrar of the Personal Property Security Registry and Mr H Ozolins, Registrar of Corporations. In 1963 the commercial law section of the Canadian Bar Association set up a committee to make recommendations on the desirability of a Uniform Act on Personal Property Security Law. This was chaired by the Hon. R L Kellock QC and later Professor Jacob Ziegel. Ultimately the committee produced a model Uniform Personal Property Security Act which was approved by the Canadian Bar Association and later adopted by the 1982 Uniform Law Conference of Canada. We have had lengthy discussions with Professor Ziegel.

An earlier draft of the model act was taken as the basis of Manitoba legislation which was proclaimed in force on September 1st 1978. Legislation based on the later draft was introduced in Saskatchewan in the Personal Property Security Act which was proclaimed in force on May 1st 1981. The Saskatchewan Act contains a number of innovations and has not followed the original amendments by the Ontario Law Reform Commission to the Catzman Bill. We had extensive discussions with Professor Ronald Cuming QC in Saskatoon. Similar legislation has been introduced in the Yukon Territory. Reports in favour of the adoption of such legislation have been produced in British Columbia, Alberta and Quebec. Although none of the latter proposals have been implemented a new Bill is being prepared in British Columbia which may well be enacted in the near future. We discussed this with Professor Cuming and also with Mr Arthur Close, Chairman of the British Columbia Law Reform Commission. There is also a proposal for a single Personal Property Security Act for the four Western Provinces. With minor exceptions the Canadian statutes do not include consumer protection provisions. The intention is for such provisions to be the subject matter of separate legislation. However, this has not always occurred. See generally Jacob Ziegel, "The New Canadian Personal Property Security Legislation" (1986) Lloyd's Maritime and Commercial Law Quarterly 160; Ronald Cuming "Second Generation Personal Property Security Legislation in Canada" (1981-2) 46 Sask.L.Rev.5.

The United Kingdom

In 1968 a committee was set up under the chairmanship of Lord Crowther to enquire into the law and practice governing consumer credit. The committee made a number of recommendations some of which were incorporated in the Consumer Credit Act 1974. However, the committee also favoured reform of the law of personal property security and recommended the enactment of a statute based substantially on Article 9 of the Ontario Act. At the time no action was taken on this part of their report but three years ago the Department of Trade and Industry commissioned Professor Aubrey Diamond to prepare a report on the matter. In 1986 he prepared a discussion paper which seemed to favour the resurrection of the Crowther proposals. We have had correspondence with Professor Diamond and consider the present position later in this report.

Australia

About the same time as the Crowther Committee reported there was a similar report in Australia. This was the Molomby Report which was originally appointed by the Law Council of Australia and later reconvened by the Victorian Attorney General to consider an earlier report produced by the Adelaide Law School. The Molomby Report also favoured an Article 9 approach but this aspect of their Report was not implemented. There were, however, reforms to motor vehicles in some states and reforms to company charges. We have had discussions and correspondence with leading Australian practitioners and academics. We consider the Australian reforms later in this Report.

New Zealand

In New Zealand there were two reports dealing with the matter in 1973. One was a report of the Legal Research Foundation and the other was a report of the Contracts and Commercial Law Reform Committee. These reports were followed in 1982 by a report by Mr D F Dugdale to the Minister of Justice on the reform of the law as to chattel securities and in 1984 by the report of a Working Party chaired by Mr John Lusk to review Clause 12 of the Companies Amendment Bill (No.2) 1982 (the latter reports will be known hereafter as "the Dugdale Report" and the "Lusk Report").

Report of the Legal Research Foundation

The Legal Research Foundation recommended centralised registration for New Zealand to replace the existing system. It was thought that the Post Office would be the best arm of government to deal with the matter. This would enable a central registry to be set up with access to it from the nearest Post Office. Instruments and charges relating to motor cars should come under the centralised system. It was felt that the need for a centralised registration also applied to companies but that registration at the Companies

Office should be retained. There should, however, be a requirement that the Registrar should transmit particulars of the charge to the Chattels Transfer Registry. The Committee recommended the abolition of the 21 day period for registration. An assurance fund should be set up. This would unavoidably increase costs. In other parts of their report the committee recommended the abolition of s.57 of the Chattels Transfer Act 1924, i.e. the privilege of customary hire purchase agreements to be exempt from registration. The effect of this would give dealers an option whether to register to obtain full protection. The committee favoured these and other ad hoc amendments which, it recognised, were patchwork revision, but felt that these were necessary because of the urgency of the matter. However, it was felt that such patchwork legislation should not be regarded as a substitute for a more comprehensive system similar to Article 9 of the U.S. Uniform Commercial Code.

Report of the Contracts and Commercial Law Reform Committee

The Contracts and Commercial Law Reform Committee favoured the setting up of a central registry on the lines that the foundation had suggested. It also supported the proposal to abolish the status of the customary hire purchase agreement. The committee accepted the piecemeal approach to reform but considered at the same time that the same rules should govern the grant of security over chattels regardless of the form used and regardless of whether the debtor was a company or an individual. However, it had reservations about adopting something along the lines of Article 9. The only legislative reform to arise out of the 1973 reports was the 1974 amendment to the Chattels Transfer Act 1924 to facilitate stock in trade financing.

The Dugdale Report

Mr Donald Dugdale was commissioned by the Minister of Justice to visit South Australia and Victoria to investigate recent developments in the law relating to chattels security. In his report he identified the policy objectives of a chattels security law. He stated these as follows:

- (a) The objective of publicly notifying the fact that the possessor of chattels is not their true owner. He argued that this policy objective is not appropriate to a more commercially sophisticated age.
- (b) The protection of the secured party.
- (c) The protection of the bona fide purchaser for value.

He recognised, however, that in the working out of any detailed legislation a host of subsidiary policy issues would arise. He considered for instance that there were good grounds for contending that no chattels securities scheme should force lenders to require borrowers to incorporate. He also regarded consumer protection as

adequately catered for by the Credit Contracts Act 1981 and said that any new chattels security legislation "should be sternly regarded as a technical or machinery measure and should not be cluttered with any provisions having consumer protection as their purpose". He then considered the mechanics of achieving these policy objectives. He identified these as -

(1) A register of title to chattels. He thought that although a register of title to chattels had operated successfully in the case of chattels of high value such as ships and in some jurisdictions motor vehicles it was obvious that a register of title to chattels could not provide a general solution to the problem.

(2) A register of instruments. He referred to the fact that all systems seem to be based on this concept.

(3) No register. He recognised that this option necessarily involves the abandonment of the first policy objective and the need for appropriate rules to do justice between competing claimants. This involved either enforcement of the Nemo Dat rule or a tinkering with the existing exceptions. Mr Dugdale recognised on the one hand that there was a system of registration of title in respect of merchant ships already in force and on the other hand that the present provisions regarding customary hire purchase was a system divorced from any requirement of registration.

Mr Dugdale indicated that other commitments had prevented the Contracts and Commercial Law Reform Committee from returning to the topic of chattels security law for some time after the Amendment Act of 1974. When it did return to the topic the Committee was aware of new developments in Australia and this was the reason why he was sent to investigate those developments. His report then summarised the South Australian and Victorian developments. His view was that the Victorian scheme which combined registration of security interests over motor vehicles, amendments to Nemo Dat and a statutory compensation scheme represented some improvement. This scheme is discussed later in this report. Mr Dugdale referred to the possible injustices to dealers. He thought, however, that the introduction of such a scheme might not be economically feasible in New Zealand and if so a package along the following lines should be considered -

(1) All requirements for registration where the debtor was not a corporation should be abolished.

(2) There should be a provision defeating a secured party's title in favour of bona-fide purchasers other than dealers in transactions say below \$20,000.

(3) Other cases should be dealt with under the Nemo Dat rule and exceptions.

(4) Finance houses should be encouraged to work out a system of title insurance.

(5) There should be a substantial one off financial grant made to the Motor Vehicle Dealers' Institute to set up some private enterprise information service in conjunction with the Finance Houses Association.

(6) The statutory "Advice to Purchasers" in Part II of the Hire Purchase Act 1971 should contain a warning about the criminal consequences of fraudulent disposal of goods and the Chattels Transfer Act should contain a similar provision in respect of other chattel securities.

Nothing was done to implement the Dugdale Report.

The Lusk Report

The Working Party chaired by Mr John Lusk was set up by the Hon J K McLay as Minister of Justice to review clause 12 of the Companies Amendment Bill (No. 2) 1982. This clause contained a number of provisions attempting to assimilate the company charges provisions with some of the provisions of the Chattels Transfer Act and to implement some of the reforms proposed by the U.K. Insolvency Law Review Committee. The Lusk Report said that it remained to be seen whether the Victorian scheme mentioned by the Dugdale Report provided a workable solution to the day to day practical problems which arise in the area of chattel securities. The Working Party was nevertheless conscious of harmonising New Zealand commercial law with Australian law in the spirit of C.E.R. However, in the case of the reform of company charges in the Australian legislation of 1981 there was no attempt to integrate the corporate and non-corporate systems. The Working Party identified two fundamental problems. The first was the identification of the purpose of registration which was ambiguous under the existing legislation and the authorities. It was undesirable to extend the existing legislation significantly when the true objective of the legislation was unclear. Secondly there was a real need to have a complete review of both systems of registration. In the Working Party's view the objective should be simply to disclose the existence of a charge rather than to indicate credit-worthiness. Registration could also achieve other objectives such as establishing priorities. The Working Party referred to the principal differences between the two systems and suggested that the matter could be resolved in one of the following three ways -

- (1) The setting up of a new committee to consider the above schemes.
- (2) By directing the Contracts and Commercial Law Reform Committee to work in conjunction with the Working Party, or
- (3) by the Working Party being asked to proceed without regard to the work of the Contracts and Commercial Law Reform Committee.

In the end Clause 12 of the Companies Amendment Bill (No.2) 1982 was not enacted and no further steps were taken to implement either of the three alternatives suggested by the report.

XII THE BASIS OF A RATIONAL AND FAIR SYSTEM

General principles

Before getting embroiled in detail it is necessary to consider what are the essentials of a rational and fair system. In an article in the Law Quarterly Review, "The Modernisation of Personal Property Security Law" (1984) 100 LQR 234 at p.237, Professor Roy Goode, a distinguished English Commercial Lawyer with extensive experience in practice as well as a teacher of law, identified these as the five features.

1. That all transactions intended as security should be regulated as secured transactions, regardless of the technical legal form in which they are cast.
2. That in any transaction thus characterised as a secured transaction the creditor's interest should be limited to a security interest, that is, to what is necessary to give him the amount he is owed, together with interest or charges.
3. That a person who in good faith acquires an interest in an asset of the debtor company should not be subordinated to a prior security interest of which he had neither knowledge nor the means of discovery.
4. As a corollary of (3), that a secured creditor who wishes to leave the debtor in possession of the security should be furnished with simple, efficient and inexpensive legal machinery by which he may give public notice of the existence of his security interest.
5. The priority rules should be so designed as to avoid unjust enrichment of one creditor at the expense of others.

In "*Credit and Security in Australia - the Legal Problems of Development Finance*" pp.20-23, Professor David Allan and his co-authors gave more detailed criteria. These included the following:

Identification of the collateral

The general body of property law regulates the type of collateral. It should enable the lender to verify the borrower's interest quickly and certainly. Formalities for the creation of this security should be as simple and as cheap as possible but should provide a permanent record of the transaction.

Registration of the security

Registration should be essential as a form of public notification for the protection of the security except where this is

adequately provided by other means e.g. possession. Any system of registration should be simple and inexpensive. What should be registered is not documents but the fact of the security interest. The consequences of failure to register should be prescribed. This should be the invalidity of an unregistered security interest against third parties.

Priority of security interests

This should depend entirely on the time of perfection.

XIII AN OUTLINE OF THE MAIN FEATURES
OF ARTICLE 9 OF THE U.C.C.

Article 9 looks to the *substance* of the transaction, not the form. It catches all transactions intended as security, regardless of form. The parties can use whatever form they wish. Article 9 does not stipulate the particular form of security which must be used. Under the code the agreement is known as a *security agreement* and the interest it creates a *security interest*.

Article 9 applies to security over all types of personal property, tangible or intangible. Its approach is *functional*. There are special rules *inter alia* for inventory financing, equipment and consumer goods.

The person in whom the security interest is vested is called "the secured party" and the person who owes the obligation for which the security interest is security is called the "debtor". The subject matter of the security is called the "collateral". "Collateral" covers any kind of personal property but Article 9 creates a classification into different types of collateral: goods, documents of title, instruments, securities, chattel paper and intangibles.

Goods are divided into four sub-categories: inventory; consumer goods; farm products; and equipment.

Inventory is goods which are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

Consumer goods are goods used or brought for use primarily for personal, family or household purposes.

Farm products which is a category not adopted by the Canadians are goods which are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their manufactured states and if they are in possession of a debtor engaged in farming operations.

Equipment covers goods if they are used or bought for use primarily in business or by a debtor who is a non-profit organisation or government agency or if the goods are not included in the other categories. Thus equipment is a residual catch-all category.

Document of title includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers.

Instrument means a negotiable instrument or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in the ordinary course of business transferred by delivery with any necessary indorsement or assignment.

Chattel paper means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper. An example of a chattel paper in the New Zealand context would be a retail conditional sale agreement.

Two concepts are central to the scheme of Article 9. These are "attachment" and "perfection".

Attachment: Under Article 9-203(1) attachment takes place when (a) the collateral is in the possession of the secured party pursuant to the agreement or the debtor has signed a security agreement which contains a description of the collateral and where necessary a description of the land concerned (b) value has been given and (c) the debtor has rights in the collateral. Paragraph (a) reflects the fact that Article 9 is concerned with consensual transactions. Value is defined in Article 1-201(44). It normally means consideration for the purposes of the law of contract but includes past consideration. Requirement (c) may be satisfied by something less than title but more than mere possession of the goods (see *Cain v Country Club Delicatessen of Saybrook Inc* (1964) 203 A 2d 441; *Euroclean Canada Inc v Forest Glade Investments Ltd* (1985) 4 PPSAC 271 (Ont. CA)).

Perfection means taking the steps necessary to give the secured interest the greatest bundle of rights available under the legislation vis-a-vis other parties claiming an interest in the collateral. In other words perfection is about priority and does not necessarily refer to an absolute validity against third parties (Gilmore, "*Security Interests in Personal Property*", Vol.II, p.653). Perfection is achieved in one of two ways:

- (1) registration of the interest against the name of the debtor or
- (2) taking possession of the collateral.

In the case of some types of collateral such as goods and chattel paper the security interest can be perfected in either manner. In other cases, which are usually self-explanatory, perfection can only take place by one of these methods. The underlying logic is that for collateral which has some of the attributes of negotiability the only sufficient method is by taking possession. In the case of collateral with no physical or documentary existence the security interest may only be perfected by registration. Thus intangibles need perfection by registration. The prevalent Canadian philosophy is that all security interests

should be capable of perfection by registration. The closest thing to invulnerability under Article 9 is a purchase money loan on the security of goods over which the debtor is given no power of disposition but even this case can be subjected to a non consensual lien such as a common law lien (see Gilmore *ibid*).

One of the accomplishments of Article 9 was to facilitate a fixed security in stock in trade. Previously this had not been possible under U.S. laws because of the decision of the United States Supreme Court in *Benedict v Ratner* 268 U.S. 353. Technically that decision only applied to New York law although it was often cited in other jurisdictions. U.S. laws did not recognise the floating charge. The result of Article 9 is that *Benedict v Ratner* is overturned and it is now possible under Article 9 to create a fixed charge over fluctuating assets. In Canada where the floating charge was recognised the status of the floating charge under the Article 9 system has been the matter of some controversy. Eventually this debate will wither away as people see the wisdom of opting for a fixed charge over fluctuating assets. If it is possible to create a fixed charge over fluctuating assets in the case of a company then there will be the immediate advantage under the law as it now stands of the secured creditor having priority over the revenue.

Article 9 provides a simple system of filing based on the concept of "notice filing". The idea is to confine the particulars to a minimum.

Article 9 adopts a set of priority rules based not on the traditional legal or on equitable rules but on sound commercial conceptions of what is a fair result in the typical case. The essence of the system is that filing is a priority point. A perfected security interest in an inventory carries through to proceeds subject to some qualifications requiring reperfecting in some cases.

The main priority rules are that amongst unperfected creditors the first to attach has priority. Where one creditor has perfected his or her secured interest he or she has priority. Amongst perfected creditors the general rule is priority is given to the interest filed first. There are, however, special rules for purchase money security interests which are given a measure of super priority. In addition there are detailed sub-systems which apply to different types of collateral.

Article 9 also contains a code of remedies applicable on default by the debtor. Upon the debtor's default the secured party can take possession of the collateral, he or she may also dispose of the collateral and apply the proceeds towards expenses and the amount of the indebtedness. In limited circumstances the defaulting debtor has the right to redeem the collateral or reinstate the security agreement.

XIV TRANSACTIONS INCLUDED AND EXCLUDED FROM ARTICLE 9 SYSTEMS

As we have seen above, the concept of a security interest covers every interest in personal property or fixtures which secure payment or performance of an obligation. Thus pledges, chattel mortgages conditional sales, reservation of property clauses and trust receipts all fall within the broad definition. In addition certain rights which had hitherto not been considered security rights were also included e.g. the rights of the buyer of accounts or chattel paper. Leases of goods are only included in Article 9 and the Ontario and Manitoba Personal Property Security Acts if they are intended by way of security. On the other hand s.3 of the Saskatchewan Act expressly includes any leases having a term of more than a year. The reason for the latter was that it was thought desirable to avoid the difficult questions which had arisen in the cases of distinguishing those leases which are intended by way of security from those which are not. (See R C Cuming and R J Wood "*Handbook on the Saskatchewan Personal Property Security Act*", 27, 33.) Similar distinctions have been attempted in New Zealand - see for example s.3 (1)(e) of the Credit Contracts Act 1981 and s.22A of the Income Tax Act 1976.

Article 9 and the Saskatchewan Act include corporate securities. These were excluded from s.3(1)(c) of the Ontario Act at the suggestion of the Ontario Law Reform Commission but their exclusion has led to difficulties in practice. It has, therefore, been proposed that they should be included in a revision of the Ontario Act. The Manitoba Act includes them to some extent but does not go as far as the Saskatchewan Act. Certain matters which are outside the scope of Article 9 are nevertheless included on the register in Saskatchewan. This is for administrative reasons only.

All Article 9 systems apply only to consensual transactions. Thus liens given by statute or rule of law are excluded (Article 9-104(c); Ontario Act, s.3(1)(a); Saskatchewan Act, s.4(a)). Also excluded from Article 9 itself are:

- (i) a sale of accounts or chattel paper as part of a sale of the business out of which they arose or an assignment of accounts of chattel paper which is for the purpose of collection only. This exception is necessary because even absolute assignments of book debts (accounts) are registrable under Article 9 systems, not just assignments by way of mortgage as in New Zealand. Without this exception, a sale of a business (including its debts) would give rise to a need to register notice of the assignment;
- (ii) a transfer of an interest in a policy of insurance except as provided with respect to proceeds;
- (iii) a right of set-off;

- (iv) a transfer of an interest in any deposit account except in certain circumstances.

There are other items excluded but these are the principal ones (see generally Article 9-104, Ontario Act, s.3; Saskatchewan Act, s.4).

XV REGISTRATION

All modern Article 9 registration systems are based on the concept of notice filing rather than instrument filing. In this respect they differ markedly from the current New Zealand practice. Instead of a copy of an instrument being filed a simple notice is filed. In the U.S.A. this is known as a financing statement. Article 9-402(1) provides inter alia that:

"A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. It is however, possible in some U.S. jurisdictions to file a copy of the instrument if it contains the above information and is signed by the debtor."

In the U.S.A. Article 9 leaves it to the adopting state to determine what type of registration is necessary. The choice is basically between a centralised state wide filing system and a system of local filing. Largely for political reasons in the U.S.A. some limited local filing has been retained. All three Canadian provinces on the other hand have opted for a system of centralised notice filing in the provincial capital. This is fully computerised and linked with District Registries. However, all filing is done centrally. It is hoped, however, in the Canadian provinces to move to a system where creditors will be able to file their own notices on line. Examples of the different forms of notice are contained in Appendices C and E to this report. The Ontario Act originally required instrument filing but by amendments in 1973 (before the coming into operation of the system) it moved to a system of notice filing.

Notice filing is much simpler to administer than instrument filing but it does not give all the information which instrument filing does. However, since the principal purpose of searching a copy of an instrument on the register in New Zealand at the moment is to discover provisions which might affect the question of priorities, the replacement of the unsatisfactory amalgam of priority rules by a streamlined statutory system removes the need to search a copy of the instrument.

Ontario has had problems with the identification of debtors. This seems to be the result of its statutory regulations prescribing the details which required that the details of the debtor's name must include a middle initial and the inflexibility of its computer programme. With this can be compared the comparative simplicity of Article 9 itself which provides in para.9-402(8) that a financial statement substantially complying with the requirements of the

section is effective even though it contains minor errors which are not seriously misleading. This particular paragraph was amended in 1972. The U.S. courts have generally taken a fairly robust line in interpretation of this paragraph. Section 47(5) of the Ontario Act provides that an error of a clerical nature or in an immaterial or non-essential part of a financing statement that has not misled does not invalidate the registration or destroy the effect of the registration. The Ontario courts have frequently taken the view that things prescribed by the statutory regulations are material (see *Re Lavery* (1982) 3 PPSAC 1 but cf. *Re 533812 Ontario Ltd; Touche Ross v Ford Credit Canada Ltd* (1985) 5 PPSAC 128; (1987) 7 PPSAC xi). The section is likely to be amended to overcome this problem, following recommendation of an advisory committee which reviewed the Ontario Act.

The Saskatchewan Act on the other hand opts for a system which contains a more flexible searching regime and registration verification whereby on entry of the debt at the registry a verification statement is automatically produced and sent to the creditor for checking. In addition s.66(1) of the Saskatchewan Act provides:

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

As can be seen this wording adopts the phrase "seriously misleading" which appears in the revised version of Article 9-402(8).

The effect of registration, as we have seen, is that it is the main method of perfecting a security interest in collateral. Perfection is crucial to the statutory system of priorities. Section 53 of the Ontario Act, unlike Article 9 itself, provides that registration of a financing statement constitutes notice of the security interest. Section 51 of the Saskatchewan Act, however, provides that registration does not constitute constructive notice or knowledge of the contents of the document to third parties. There is no reason why, in an Article 9 system, the concept of constructive notice should be retained. It has no place in a system which is based on perfection of a security interest. To introduce doctrines whose implications are unclear runs the risk of jeopardising the whole system.

XVI PERFECTION

Perfection is a technical term used in Article 9. Although it is not sharply defined its function is clear. In order to gain priority over third parties the secured party must generally perfect his security interest. In some cases a security interest is perfected as soon as it attaches. In other cases it has temporary perfection for 21 days. In other cases it is perfected as long as the secured party keeps possession of the collateral. However, in the vast majority of cases the secured party must give public notice by filing a financing statement.

Article 9-302(1) excludes certain categories of security interest from the filing requirement. Of these the most important are:

1. A security interest in property in the possession of the secured party (see too s.24 of the Ontario Act; s.24 of the Saskatchewan Act).
2. A purchase money security interest in consumer goods (other than registered motor vehicles). (This is in fact an example of automatic perfection which is not found in the Canadian legislation.)
3. An absolute assignment of accounts which does not transfer a significant part of the outstanding accounts of the assignor. (This has not been adopted in Canada.)
4. A security interest temporarily perfected in instruments or documents under Article 9-304 (s.26 of the Ontario Act; s.26 of the Saskatchewan Act).
5. A security interest in proceeds of sale or disposal of collateral for a 10 day period after such disposal if the security interest in the original collateral was perfected (Article 9-306(3)). (Compare s.28(3) of the Saskatchewan Act.)

Possession without filing can perfect a security interest where the collateral consists of goods, money, documents, instruments or chattel paper (Article 9-305; s.24 of the Ontario Act; s.24 of the Saskatchewan Act). Generally speaking, accounts and general intangibles cannot be perfected by possession because they are not regarded as possessable. On the other hand, subject to what we say below, security interests in instruments can only be perfected by possession, subject to the possibility of temporary perfection. (Article 9-304(4)(5); s.26(2) of the Ontario Act; s.26(2) of the Saskatchewan Act.)

The Saskatchewan Act is peculiar in that it permits the registration of a security interest in any type of collateral including highly negotiable collateral such as money and bills of exchange. It is likely that this feature of the Saskatchewan Act will become general throughout Canada eventually.

XVII PRIORITIES

At the heart of any commercial security problem is the establishment of priorities. Under an Article 9 system the practical question to be asked is, is the security interest unperfected? If it is, then the secured party will have little priority. If on the other hand it is perfected then Article 9 specifies a number of rules. The principal rules are the first to file or perfect rule, the purchase money security interest rules and special rules which are applicable to fixtures, accessions and commingled goods. In addition there are rules governing competing claims to the proceeds of sale or disposition of the collateral. Finally there is the case of the persons against whom even a perfected interest holds no protection. The principal examples are a bona fide purchaser from a dealer in goods, and the holder in due course of a negotiable instrument.

There are two ways of approaching the priority rules of Article 9 - the first is to examine the special rules and then to consider the general propositions of Article 9-312 which cover all cases not subject to one of the special rules. This is the scheme of the draftsmen of Article 9. The second way is to treat Article 9-312 as general rules and the special rules as some kind of exceptions. This would have a certain logic about it but might lead one into error. We will, therefore, follow the draftsmen's intended scheme, recognising that for the purposes of this report we are merely skating over the surface of a complex set of propositions. The complexity is not simply the fault of the draftsmen but lies in the difficulty of the problem (see *Gilmore Security Interests in Personal Property*, Vol.II, p.657).

Purchase money security interests

There are special rules for purchase money security interests. Purchase money security interests can be divided into two species -

- (a) non-inventory purchase money security interests; and
- (b) inventory purchase money security interests.

Non-inventory purchase money security interests

A purchase money security interest in collateral other than inventory takes priority over conflicting security interests if the interest is perfected when the debtor takes possession of the collateral or within 10 days thereafter (Article 9-312(4) s.34(3) of the Ontario Act; s.34(1) of the Saskatchewan Act). The rationale of this is that by supplying the goods the creditor is augmenting the debtor's estate. Thus arguably the other creditors are in no worse position than if he had not entered into the purchase money agreement. The existence of a purchase money security interest arguably prevents a debtor from becoming dominated by his or her

existing creditors. The effect of this super priority is to cut across the general rule both in terms of time and in method of perfection. Knowledge of a prior interest is immaterial even where the interests were filed at the time of sale and known to the purchase money secured party (*Noble Co v Mack Financial Corp* 264 A 2d 325).

Inventory purchase money security interest

A creditor with a purchase money security interest in inventory is afforded super priority if the filing requirements are fulfilled:

1. The purchase money security interest must already be perfected at the time the debtor receives possession of the collateral. In other words there is no ten day grace period as in the case of non-inventory collateral (Article 9-312(3)(a); Ontario Act s.34(2); Saskatchewan Act s.34 (2)).

2. The purchase money secured party must give written notice to any other security interest holder of whom he knows or who has previously filed a financing statement covering inventory of the same type of goods as those contained in the purchase money security interest. This does not cover a person financing a debtor's accounts. The notice must be given prior to the date when the debtor takes possession of the collateral (Article 9-312(3)(b); Ontario Act, s.34(2)(b); Saskatchewan Act, s.34(2)(b)).

Other special rules

There are special rules for certain types of collateral. We will deal with the more important of these below.

Fixtures

The present rules are in contained in the 1972 version of the Code. First, it should be noted that these rules do not apply to perfected interests in readily removable factory and office machines or replacement of consumer goods which are domestic appliances. It is unlikely in any event that any of these are fixtures. Most security interests in fixtures will be purchase money security interests. Such interests prevail against most existing and future interests in the land provided the purchase money security interest is perfected by a "fixture filing" at the time the goods are fixed to the land or within ten days thereafter (Article 9-313). However, a lender who finances the construction of a building takes top priority as to all items that become part of the building during construction. Thus even a perfected purchase money security interest in goods becoming fixtures during construction will rank subordinate to it (Article 9-313(6)). It is of course possible to have express subordination agreements which vary these rules. In the case of non-purchase money security interests these will rank subordinate to a prior recorded interest in the land if they are

created more than ten days after the goods become a fixture. On the other hand they will prevail over subsequent parties if there is a fixture filing before the subsequent parties obtain their rights in the land. There is no special fixture filing provision in Canada as there is in the United States. In the Ontario and Saskatchewan Acts an interest in fixtures will have priority over a person with an interest in the land if the security interest attached to the goods before they became fixtures. A security interest that attached to goods after they became fixtures has priority over the claim of any person who subsequently acquired an interest in the land but not over a person who had a registered interest in the land at the time the security interest attached to the goods and who has not consented in writing to the security interest or disclaimed an interest in the goods as fixtures (Ontario Act s.36(1), (2); Saskatchewan Act s.36(1)).

Accessions

Where goods are attached to other goods Article 9-314 sets out rules which apply. (See too Ontario Act, s.37; Saskatchewan Act, s.37.) In general a creditor whose security interest attaches before the goods are affixed takes priority. Perfection is not required (Article 9-314(1) Ontario Act, s.37(1); Saskatchewan Act s.37(1)). A security interest which attaches to goods after they become part of the whole has priority over all persons subsequently acquiring interest in the whole (subject to certain exceptions) but not against any person with an interest in the whole at the time when his or her security interest attaches where the latter person has not consented in writing. Security interests under the previous rules do not take priority over -

- (a) a subsequent purchaser for value of any interest in the whole; or
- (b) a creditor with a prior perfected interest in the whole to the extent that he makes subsequent advances,

if the subsequent purchase is made or the subsequent advance made without knowledge of the security interest and before it is perfected.

Commingled goods

Linked with the question of accession is the question of the commingling of goods. Here the rules are set out in Article 9-315; Ontario Act, s.38; Saskatchewan Act, s.38. Where there is a perfected security interest in goods which have become part of a larger mass so that they are no longer identifiable the security interest continues in the mass as a perfected interest. This is regardless of identifiability. If there are competing interests in the mass then each ranks proportionately in the ratio which the original cost of the goods covered by the security interests bears to the total mass.

Proceeds

Prior to the UCC if a debtor was allowed to use or dispose of the collateral or retain the proceeds the security interest was treated as a floating lien (*Benedict v Ratner* 268 US 353 (1925)). The effect of *Benedict v Ratner* was that such a lien was fraudulent. Article 9-205 now expressly provides that a security interest is not invalid or fraudulent against creditors by reason of such a permission being granted to the debtor. Insurance proceeds are regarded as proceeds for this purpose. The secured party's rights in respect of proceeds arise by operation of law in accordance with presumed intent unless otherwise agreed (Article 9-306(2); cf. Ontario Act, s.27(2); Saskatchewan Act, s.28(1)). As long as the secured rights interest in the original collateral was perfected that interest will normally continue automatically to apply to identifiable proceeds. Under the Saskatchewan Act collateral in proceeds is treated for the purpose of perfection as if it were itself collateral. Unlike under the Ontario Act it is, therefore, necessary to describe the proceeds collateral in a financing statement (Saskatchewan Act s.28(2)).

In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

- (a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;
- (b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;
- (c) in identifiable cash proceeds in the form of cheques and the like which are not deposited in a deposit account prior to the insolvency proceedings; and
- (d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is -
 - (i) subject to any right to set-off, and
 - (ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of -
 - the payments to the secured party on account of cash proceeds received by the debtor during such period and
 - the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subs.(4). (Article 9-306(4))

In Canada the corresponding provisions in s.27 of the Ontario Act and s.28 of the Saskatchewan Act are much briefer and do not contain the detailed rules set out in Article 9-306(4). The reason for these differences is no doubt due to the fact that under the Canadian constitution bankruptcy is governed exclusively by federal legislation. The interest in proceeds will be extinguished if the proceeds are not identifiable or traceable (Ontario Act, s.27(2)). The terms used in s.27(2) are not defined and one has to turn to the case law to ascertain their meaning. The essence of "identifiable" at common law is that the claimant has a right in rem to the collateral giving rise to the proceeds. The property must be capable of being traced and it must not be unjust to allow the claimant to re-take possession (R McLaren "*Personal Property Security*" 4.02[2]).

The equitable remedy of tracing is more extensive than the common law right but it has been held by the Ontario Court of Appeal in *General Motors Acceptance Group of Canada Ltd v Bank of Nova Scotia* (1986) 55 OR (2d) 438 that it is necessary even for this purpose to establish the existence of a fiduciary relationship. The necessity for a fiduciary relationship is debatable in English law and Professor Jacob Ziegel strongly argues that it should be irrelevant as regards s.27(3) (J S Ziegel "Tracing of proceeds under the Ontario Personal Property Security Act: *General Motors Acceptance Group of Canada Ltd v Bank of Nova Scotia*" (1987) 13 Canadian Business Law Journal 177, 188 et seq). In Professor Ziegel's opinion the wording in s.27(2) is a "terminal test limiting the scope of the right to trace and was never meant to impose the additional requirement of a fiduciary relationship". He argues that it makes no sense to do so since there is already a perfected security interest in proceeds. In the *General Motors Acceptance* case proceeds of sale of inventory were held to be neither identifiable nor traceable upon deposit in the debtors active bank accounts. Thus aside from the fiduciary requirement the property was no longer identifiable in the hands of the defendant. For a discussion of the position in Saskatchewan law see R C Cuming and R J Wood "*A Handbook on the Saskatchewan Personal Property Security Act*", pp.142 et seq. and cf. Article 9-306(4)(b) and (d) above.

Future advances

The security agreement can create security interests in the collateral not only in respect of the original loan but also future loans by the same creditor (Article 9-204(3); Ontario Act, s.15; Saskatchewan Act s.14(1)). Where, however, the original security agreement does not cover future loans a secured party can still have priority over later creditors in respect of a future advance by filing or possession (Article 9-312(7); Saskatchewan Act, s.35(4)).

Special rules for buyers

Article 9 favours buyers of the collateral in certain circumstances. Thus under Article 9-307(1) (Ontario Act, s.39(1)

cf. Saskatchewan Act s.30(1)) a buyer in the ordinary course of inventory from a dealer takes prior to the rights of any secured party whether perfected or not. Article 9-308 (Ontario Act, s.30(2); Saskatchewan Act, s.31) gives protection to certain buyers of chattel paper and instruments, Article 9-309 (Ontario Act, s.31; Saskatchewan Act, s.31(4) to buyers of negotiable instruments and documents and Article 9-307(2) to consumers who buy household goods from other consumers.

Clearly, where the security agreement authorises a sale the buyer will take free of even a perfected security interest (Article 9-306(2); Ontario Act, s.27(1)(a); Saskatchewan Act, s.28(1)(a)). Such authorisation can be inferred from a course of dealing. If, however, it cannot be established that the sale was authorised by the secured party Article 9-307(1) (Ontario Act, s.30; Saskatchewan Act, s.30) sets out rules which may allow the buyer to take free of the secured party's interest. The basic rule in Article 9-307(1) is - A buyer in the ordinary course of business other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his or her seller even though the security interest is perfected and even though the buyer knows of its existence. In order to fall within Article 9-307 (1) six conditions must be satisfied:

1. The buyer must be in the ordinary course.
2. He must not take his interest as security for a pre-existing debt i.e. he must give new value.
3. He must buy from one who is in the business of selling goods of the kind bought.
4. He must buy in good faith and without knowledge that the purchase is inconsistent with another's ownership rights or security interest.
5. The purchase must not be of farm products from a person engaged in farming.
6. The security interest must be one created by the seller himself. (See White & Summers, *Uniform Commercial Code Handbook*, p.1067.)

In determining the meaning of ordinary course there seems to be a conflict between the provisions of Article 9-307(1) which protects an ordinary course buyer "even though [he] knows of [the security agreements] existence and the definition of "buyer in the ordinary course of business" in Article 1-201(9) as a person who buys "without knowledge that the sale to him is in violation of the ownership rights or security interest of a third person". The conflict can be resolved by saying that the buyer may know that a security interest exists but he must not know that the purchase is in breach of that security interest. (See *O M Scott Credit Corp v Apex Inc* 198 A 2d 673.)

Where a consumer buys goods for his or her personal use and then sells them to another consumer a conflict may arise between the rights of the subsequent consumer and a person holding a security interest in the goods from the original consumer. Such a sale would not fall within Article 9-307(1) because the second consumer would not have purchased from someone "in the business of selling goods of that kind". However, Article 9-307(2) may protect the second consumer. It provides:

"In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods."

In order to fall within this provision the goods must be consumer goods in the hands of both the first and second consumers. In practice purchase money security interests are rarely protected by filing. It is usually not worth the cost and the likelihood of resale is regarded as low.

The Ontario Act simply provides in s.30(1) that a purchaser of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by his seller even though it is perfected and the purchaser actually knows of it. This gives no protection to a person who subsequently buys from the original buyer, even though the original buyer was protected. In contrast s.30 of the Saskatchewan Act sets out a number of detailed rules. These provide as follows:

First, a buyer or lessee of goods sold or leased in the ordinary course of business of the seller or lessor takes free of any perfected or unperfected security interest whether or not the buyer or lessor knows of it unless the secured party proves that the buyer or lessor also knows that the sale or lease constitutes a breach of the security agreement (Saskatchewan Act, s.30 (1)). Secondly, a buyer or lessee of goods bought or leased primarily for personal, family, household or farming uses takes free of a perfected security interest in the goods if:

- (a) he gives new value for his interest;
- (b) he bought or leased the goods without notice of the security interest; and
- (c) he receives delivery of the goods. (s. 30(2))

However, the second rule does not apply to a security interest in -

- (a) a motor vehicle as defined in the regulations;
- (b) fixtures; or
- (c) goods whose purchase price exceeds \$500 or, in the case of a lease, whose retail market value exceeds \$500. (s.30(3))

Certain sales are excluded from s.30(1) and (2). Thus a transfer

as security for a money debt or a past liability are excluded. There are special rules protecting a buyer or lessee from a security interest which is temporarily perfected.

The Saskatchewan Court of Appeal has held that a sale "in the ordinary course of business" includes a sale to the public at large of the type normally made by the vendor in a particular business where the basic business dealings between buyer and seller are carried out under normal terms and consistent with general commercial practice. It does not include private sales between individuals. (*Royal Bank of Canada v 216200 Alberta Ltd* [1987] 1 WWR 545.) Section 30(2) is a much wider provision but limited in scope. Such a provision is consistent with Saskatchewan's tradition of protecting small consumers and farmers. (See generally R C Cuming and R J Wood "A Handbook on the Saskatchewan Personal Property Security Act", pp.167 et seq.)

Purchases of chattel paper and non-negotiable instruments

Such purchases fall outside Article 9-307(1) but may be protected by Article 9-308; Ontario Act, s.30 (2) and (3); Saskatchewan Act, s.31. This provides that a purchaser of chattel paper or of an instrument takes free of a filed or temporarily perfected security interest if he or she has done the following three things:

1. given new value;
2. taken possession of the paper or instrument in the ordinary course of his or her business;
3. taken without knowing that the paper or instrument is subject to security interest.

Even where the purchaser knows he will still take free of an interest which is claimed merely as proceeds of inventory subject to a security interest.

Purchasers of negotiable instruments etc.

Article 9-305 (Saskatchewan Act s.31(4); cf. Ontario Act, s.31) provides that a secured party is subordinate to the rights of a holder in due course of a negotiable instrument. This is the case even where the security interest is perfected or temporarily perfected.

Residual general rules

Unperfected creditors

Here the rules are as follows:

1. If all the relevant creditors are unperfected then the order of attachment determines priority (Article 9-312(5)(b)); Ontario Act

s.35(1)(c); Saskatchewan Act, s.35(1)).

2. An unperfected creditor ranks subordinate to a creditor who has perfected a security interest in the collateral first. Knowledge and the time of attachment are irrelevant.

3. Certain judicial and statutory liens and the Trustee in Bankruptcy rank in priority.

4. A purchaser of the collateral for value takes free of an unperfected security interest as long as he or she has no knowledge of the unperfected interest (Article 9-301(1); s.22 Ontario Act; s.20 of the Saskatchewan Act).

Perfected creditors

Here the general rule under an amendment of Article 9 in 1972 is that priority goes to which ever secured party is the first either to file or perfect his or her security interest (Article 9-312(5)); s.35(1) of the Ontario Act; s.35(1) of the Saskatchewan Act). Thus the person who files first obtains priority even though a later creditor perfected first e.g. by taking possession. Knowledge of the other creditor's unperfected security interest is irrelevant as is the date when the competing security interest attached.

Conclusion

The priority provisions of Article 9 are undoubtedly complex and no doubt Article 9 engenders a few new priority problems. Nevertheless most of the problems which it deals with existed under the pre Code law and are implicit in our law. As Grant Gilmore stated "The Article's attempt to deal explicitly with what have long been notably obscure areas in our security law is undoubtedly one of its most original and interesting contributions" (*Security Interests in Personal Property*, Vol.II p.657).

XVIII REMEDIES

Article 9 provides a unitary system of remedies on default. Default is defined in s.1(h) of the Ontario Act as the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable (see too the Saskatchewan Act s.2(1)). As some of these remedies differ slightly from existing New Zealand remedies we will attempt to summarise them. In considering proceedings under Article 9 the parties need to ask first of all whether default has occurred, secondly what remedies are provided in the security agreement itself and then what remedies are provided by Article 9. The remedies provided by Article 9 are that the creditor might (1) sell the collateral, (2) retain the collateral in full satisfaction of the debt, subject to certain limitations as regards consumer goods, or (3) ignore the collateral and sue on the debt. These are essentially the same as the rights under New Zealand law.

As to what occasions default, one must look at the terms of a security agreement. Article 9 does not as such establish the conditions constituting default. In this connection it might be necessary to consider such matters as acceleration clauses, so-called insecurity clauses, and waiver of defences. An acceleration clause is one that gives the secured party the option of declaring the entire unpaid balance immediately due on the occasion of some default. Such clauses are authorised by Article 1-208 of the UCC but the exercise of the right in relation to deemed insecurity provisions is limited to cases where the secured party "in good faith believes that the prospect of payment or performance is impaired". Thus it is not possible to rely on an acceleration clause for trivial defaults. On the other hand the burden is on the debtor to show that the secured party was not acting in good faith (see s.18 of the Ontario Act and s.16 of the Saskatchewan Act).

An "insecurity clause" is one which gives the secured party the right to declare the entire obligation due at will or when he deems himself insecure. Such clauses are also subject to the standard of good faith although the courts are divided as to the standard required in practice. There is a division of opinion in the cases between a subjective test and an objective test. It is thought that the objective test is the preferable one. (See s.18 of the Ontario Act and s.16 of the Saskatchewan Act.)

Security agreements often contain clauses which purport to waive defences against assignees. Article 9-206 provides that except in relation to consumer goods such waivers are valid if an assignee purchases the security agreement in good faith and without notice of any defences that the buyer or borrower might have against the assignor. Article 9-206 (s.16 of the Ontario Act) expressly provides that the validity of waiver clauses in the case of consumer goods must be determined by other statutes. Some jurisdictions such as California outlaw such waivers in the case of a sale or lease of consumer goods.

In contrast to earlier law Article 9-501(1) provides that a secured creditors rights and remedies are cumulative. In other words he is not put on election. The three basic remedies are: (1) sale or other disposition of the collateral (Article 9-504; s.59 of the Ontario Act; s.59 of the Saskatchewan Act); (2) retention of the collateral (Article 9-505 s.61(2) of the Ontario Act; s.61 of the Saskatchewan Act); or (3) an action for the debt (Article 9-501(1); s.56(3) of the Ontario Act; s.56(6) of the Saskatchewan Act. It is important to bear in mind here that US laws do not make use of receiverships in this connection. In U.S. jurisdictions parties normally seek to obtain possession upon default. Article 9-503 provides that as long as possession can be obtained without a breach of the peace the secured party may seize the collateral without judicial process. There is considerable jurisprudence on what constitutes breach of the peace, force and breaking and entry. The law on this is less relevant to the New Zealand context.

In lieu of other remedies the creditor may elect to keep the collateral and write off the rest of the debt. This procedure which is known as "strict foreclosure" is authorised by Article 9-505; Ontario Act s.61(2)-(3); Saskatchewan Act, s.61 (2)-(3)). There are exceptions, however, in relation to consumer goods where the debtor has already paid at least 60% of the cash price. We will deal with this later. In other cases of strict foreclosure the secured party must send a written notice of his intention.

Article 9 provides considerable flexibility with regard to the disposition of the collateral by sale. It is possible to sell, lease or otherwise dispose of the collateral under Article 9-504; Ontario Act, s.59; Saskatchewan Act, s.59. The code allows either public or private sale and the only real limitation is that the sale must be in good faith and conducted in a commercially reasonable manner. No particular time is specified within which the sale must be effected. There is a notice requirement except where the collateral is perishable goods or is of a type sold in a recognised market. The debtor, sureties and junior secured parties must generally receive notice. Notice is not required where the collateral is sold in a recognised market. Article 9 itself does not say how far in advance the resale notice must be sent although it is assumed that it must give the debtor a reasonable opportunity to redeem the goods or attend the sale. Some states have imposed a three day notice rule. Ontario has a 15 day rule and Saskatchewan a 20 day rule. A secured party has a right to bid at a public sale and in the U.S.A. in the case of a private sale he is entitled to bid if the collateral is of a type customarily sold in a recognised market or of a type subject to standard price quotations (Article 9-504 (3); Ontario Act, s.59(7); Saskatchewan Act, s.59(11)).

Article 9 provides for a strict priority as regards the application of the proceeds. These must be applied in meeting (1) the expenses of the secured party in connection with the default (2) the debt owed and (3) the indebtedness owed to other secured parties having interest in the collateral (Article 9-504(1); Ontario Act, s.59(1); Saskatchewan Act, s.59(1)).

The debtor may exercise a right of redemption at any time

prior to the date of disposal of the collateral or before the debtor's application has been discharged by the secured party's retention of the collateral (Article 9-506); Ontario Act, s.62; Saskatchewan Act, s.62). To redeem the debtor must tender the entire debt due plus any expenses of the secured party. The right of redemption cannot be waived by the debtor prior to default.

XIX CONSUMER PROTECTION

Although Article 9 contains some provisions which relate to consumer goods the general scheme is to leave consumer protection legislation intact and to subject Article 9 to it. (See Article 9-203 (4); Ontario Act, s.69; Saskatchewan Act, s.69). Consumer goods are defined by Article 9-109 (1); Ontario Act s.1(e); Saskatchewan Act, s.2(h) as goods used or bought for use primarily for personal, family or household purposes. This definition is relevant for seven other provisions of Article 9. These are -

1. Article 9-204(2) Ontario Act, s.13(2)(b) (attachment of after-acquired property clause).
2. Article 9-206(1) Ontario Act, s.16 (buyer's agreement not to assert defences against an assignee subject to statute or decision which establishes a rule for buyers of consumer goods).
3. Article 9-302(1)(d) (when filing not required).
4. Article 9-307(2) Ontario Act s.30(1); Saskatchewan Act, s.30(5) (when buyers from debtor take free of security interest).
5. Article 9-401(1)(a) (place of filing).
6. Article 9-505(1); Ontario Act, s.61 (secured party's duty to dispose of repossessed consumer goods).
7. Article 9-507(1) Ontario Act s.63 (secured party's liability for improper disposition of consumer goods after default).

In addition to these seven provisions the generally liberal treatment of the buyer for value under the priority rules will favour a consumer buyer.

Article 9-204(2), Ontario Act s.13 (2)(b) provide that no security interest attaches under an after acquired property clause in a security agreement to consumer goods (other than the accessions) unless the debtor acquires rights in them within ten days after the secured party gives value. Article 9-204, Ontario Act s.13 as a whole accepts the principle of a continuing general lien or charge. Article 9-204 (1), Ontario Act s.13(1) gives general legitimacy to such liens or charges. This was necessary in the U.S.A. because the previous case law had outlawed the floating charge. Article 9-204(2) cuts down the scope of this and limits the operation of the after acquired clause against consumers. There is no similar provision in the Saskatchewan Act. It was intended to cover consumer protection comprehensively in a separate act.

Clauses are frequently inserted in instalment purchase contracts under which the conditional purchaser agrees not to assert defences against an assignee of the contract. Under the wording of Article 9-204(1), such clauses are valid subject to any statute or decision which invalidates them in respect of consumer goods. In other words Article 9 itself does not invalidate them but leaves open the possibility that they are invalidated in whole or in part by consumer protection legislation. The Ontario Act s.16 outlaws them in the case of consumer goods.

Article 9-302 defines the instances where filing is required to perfect a security interest. Article 9-302(1) sets out a number of exceptions. One of these is Article 9-302(1)(d) which refers to a purchase money security interest in consumer goods except in relation to motor vehicles and fixtures. There does not appear to be an equivalent provision in the Canadian Acts. The origins of these provisions lie in the pre-code law whereby in a number of jurisdictions consumer goods under conditional sale or bailment leases were not subject to filing requirements. It should also be noted that although the security interest referred to in this paragraph is perfected without filing, Article 9-307(2) provides that unless a financing statement is filed certain buyers may take free of the security interest even though it is perfected.

Article 9-307(2) refers to consumer goods bought for value and for the buyers own personal, family or household purposes and provides that these shall take free of a security interest even though perfected if bought without knowledge of the security interest. The Saskatchewan Act contains similar but not identical provisions in s.30(5).

Article 9-401 is concerned with place of filing and need not concern us here.

Article 9-505(1), Ontario Act s.61 provide that if a debtor is paid 60% of the cash price in respect of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods and has not signed after default a statement renouncing or modifying his or her rights a secured party in possession must dispose of the collateral under Article 9-504 and if it fails to do so within 90 days after it takes possession the debtor may at his or her option recover in conversion (Article 9-507(1)). Article 9-507(1) Ontario Act s.63 deals with the secured party's liability for failing to comply with this part of Article 9.

Under Article 9-507, Ontario Act s.63 a court order may be granted to restrain a secured party from disposing of collateral in an unreasonable manner and it also provides for damages where the unreasonable disposition has been concluded. In the case of consumer goods it provides for a minimum recovery. This is an amount not less than the creditor's service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price (Ontario Act s.63(2)(b)).

If any reform is adopted in New Zealand based on Article 9 careful attention will need to be given to the relationship between the different overseas systems and also to the relationship between such provisions and existing consumer protection legislation. There is much to be said for leaving consumer protection provisions out of the Article 9 type of legislation provided that adequate protection is given elsewhere.

The experience of the U.S.A (although not necessarily the Canadian provinces) is that the flexible regime of Article 9

facilitates the granting of secured credit and enables a consumer to avoid being locked in to one creditor. In Canada this latter advantage has been lost because of the traditional pattern of dominance by one of the banks of a debtor's affairs and the taking by banks of wide ranging security under the Ontario Act. However, even here the Ontario Act by its clear provision of known rules and facilitation of subordination agreements enables a consumer to negotiate ad hoc arrangements in respect of later credit.

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XX ARTICLE 9 SYSTEMS AND RURAL DEBT FINANCING

Agricultural financing was one of the five major categories conceived by the draftsmen of Article 9. Agricultural security has its own problems and many of these had been brought home to the U.S.A. in the lean years of the Depression. Article 9 contains a number of provisions of relevance to agricultural financing but no separate regime as such. In this chapter we draw heavily on an unpublished paper of Professor Richard McLaren of the Faculty of Law of the University of Western Ontario.

Classification

Article 9-109 divides goods into "consumer goods", "equipment", "farm products" and "inventory". Farm products are defined as crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in the unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory. Goods are farm products only if they are in the possession of a debtor engaged in farming operations. Animals in a herd of livestock are covered whether they are acquired by purchase or result from natural increase. Products of crops or livestock remain farm products as long as they are in the possession of a debtor and have not been subjected to a manufacturing process. "Crops", "livestock", and "farming operations" are not defined but farming operations would seem from the text to include raising livestock as well as growing crops. Crops, livestock or their products cease to be "farm products" when they come into the possession of a person not engaged in farming operations. Thus they would cease to be farm products when they came into the possession of a marketing board or meat works for sale or distribution. In such cases they become inventory. Products of crops or livestock remaining in the possession of a person engaged in farming operations cease to be farm products if they are subjected to a manufacturing process. Manufacturing process is not defined by Article 9. The commentary indicates that at one end of the scale some processes are so closely connected with farming such as pasteurising milk that they would not rank as manufacturing. On the other hand extensive canning operations would rank as manufacturing. The line has to be drawn by the courts. After farm products have been subjected to a manufacturing process they become inventory if held for sale.

It should be noted that under Article 9-307 a buyer in the ordinary course who takes free of a security interest any goods held for sale does not include someone who buys farm products from a person engaged in farming operations.

The Canadian Acts do not use the concept of farm products. However, they do retain the substantive provisions of Article 9 which deal with farm products.

Creation of a security interest

The creation of a security in respect of farm products in the form of crops, farm property in the form of fixtures and farm animals in the form of livestock have all got special features which effect the creation of a security interest. The attachment of a security interest in farm products and farm property is governed by the general provision contained in Article 9-203 but in the case of crops the debtor is not considered to have rights in the collateral until they become growing crops (Ontario Act, s.12(2); Saskatchewan Act, s.12(3)).

Article 9-204 allows a security agreement to include after acquired property. However, inroads are made into this in the case of the Ontario Act. Under s.13(2)(a) no security interest attaches under an after acquired property clause to crops which become such more than one year after the security interest has been executed. There is an exception, however, in the case of a security interest in crops given in connection with a lease, purchase or mortgage of land which may expressly provide that it shall attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage. The object of this is to prevent long term arrangements involving crops as security. The former Bills of Sale and Chattels Mortgages Act 1970 prevented such arrangements. The justification for the policy of the section and the exception is stated in F Catzman *"Personal Property Security Law in Ontario"* (Carswells 1976) p.69 as being that long term arrangements involving crops should be dealt with as an interest in land. The Saskatchewan Act s.13(2) contains a similar provision.

Special priority rule for perfected security interest in crops

Article 9-312(2) (see too Ontario Act s.34(1); Saskatchewan Act s.34(6)) provides:

A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

The policy of this provision is similar to that of a purchase money security interest. The theory is that a secured party giving money to the farmer to plant current crops by giving new value ought to have priority over earlier security interests. The provision seems to be ineffective because three months before planting time is too short a period. Also the priority afforded by the provision is limited to priority over a security interest in crops where the obligation is due more than six months before the crops have become growing crops. Thus the priority will only effect rents, market

payments and the like which have been unpaid for a period of six months prior to the time when the crops became growing crops. Subject to this the farming sector is governed by the general rules.

Other priority problems

Security interests v purchaser of land

Problems will arise in practice between the holder of a security interest under an Article 9 system and a purchaser of land. The problems will arise in connection with fixtures and growing crops. To some extent there is an inevitable twilight zone between real and personal property in the case of fixtures. Article 9 systems contain rules for dealing with fixtures which we have considered above. See Priorities above.

Problems arise with crops as to whether they are industrial growing crops which are capable of being independent security under Article 9 systems or whether they are to be treated as part of the land. In Canada no case has arisen of a security interest in a growing crop preceding a mortgage of land but an attempt can be made to reason from first principles. Growing crops are land but capable of being treated as personal property and having priority over a mortgage on the land in two circumstances. The first is that the Article 9 secured party may have obtained legal title or secondly it may have served a notice in the appropriate Land Registry Office as required by s.54 of the Ontario Act (fixture etc. filing).

Security interest v purchaser of crops

In Canada it has been held that an owner of land who gave a chattel mortgage on growing crops and then made a contract of sale to a canning company for the same crops thereby subordinated the chattel mortgage to the purchase (*Nourse v Canadian Cannery* [1935] 3 DLR 168. The reasoning of the majority of the Ontario Court of Appeal was that the chattel mortgagee acquired an equitable right which became legal ownership when the crops grew. The contract of sale passed property to the buyer under the Sale of Goods Act because the farmer as a chattel mortgagor would customarily sell the crops in the ordinary course of business. It was implied that the farmer was at liberty to make a bona fide sale in the ordinary course of business. The decision was reached despite the fact that the dispute arose after harvest. Under a Personal Property Securities Act system such a dispute would not be so complex to resolve. Under s.30 of the Ontario Act a seller in the ordinary course of business can confer a good title on a buyer free from any security interest. (See too s.30(5) of the Saskatchewan Act.)

Security interest v landlord

If the farmer is a tenant, then an Article 9 security interest might come in conflict with the Landlord's rights. The landlord is entitled to distrain for arrears in rent. Article 9 does not apply to a lien given by statute or rule of law. The

result in the United States is to leave the question of priorities to the common law.

In Ontario and Saskatchewan the Landlord and Tenant Acts provide a set of priority rules to address the conflict between the landlord's right of distress and a secured party interest on goods in the leased premises.

If an Article 9 system were to be adopted care would be needed to ensure that in New Zealand the flexibility of existing forms of security under the Chattels Transfer Act 1924 is not lost.

XXI MOTOR VEHICLE TITLE SYSTEMS IN THE U.S.A.

In most states of the U.S.A. motor vehicles are subject to title systems and are excluded from the operation of Article 9 (see Article 9-103). That is not to say, however, that inventory financing operations with regard to the sale of motor vehicles will necessarily be excluded from Article 9. This is often not the case under particular state title systems. These transactions are then included within Article 9. Where the collateral is a motor vehicle or other goods covered by Certificate of Title issued by any state the security interests are often required to be perfected by notation of the Certificate of Title. In some systems such as Wyoming filing of a financing statement and concurrent notation of the security interest on the certificate of title are required to perfect the security interest (see *Slates v Commercial Credit Corp* 412 P 2d 444, 445-6).

Except in cases of states where there is no title system or where there are concurrent systems such as Wyoming the perfection of a security interest must be accomplished in the manner provided by the motor vehicle title law. Corpus Juris Secundum Vol.79 Secured Transactions para.33 describes the practice in various states as follows:

"Many certificate of title laws provide that a security interest is perfected when an application for a certificate of title which notes the security interest is delivered to a specified officer or agency. Under some certificate of title laws, a security interest is perfected as of the time it was created or attached if the certificate is delivered to the designated officer within a specified number of days, but otherwise as of the date of delivery to the officer. Other statutes make it necessary that the designated officer or agency actually issue a certificate on which the security interest has been noted before the interest is perfected.

Provisions for perfection of a security interest in a vehicle by notation on the certificate of title require only substantial compliance. So the perfection of a security interest is not prevented by a failure to declare the date of the security interest on the application form where other information on the application indicated the date; and the failure of the certificate of title to show the date of the security agreement is not fatal where it is not shown that the omission was prejudicial to any person.

Where a prior certificate of title delivered by the debtor to the secured party to be presented with an application for a certificate showing the security interest shows no title in the debtor no security interest can be perfected.

Where the statute requires a dealer who sells a new automobile to prepare the application for a certificate of

title indicating the existence of a security interest, it is his duty to note the interest of a bank which financed the purchase, and he will be liable to the bank for any unpaid balance due if it fails to do so.

A statutory requirement that a financing statement be filed with a state officer to perfect a security interest in a motor vehicle not created in connection with a sale of the vehicle requires a secured party who held a perfected purchase money interest in vehicles to file again with respect to subsequent advances."

We give as an example of a Certificate of Title jurisdiction, Illinois. In Illinois which has had such a system since the 1920's the motor vehicle title system is a substantial operation with a large computer entry and checking staff. This seemed to be bigger than the registry staff for the whole Personal Property Security Registry in Toronto. The volume of new titles was approximately three million per year and on the day of our visit twenty-seven thousand new titles were issued. Many of these were updates of old titles where a transfer of ownership or change in a security interest had occurred. We were informed that the registry had 65 to 70 people working in two shifts and at present was not able to produce a title until about 3-4 weeks after a request was made. During that time the vehicle was driven under a temporary permit. The motor vehicle certificate of title was printed on bank note paper which was difficult to counterfeit with a specially prepared engraved border which was hard to reproduce and a lamination strip which protects the vehicle information from being altered, allows changes to be detected under retro-reflective light and is of such a form that the removal of the lamination will destroy the information. Before these security features were introduced several hundred counterfeit or altered titles were discovered each year in Illinois. Since June 1978 when the security features were introduced there has been a continual decrease in counterfeit and altered titles. A copy of a Certificate is shown opposite. In addition to Certificates of Title there are separate certificates for junking and salvage.

Vehicle information is processed through the National Crime Information Center and LEADS Hot Check to determine whether a vehicle has been reported stolen. This is not entered on the register itself. Thousands of stolen vehicles have been identified since the implementation of a computerised title system. Illinois had a title system for motor vehicles since the 1920s.

In the Canadian provinces there are no title systems for motor vehicles. We understand that such a system was considered in Ontario in the 1950s but was rejected as a result of pressure from motor vehicle dealers who were worried about being unable to confer title in a sale effected at the weekend. We did not find this a very convincing reason for the rejection of a title system. The result of not having such a system means that all motor vehicle transactions come under the Ontario Act. In Ontario over 90% of all transactions recorded under the Ontario Act are concerned with motor

vehicles or the financing of motor vehicles or dealers. We understand that a similar proportion would apply in the other provinces.

Compared with this a title system takes the pressure off the Article 9 system. In the Article 9 registry in Illinois 600-700 financing statements were filed daily. There were two people working fulltime entering particulars on the computer and dealing with searches. The system had been computerised in 1972.

There was little doubt to us that the title system seemed to work well in practice and ease the pressure off an Article 9 system, as well as providing prospective purchasers of motor vehicles with notice of security interests without the need to undertake a search. This was due to the degree of specialisation involved and in keeping the bulk of motor vehicles transactions off the Article 9 registry. The Canadian provinces have to contend with motor vehicles and a variety of other transactions. There is at the same time also a greater degree of uncertainty regarding the title to motor vehicles in the Canadian provinces. While the problems concerned with title are cut down by a Personal Property Security Act they are not eliminated, because, though security interests can be ascertained from the register, the identity of the owner is not itself recorded. However, the ability to obtain searches of motor vehicles by reference either to the debtor or the identification number of the vehicle reduces this shortcoming somewhat.

The optimal system seems to us to be to have a title system for motor vehicles separate from an Article 9 system. We set out in Appendix H the Illinois Motor Vehicles Code which deals inter alia with the issue of title certificates, transfer and security interests. However, with a country the size of New Zealand this would probably make a separate Article 9 system impractical. The number of transactions which were non-motor vehicle transactions would probably not justify the economics of running a separate computerised system. On the other hand it would be possible to have an integrated system whereby there was a title system for motor vehicles with the security arrangements perfected by endorsement on the title certificate or by concurrent filing of a financing statement but in other respects the security to be governed by an Article 9 system. It is interesting to note that the state motor vehicle title systems which were looked at used conceptual terminology which was compatible with an Article 9 system. The reason why they are not fully integrated is the existence of a Title Register before Article 9 was introduced.

XXII CURRENT THINKING IN THE UNITED KINGDOM

In 1974 the Crowther Committee recommended the enactment of a Lending and Security Act based on the Ontario adaptation of Article 9 of the Uniform Commercial Code (see Appendix I). This was part of a report which made recommendations with regard to consumer credit. The latter were enacted in the Consumer Credit Act 1974 but the proposed Lending and Security Act was not proceeded with.

In 1985 the Department of Trade and Industry appointed Professor A L Diamond as consultant on the topic of security interests in property other than land. In 1986 he produced a consultative paper which discussed the whole topic, raised the question of whether the proposed Lending and Security Act should be proceeded with and called for public responses. After a good deal of consultation Professor Diamond is now preparing his final report. This has been delayed because of Professor Diamond's illness last year but from our contact with him we think that it is likely that the report will favour an Article 9 solution. In the meantime the department is considering various proposals for changes in company law with a view to a possible Companies Bill in the 1988/89 parliamentary session. The department would like to amend the Companies Act provisions on companies charges which have long been regarded as unsatisfactory and in need of reform. In a memorandum dated 2 September 1987 headed Registration of Charges, the department states that they had hoped that it would be possible to develop proposals for amending the act in the light of reactions to Professor Diamond's final report but this had been delayed for the reasons stated above. It was important that any amendments should not cut across Professor Diamond's recommendations but, subject to that proviso, they saw scope for including proposals on company charges in the proposed bill. The memorandum then covers a number of the issues which were originally addressed in Professor Diamond's consultative document and reflects both the responses received to the document and Professor Diamond's own views on interim reforms pending a more general reform of security law. It excludes a number of issues such as priorities and provisional registration which are thought to be better considered on a general basis in the light of Professor Diamond's report. It also proceeds on the assumption that company charges will continue to be registered at the Companies Registration Office. The main proposals are as follows:

1. The department proposes to streamline the present system of registration based on submission of prescribed particulars. It would no longer be necessary to produce an original or copy of the document and the registrar would be relieved of responsibilities for checking that the particulars accurately reflect the charge. The registrar would also cease to check whether the charge was registrable.
2. The prescribed particulars would be amended, in particular there would be a provision stating whether there was a restrictive clause or negative pledge.

3. The period of registration would be reduced to 14 days.
4. The parties would be penalised for the inaccuracy of registered particulars.
5. The registrar's certificate would no longer be conclusive that registration requirements had been satisfied.
6. Registration out of time would be the subject of an administrative procedure rather than an application to the High Court.
7. Corrections would be allowed to be made to the register.
8. Alterations to a registered charge would have to be registered.
9. The list of registrable charges would be amended and the Secretary of State would be given the power to vary the list by secondary legislation.
10. Charges by foreign companies would only be registrable if the company has registered as an overseas company.
11. The doctrine of constructive notice would be limited to situations where the party concerned could reasonably have been expected to inspect the register.

To a certain extent these proposals represent "Hamlet" without the Prince of Denmark in that the question of priorities are not addressed. However, the proposed amendments should facilitate the administration of the company charges division. One must question whether it is sensible to retain a list of registrable charges and not opt for a system whereby all charges are registrable subject to certain exceptions. The proposal to amend the doctrine of constructive notice sounds rather complicated and it would be better if the doctrine was abolished provided that registration became a method of perfection of a security interest.

XXIII RECENT AUSTRALIAN REFORMS

There have been recent reforms in Australia to the equivalent of our Nemo Dat provisions, Chattels Transfer Act and Companies Act. The first two are limited to motor vehicles.

Motor vehicle reforms

Although suggestions had been made to create further exceptions to the Nemo Dat rule as was done in the United Kingdom by the Hire Purchase Act 1964, the method adopted by the Chattel Securities Act 1987 (Vic.) and copied in certain respects in a number of other states including New South Wales is to provide for a simple means of checking the existence of a certain security interest in motor vehicles. Part 3 of the Chattel Securities Act sets up a system of registration of motor vehicles (including trailers). The security interests are widely defined to include:

- (a) a mortgagee under a goods mortgage;
 - (b) a lessor under a lease; and
 - (c) an owner under a hire-purchase agreement.
- A reservation of property clause is not covered.

It should be emphasized at the outset that the Register is a register of security interests in goods not a register of title to goods and indeed there is no provision for the registration of the name of the true owner which is somewhat bizarre. Nor the debtor - which one would normally assume is the owner. The Victorian legislation applies to all chattels but the legislation in the other states is limited to motor vehicles and trailers with the possibility of other goods being added. None of the legislation deals with personal property other than chattels. Each of the acts establishes a registration system with respect to motor vehicles and trailers. Mr Simon Begg and Mr A J Duggan in an unpublished paper entitled "Chattel Securities" delivered at the Consumer Credit Seminar of the University of New South Wales on the 14th July 1987 state:

"None of the Acts, nor the registration systems they establish, purport to require or to regulate the registration of ownership interests in chattels, except insofar as such interests arise under leases or hire purchase agreements and are thus classified as security interests. Yet, because each of the registers which the Acts establish, are indexed with respect to the goods, it would have been perfectly feasible to have established a system of registered ownership interests in similar fashion to Torrens Title land."

Whilst the Victorian legislation provides for registration of security interests over motor vehicles and trailers it provides for non-registration of other security interests. It also provides for extinguishment of non-registered security interests following

sale to innocent purchasers without notice in certain situations. Except in the case of motor vehicles and trailers and farm machinery unregistered interests are not extinguished where the purchaser pays more than the prescribed amount. Dealers and financiers, however, do not benefit from the extinguishment of interest provisions when buying goods other than motor vehicles and trailers. There is a system of compensation for wrongful extinguishment of registered interests.

Section 7(2) of the Victorian Act deals with extinguishment of registered security interests following the sale of motor vehicles or trailers by a licensed motor vehicle trader. The sub-section provides as follows:

"Subject to section 8, if a secured party has a security interest in a motor car within the meaning of the Motor Car Traders Act 1986 but is not in possession of the motor car and a purchaser purchases or purports to purchase an interest in the motor car (otherwise than at a sale in pursuance of a process of execution issued by or on behalf of a judgment creditor) for value in good faith and without notice when the purchase price is paid (or, if the price is not paid at one time, when the first part of the purchase price is paid) of the security interest from a licensed motor car trader within the meaning of the Motor Car Traders Act 1986, the security interest of the secured party is extinguished."

This is a badly drafted provision, unintelligible to a lay person and difficult for a lawyer to understand at first reading.

In addition ss. 27 and 48 of the Motor Vehicles Traders Act 1986 apply. Section 48 deals with motor cars and s.27 mainly with goods other than motor cars. These provisions impose an obligation on a dealer not to dispose of goods without first procuring the discharge of security interests created by the dealer or of which he has knowledge and in the case of motor cars a registered security interest whether the dealer knows of it or not. In the case of motor cars there is a right of recourse to the guarantee fund under the Motor Car Traders Act if a motor car trader is insolvent. There are similar provisions to s.7(2) in the New South Wales and South Australian legislation.

The Victorian Chattel Securities Act 1981 enabled the dealer to obtain a search certificate the effect of which was to freeze the register for 60 days. This proved unworkable and was abolished by the new Act.

Purchase and purchaser are widely defined in the Victorian Act:

"'Purchase' with respect to goods, means acquire an interest in the goods by way of purchase, exchange, lease or hire purchase."

"'Purchaser' means a person who purchases goods but excludes -

- (a) a secured party; and
- (b) a person who purchases goods with the intention of becoming a secured party; and
- (c) in relation to unregistrable goods, a dealer."

There is a consequential amendment to purchase price. In other States, however, the definition of purchaser is not so sophisticated and the protection of the act depends on the form of the transaction.

Section 10 of the Victorian Act deals with priorities. It provides as follows:

"(1) If there are two or more security interests in respect of the same goods and one or more of those security interests is registered under Part 3, those interests, subject to this section, rank in priority with respect to all debts or other pecuniary obligations (including contingent obligations) and all other obligations respectively secured under them whenever arising in the order in which they are so registered.

(2) The order of priority of security interests in sub-section (1) is subject to any express contrary provision in the Companies (Victoria) Code and to any agreement between the holders of the security interests.

(3) If, before the registration of a security interest, the secured party in respect of any other security interest in the same goods takes possession of the goods, the second-mentioned security interest, subject to sub-section (2), ranks in priority to the registered security interest with respect to those goods."

These are not the clearest priority provisions and there is no provision for priority of unregistered security interests. Here it will be necessary to resort to the general law. In addition as between competing security interests Schedule 5 of the Companies Code might be applicable. Section 10(2) provides that the Companies Code shall have priority. The priority rule in s.10(1) would not necessarily apply under the priority rules in the Companies Code as these depend on whether a liability is an actual liability at the time priority is established.

Section 31 of the Victorian Goods Act 1958 deals with the situation in which a buyer who is in possession of goods for which he has not fully paid sells these goods to an innocent purchaser. It is the corresponding provision to s.27(2) of our Sale of Goods Act 1908. Section 31 has been amended to exclude its application in respect of registered interest under the Chattel Securities Act 1987. The New South Wales provision in s.3 of the Goods (Registrable Interests) Amendment Act 1986 is less clearly drawn. The Victorian Act abolishes the doctrine of constructive notice. While registration does not protect a security interest from extinguishment in all circumstances the legislation does provide expressly for the circumstances in which the security interest will be defeated. (This discussion is based substantially on the

unpublished paper of Simon Begg and A J Duggan cited above.)

There seems to be a number of defects in this legislation. These are as follows:

1. The Register is not a title register and if there is any doubt about title there remains the need, as before, for the purchaser to verify title, for example by examining documents such as receipts and motor registration records.
2. The Register is a goods based register not a person based register and so one must seek credit information from other private sources.
3. There is a need for the security holder to protect his interest where goods outside Part 3 subsequently come within that Part.
4. There is a large volume of transactions.
5. There is a significant error rate in practice.
6. There are drastic consequences for a person registering inaccurate information which occasions criminal and civil liability.
7. There is an untidy relationship with other registration provisions under the existing legislation.
8. Lastly and perhaps most importantly, there is the measure of arbitrariness in limiting reform to motor vehicles and trailers. There is a need for an efficient system for all personal property, not least to facilitate commercial financing arrangements. While motor vehicles are the largest single class of personal property one should bear in mind the cost of an inefficient and outdated system of law for the remainder.

(See generally Martin Pollard "Practical Aspects of the Vehicles Securities Register" in "Chattel Securities" (Leo Cussen Institute for Continuing Legal Education 1985); Peter Carroll, "Competing Interests - New Chattel Security" (1987) 61 Law Institute Journal 550; John Wilkin "Deja vu - Problems of the Chattel Securities Act - Again" (1987) 61 Law Institute Journal 937.)

The Victorian statute is the most advanced of the Australian statutes and there is a lack of uniformity among the State statutes. Simon Begg and A J Duggan sum up as follows:

"There is no doubt that the recent Australian legislation is only a step in the right direction. Similar principles can be applied to other personal property such as debts. The laws regulating business securities (including the Companies Code) can be integrated with laws primarily concerned with securities given by individuals in their personal capacity. The North American legislation and the legislation contemplated in England is much more sophisticated. Eventually Australia must follow suit." (op.cit)

Company charge reforms

Although the Molomby Committee favoured an integrated system of corporate and non-corporate securities this was ignored by the Eggleston Committee which favoured a revamping of the charges provisions of the Companies Act as a separate system. The latter reforms were carried out in 1981. The general characteristics of the new Charges Division of the Companies Code are:

- . There is a definition of charges by inclusion and exclusion, unlike the present system which merely defines by inclusion.
- . It now covers most types of charge commonly encountered in practice.
- . Dual registration and cross-referencing in respect of the bills of sale legislation and companies legislation in the case of chattels has been avoided.
- . It creates a statutory priority system of company charges independent of the case law rules. The new system provides that registration affords priority rather than merely providing for the avoidance of unregistered charges. Priority is accorded by the time of registration unless the holder of a later charge had actual or constructive notice of an earlier unregistered charge at the time of the taking of the interest.

There are, however, certain drawbacks with the Australian reforms:

- . The Code still covers only charges and, therefore, fails to cover other forms of securities such as hire purchase, long-term chattel leases, reservation of property, absolute transfer of title without transfer of delivery (for either tangibles or intangibles).
- . The Code excludes choses-in-action other than book debts and, in certain instances negotiable instruments and "marketable securities". (Charges on negotiable instruments and marketable securities are not registrable at all in New Zealand unless under a charge on "an issue of debentures" or a floating charge.)
- . The Code excludes "transfers in the ordinary course of business". This phrase which originates from the English Bills of Sale legislation is in our Chattels Transfer Act and has caused considerable difficulties in interpretation.
- . The Code still requires registration within certain time limits, although it seems that the failure has consequences only against a liquidator and an official manager.
- . The Code's schedule of priorities does not deal with priorities between a registrable and a non-registrable

security interest or as between unregistrable interests inter se. The Code also fails to deal with the effect of a restrictive clause in relation to non-registrable charges or absolute transfers of property.

- . Execution creditors and other creditors are no longer protected by non-registration of charges.
- . No protection is given to absolute purchasers against registered or even unregistered charges.
- . The Code leaves in place the law permitting the realisation of an unregistered charge prior to winding-up.
- . The effect of automatic and other forms of crystallisation of a floating charge is not dealt with.
- . It is not clear whether the doctrine of constructive notice affects non-registrable interests.

Restrictive clauses in floating charges which retain priority over later registrable charges are given recognition. In the absence of a restrictive clause, the holders of registered floating charges are deemed to have consented to priority having been given to later registered fixed charges. Thus the floating charge remains a vulnerable security.

Australian attitudes to Article 9

Australian attitudes towards Article 9 seem to differ. The Molomby Committee at para. 5.11.33 of its Report in 1972 said:

"Legislation is desirable to rationalize and modernize the law relating to securities over property other than goods. It would be of advantage to all concerned to have assignments of book debts and similar securities governed by uncomplicated and businesslike provisions. Legislation might deal with wholesale and inventory financing. The committee commends the uniform approach of these problems made by Article 9 of the Uniform Commercial Code. The committee would propose that where property is identifiable by reference to the name of the mortgagor and the mortgagor is engaged in business, priorities between a mortgagee and a subsequent buyer or mortgagee be resolved with reference to a mortgagors' name search section. There would also be merit in legislation authorizing and governing floating charges by traders and firms over business assets as in the case of a company."

Learned commentators such as the late Professor J R Peden, Professor Sykes, Mr Simon Begg and Mr A J Duggan have all expressed support for an Article 9 system. However, in a recent submission by the Business Law Section of the Law Council of Australia prepared by Dr W J Gough it is suggested, that it would be better to build on

previous Australian developments where the floating charge has been largely successfully accommodated within the Companies Code priorities rather than follow uncritically a radically different priority system from overseas. Dr Gough's reasoning is not entirely convincing because he argues that Article 9 was introduced to get over the U.S. rejection of the floating charge. This, with respect, was merely one of the purposes of Article 9. The other purposes were to attempt to create a modern and efficient system of security and priorities characterised by substance or function rather than form and to achieve fairness in typical cases rather than dogmatically apply archaic concepts. While the Australian Companies Code reforms probably represent an improvement on the old law this is not without a price, part of which is the retention of two systems bearing an uneasy relationship with each other, superimposed upon which is the motor vehicle reform.

XXIV CONCLUSION

General

In the course of our visit to the United States and Canada we had an opportunity to consider the law and practice of four different Article 9 systems, Michigan, Illinois, Ontario and Saskatchewan. John Farrar has also carried out some investigation of the law and practice of vehicle and company charge reforms in Australia. In spite of the need to introduce commercial reforms in accordance with both the letter and spirit of New Zealand's obligations under the C.E.R. Treaty with Australia we are nevertheless convinced that the suggested amendments to the Sale of Goods Act 1908 and reform on the lines of Article 9 are to be preferred to the Australian reforms. The principal advantages of adopting such reforms are:

- (1) they deal with most of the problems encountered in connection with the Nemo Dat rule in practice;
- (2) they create an integrated code of personal property security law which the Australian reforms do not;
- (3) they assimilate all forms of personal property security with regard to substance rather than form which produces a simplification in the law and a consequent economy in transaction costs;
- (4) they use concepts which facilitate a wide variety of financing operations.
- (5) they adopt a rational priority system with some special rules designed to deal with different types of transaction and residual general rules. The priority rules depart from the existing system which resolves priority questions by reference to traditional legal and equitable concepts and replace it by a new system designed to produce justice in typical cases of the different types of transaction;
- (6) they overcome the problems which have recently been highlighted in connection with the floating charge and reservation of property clauses;
- (7) they clarify the position of the purchase money security interest while at the same time providing protection to buyers in the ordinary course of business. These provisions together with the proposed reform of Nemo Dat go a long way to safeguard innocent parties;
- (8) an Article 9 system lends itself easily to computerisation. Of the systems which we have looked at we prefer the Saskatchewan system, details of which appear in Appendices D-F;

- (9) the notice filing system allows for a national register, overcoming the problems of the severely overburdened companies registries, the inaccessibility of localised chattels transfer registers and the separation of corporate and non-corporate registers;
- (10) if the United Kingdom adopts an Article 9 system there is likely to be a renewal of interest in Australia in such a system.

We, therefore, recommend that in addition to the proposed amendments to the Sale of Goods Act 1908 work should begin immediately on the preparation of a bill on the lines of the Saskatchewan Personal Property Security Act modified if necessary by reference to the proposed British Columbia Bill.

A policy decision should be reached as to whether a motor vehicle title system is to be introduced. If such a system is to be introduced then it would be desirable for the security provisions to harmonise with the Article 9 system. If a motor vehicle title system is not to be introduced then motor vehicles should be fully integrated in the Article 9 system as in the Canadian Personal Property Security Acts.

Transition

Almost all the amendments to the Sale of Goods Act 1908 can be enacted forthwith. With the exception of one reference to a Personal Property Security Act ("P.P.S.A.") in s.27(2) they do not depend on the enactment of such an act.

If a P.P.S.A. is enacted then the Chattels Transfer Act 1924 as amended and Part IV of the Companies Act 1955 will need to be repealed but there will have to be transitional provisions. First, it could be provided that registration under the existing legislation shall be treated as registration under the P.P.S.A. However, the existing legislation requires document filing and the P.P.S.A. would require notice filing. One solution would be to adapt the P.P.S.A. requirement for existing registrations but this would be messy. A second solution would be to provide for a carrying forward of registration if the P.P.S.A. requirements were met. This would result in the system being swamped by activity. The third and most feasible solution is that adopted by Ontario: This was:-

- (1) to impose renewal requirements on a uniform basis consistent with the renewal requirements of the P.P.S.A;
- (2) to impose a requirement to provide information consistent with that required for the registration of notices under the P.P.S.A.
- (3) to repeal the existing legislation at the appropriate time. There will need to be a time gap equivalent to the basic

period of registration or the imposition of some time limit for registration. In Saskatchewan the latter does not apply to trust indentures.

The P.P.S.A. would need to be introduced in three phases. First, the provisions of the P.P.S.A. which deal with administrative matters such as the appointment of the registrar and the setting up of the registry should be brought in. Secondly, the parts of the P.P.S.A. which require a notice filing or renewal where none previously existed should then be brought in. Thirdly, the Chattels Transfer Act and Part IV of the Companies Act should be repealed and the P.P.S.A. brought into full force.

The way ahead

It is recommended that a small committee of experts should be set up by the Law Commission in co-operation with the Law Reform Division of the Department of Justice to prepare a draft bill based substantially on the Saskatchewan P.P.S.A., modified, where necessary, by reference to the British Columbia bill. A skilled legislative draftsman should be a member of this committee.

CANADIAN UNIFORM SALE OF GOODS ACT

(General rules
re transfer of
title)
General
irrelevance
of title

60(1) Except as otherwise provided in this Act, the provisions of this Act relating to the rights, obligations and remedies of the seller, buyer and any third party apply without regard to the person who has title to the goods.

General rules
for the transfer
of title

(2) Where questions concerning title become material, title passes from the seller to the buyer at the time and in the manner agreed upon by the parties, except that

(a) title cannot pass before goods have been identified to the contract as provided in section 67, and

(b) any reservation by the seller of the title in goods shipped or delivered to the buyer is limited to the reservation of a security interest.

Where no time
specified for
title to pass

(3) Where there is no agreement between the parties with respect to the time at which the title to the goods is to pass to the buyer, the following rules apply:

(a) title passes at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, notwithstanding the reservation of a security interest and that a document of title is to be delivered at a different time or place;

(b) where delivery is to be made without moving the goods, title passes

(i) where the seller is required to deliver a document of title, at the time when, and the place where, he delivers the document,

(ii) where the goods are held by a bailee other than the seller and the seller is not required to deliver a document of title, when the bailee acknowledges to the buyer his right to possession of the goods, and

(iii) in any other case, when the buyer receives the goods.

Where title is
reverted in
seller

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, reverts title to the goods in the seller.

(Nemo dat
rule)
Nemo dat
rule

61(1) Except as otherwise provided in this Part, where goods are sold by a person who does not own them and

PART VI

TRANSFER OF TITLE AND GOOD FAITH BUYERS

Interpretation

59 In this part, other than in sections 60 and 62, "goods" includes a document of title.

who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title than that of the seller.

Exceptions

(2) Subsection (1) does not apply where the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Idem

(3) Subsection (1) does not affect

(a) *[jurisdictions should insert a reference to The Factors Act]* or any other enactment enabling the apparent owner of goods to dispose of them as if he were the true owner of them, or

(b) the validity of any contract or sale under any common law or statutory power of sale or under the order of a court of competent jurisdiction.

Owner's failure to exercise reasonable care

(4) Without limiting the generality of subsection (2), an owner is precluded from denying the authority to sell of the person in possession of the goods, where

(a) he has failed to exercise reasonable care with respect to the entrusting of the goods, and

(b) the buyer has exercised reasonable care in buying the goods and has received the goods in good faith, for value and without notice of the defect in the title of the transferor or his lack of authority to sell the goods.

Failure of owner and buyer to exercise reasonable care

(5) If, in an action between the owner and the buyer pursuant to subsection (4), the court finds that both have failed to exercise reasonable care, the court may allocate the loss between them and make any other order with respect to the goods that it considers fair in the circumstances.

Registration of entrusted goods

(6) Subsection (4) does not apply to an entrusting of goods under a transaction governed by *[jurisdictions should insert a reference to The Personal Property Security Act]* or any other Act requiring the registration or filing in a public place of a document relating to the transaction.

(Voidable title) Effect of voidable title

62(1) A person with a voidable title has power to transfer a good title to a buyer who receives the goods in good faith,

for value and without notice of the defect in the title of the transferor, even though the owner has purported to avoid the sale to the transferor.

Extended meaning of voidable title

(2) A person with a voidable title has the power to transfer described in subsection (1); even though

(a) the transferor was deceived as to the identity of the buyer,

(b) the goods were delivered in exchange for a cheque that is later dishonoured,

(c) it was agreed that the transaction was to be a cash sale,

(d) the transfer of title was procured by fraud, or

(e) the transaction was entered into under a mistake of a character that renders the agreement void at common law.

(Transfer of goods in possession) Definitions

63(1) In this section,

(a) "prospective buyer" means a person who receives the goods

(i) under a sale on approval or under a contract of sale or return,

(ii) under an agreement containing an option to purchase, or

(iii) under a contract of sale that is subject to approval by another person or the fulfillment of any other condition;

(b) "prospective seller" means a person from whom a prospective buyer receives the goods.

Effect of possession of goods by seller, etc.

(2) Where a seller, buyer or prospective buyer is in possession of goods, he has the capacity to transfer all rights of the person consenting to his possession to a person who buys or leases and receives the goods from him in good faith, for value and without notice of the defect in the title of the transferor.

Application of subsection (2)

(3) Subsection (2) applies

(a) where a seller, having sold goods, continues in

possession of the goods with the buyer's consent, whether in his capacity as seller or otherwise, or

(b) where a buyer or prospective buyer is in possession of the goods with the seller's or prospective seller's consent before title in the goods has been transferred to him.

Non-application of subsection (2)

(4) Subsection (2) does not apply

- (a) where, prior to the disposition of the goods by the person in possession, a security interest to which *[insert reference to The Personal Property Security Act or other provincial legislation]* applies has been perfected by registration in favour of the buyer or seller, or
- (b) where, in any other case, a notice in the prescribed form has been filed under *[insert reference to The Personal Property Security Act or other provincial legislation]* prior to the disposition of the goods by the person in possession.

(1) Transfer of entrusted goods) Definitions

64(1) In this section, "entrust" includes any delivery and any acquiescence in retention of possession regardless of

(a) any condition expressed between the parties to the delivery or acquiescence; and

(b) whether the procurement of the entrusting or the possessor's disposition of the goods has been fraudulent.

(2) Where the possession of goods is entrusted to a merchant who deals in goods of that kind for any purpose connected with sale or promoting sales of goods of that kind gives him power to transfer all rights of the entruster to a buyer or lessee in the ordinary course of business.

Effect of entrustment on sale and revocation of consent

65 Unless goods are recovered by their owner before they have been delivered by the person in possession of them to a third party, sections 63 and 64 apply even though the owner has revoked his consent to possession of the goods by the seller, buyer, prospective buyer or merchant, as the case may be.

Right of owner to recover goods

66(1) In this section, "buyer" includes a person claiming from or under a buyer.

(2) Where sections 61(3), 62, 63 and 64 apply, a court may,

where it considers it fair, make an order that the owner may recover the goods from the buyer if the owner repays the buyer the price or its equivalent value in money that was paid by the buyer for the goods, together with any other reliance losses that the buyer would otherwise suffer.

APPENDIX B

ONTARIO PERSONAL PROPERTY SECURITY ACT AND REGULATIONS

PERSONAL PROPERTY SECURITY ACT

REVISED STATUTES OF ONTARIO, 1980
CHAPTER 375

I N D E X

Personal Property Security Act

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Government
of Ontario

Personal Property Security Act

Revised Statutes of Ontario, 1980
Chapter 375

as amended by
1981, Chapters 2 and 58

and

Regulation 747

Revised Regulations of Ontario, 1980
as amended by O. Reg. 616/84

Regulation 748

Revised Regulations of Ontario, 1980
as amended to O. Reg. 249/86

Regulation 749

Revised Regulations of Ontario, 1980
as amended by O. Reg. 838/81

Regulation 750

Revised Regulations of Ontario, 1980

CHAPTER 375

Personal Property Security Act

Interpretation

1. In this Act,

- (a) "accessions" means goods that are installed in or affixed to other goods;
- (b) "account debtor" means a person who is obligated on chattel paper or on an intangible;
- (c) "chattel paper" means one or more than one writing that expresses both a monetary obligation and a security interest in specific goods;
- (d) "collateral" means property that is subject to a security interest;
- (e) "consumer goods" means goods that are used or acquired for use primarily for personal, family or household purposes;
- (f) "creditor" includes an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver, and an executor, administrator or committee;
- (g) "debtor" means a person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes an assignor of book debts and an assignee of the debtor's interest in the collateral referred to in subsection 49 (1), or such one or more of them as the context requires;
- (h) "default" means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable;
- (i) "document of title" means any writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee's possession

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NOTE: See the Statutes of Ontario, 1991, chapter 2, section 2 and 1991, chapter 58, sections 3 and 6 for saving provisions.

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as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

- (j) "equipment" means goods that are not inventory or consumer goods;
- (k) "goods" means all chattels personal, other than choses in action and money, and includes emblements and industrial growing crops, and oil, gas and other minerals to be extracted, and timber to be cut, and goods are either consumer goods, equipment or inventory;

(l) "instrument" means a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada), or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, but does not include a writing that constitutes part of chattel paper, a document of title or securities;

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

(n) "inventory" means goods that are held by a person for sale or lease, or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession;

(o) "judge" means a judge of a county or district court;

(p) "notify" means to take such steps as are reasonably required to give information to the person to be notified so that,

- (i) it comes to his attention, or
- (ii) it is directed to such person at his customary address or at his place of residence, or at such other place as is designated by him over his signature.

and "notification" has a corresponding meaning;

(q) "prescribed" means prescribed by the regulations;

(r) "proceeds" means personal property in any form or fixtures derived directly or indirectly from any dealing with collateral or proceeds or that indemnifies or compensates for collateral destroyed or damaged;

(s) "purchase-money security interest" means a security interest that is,

(i) taken or reserved by the seller of the collateral to secure payment of all or part of its price, or

(ii) taken by a person who gives value that enables the debtor to acquire rights in or the use of the collateral, if such value is applied to acquire such rights;

(t) "registrar" means the registrar of personal property security;

(u) "regulations" means the regulations made under this Act;

(v) "secured party" means a person who has a security interest;

(w) "securities" means shares, stock, warrants, bonds, debentures, debenture stock or the like issued by a corporation or other person, or a partnership, association or government;

(x) "security agreement" means an agreement that creates or provides for a security interest;

(y) "security interest" means an interest in goods, other than building materials that have been affixed to the realty, fixtures, documents of title, instruments, securities, chattel papers or intangibles that secures payment or performance of an obligation, and includes an interest arising from an assignment of book debts;

(z) "value" means any consideration sufficient to support a simple contract. R.S.O. 1980, c. 375, s. 1.

PART I
GENERAL

2. Subject to subsection 3 (1), this Act applies,

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

- (i) a chattel mortgage, conditional sale, equipment trust, floating charge, pledge, trust deed or trust receipt; and
- (ii) an assignment, lease or consignment intended as security; and

(b) to every assignment of book debts not intended as security, but not to an assignment for the general benefit of creditors to which the *Assignments and Preferences Act* applies. R.S.O. 1980, c. 375, s. 2.

R.S.O. 1980,
c. 33

3.—(1) This Act does not apply,

- (a) to a lien given by statute or rule of law, except as provided in section 32, clause 36 (3) (b) and clause 37 (2) (b);
- (b) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity;

Where Act
does not
apply

(c) to a mortgage, charge or assignment whose registration is provided for in the *Corporations Securities Registration Act*;

R.S.O. 1980,
c. 94

(d) to a transaction under the *Pawnbrokers Act*; or

R.S.O. 1980,
c. 372

(e) to the creation or assignment of an interest in real property, including a mortgage, charge or lease of real property, other than,

(i) a fixture, or

(ii) an assignment of a right to payment under a mortgage, charge or lease where the assignment does not convey or transfer the assignor's interest in the real property. R.S.O. 1980, c. 375, s. 3 (1); 1981, c. 58, s. 1.

(2) The rights of buyers and sellers under subsection 20 (2) and sections 39, 40, 41 and 43 of the *Sale of Goods Act* are not affected by this Act. R.S.O. 1980, c. 375, s. 3 (2).

Rights under
R.S.O. 1980,
c. 362 not
affected

4. A document to which this Act applies is not invalidated by irregularity, omission or error therein or in the execution thereof unless, in the opinion of the judge or court, the defect, irregularity, omission or error is shown to have actually misled some person whose interests are affected by the document. R.S.O. 1980, c. 375, s. 4.

Errors,
omissions,
etc.

5.—(1) Where the chief place of business of a debtor is in Ontario, the validity and perfection of a security interest and the possibility and effect of proper registration with regard to intangibles or with regard to goods of a type that are normally used in more than one jurisdiction, if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others, are governed by this Act.

Conflict of
laws

(2) Where the chief place of business of a debtor is not in Ontario, the validity and perfection of a security interest and the possibility and effect of proper registration with regard to intangibles or with regard to goods of a type that are normally used in more than one jurisdiction, if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others, are governed by the law, including the conflict of laws rules, of the jurisdiction in which the chief place of business is located.

Idem

(3) If a jurisdiction does not provide, by registration or recording in such jurisdiction, for perfection of a security interest of the kind referred to in subsections (1) and (2), the security interest may be perfected by registration in Ontario. R.S.O. 1980, c. 375, s. 5.

Idem

6.—(1) Where personal property, other than that governed by subsection 5 (1) or (2), was already subject to a security interest when it was brought into Ontario, the validity of the security interest in Ontario is to be determined by the law, including the conflict of laws rules, of the jurisdiction where the property was when the security interest attached.

Conflict of
laws,
continued

(2) Where goods brought into Ontario are subject to the seller's right to revendicate or to resume possession of the goods, unless the seller registers a financing statement in the prescribed form within twenty days after the day on which the goods were brought into Ontario, such right is unenforceable in Ontario thereafter. R.S.O. 1980, c. 375, s. 6.

Right of
revendication

Abstract

Ident

**Conflict of
interests.**

PART II

VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

9. Except as otherwise provided by this or any other Act, a security agreement is effective according to its terms between the parties to it and against third parties. R.S.O. 1980, c. 375, s. 9.

10. A security interest is not enforceable by or against a third party unless.

- (a) the collateral is in the possession of the secured party; or
- (b) the debtor has signed a security agreement that contains a description of the collateral and, if the collateral is or includes fixtures or crops, or oil, gas or other minerals to be extracted, or timber to be cut,

When security interest attaches

12.--(1) A security interest attaches when,

- (a) the parties intend it to attach;
(b) value is given; and
(c) the debtor has rights in the collateral.

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

- (a) crops until they become growing crops:
(b) fish until they are caught;
(c) oil, gas or other minerals until they are extracted:
or
(d) timber until it is cut. R.S.Q. 1980, c. 375, s. 12.

13.—(1) Except as provided in subsection (2), a security agreement may cover after-acquired property and the young property, etc. of animals after conception.

(2) No security interest attaches under an after-acquired property clause in a security agreement.

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

8	Chap. 375	PERSONAL PROPERTY SECURITY	Sec. 13 (2)	9	Sec. 19 (5)	PERSONAL PROPERTY SECURITY	Chap. 375
			after the secured party gives value. R.S.O. 1980, c. 375, s. 13.			the custody and preservation of the collateral, are chargeable to the debtor and are secured by the collateral;	
Limitation on coverage			14. A purchase-money security interest in consumer goods does not attach to any collateral other than such consumer goods. R.S.O. 1980, c. 375, s. 14.			(b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;	
Future advances			15. A security agreement may secure future advances or other value whether or not the advances or other value are given pursuant to commitment. R.S.O. 1980, c. 375, s. 15.			(c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the secured obligation;	
Agreement not to assert defence against assignee			16. Except as to consumer goods, an agreement by a debtor not to assert against an assignee any claim or defence that he has against his seller or lessor is enforceable by the assignee who takes the assignment for value, in good faith and without notice, except as to such defences as may be asserted against the holder in due course of a negotiable instrument under the <i>Bills of Exchange Act</i> (Canada). R.S.O. 1980, c. 375, s. 16.			(d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and	
R.S.C. 1970, c. B-5						(e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor's right to redeem it.	
Seller's warranties			17. Where a seller retains a purchase-money security interest in goods,			(3) A secured party is liable for any loss or damage caused by his failure to meet any obligations imposed by subsection (1) or (2), but does not lose his security interest.	Liability for loss
R.S.O. 1980, c. 402			(a) the <i>Sale of Goods Act</i> governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties; and			(4) A secured party may use the collateral.	Use of collateral
			(b) except as provided in section 16, the conditions and warranties in a sale agreement shall not be affected by any security agreement. R.S.O. 1980, c. 375, s. 17.			(a) in the manner and to the extent provided in the security agreement;	
Provision to accelerate			18. Where a security agreement provides that the secured party may accelerate payment or performance when he considers himself insecure, such provision shall be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired. R.S.O. 1980, c. 375, s. 18.			(b) for the purpose of preserving the collateral or its value; or	
Care of collateral			19.—(1) A secured party shall use reasonable care in the custody and preservation of collateral in his possession, and, unless otherwise agreed, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties.			(c) pursuant to an order of,	
			(2) Unless otherwise agreed, where collateral is in the secured party's possession,			(i) the court before which a question relating thereto is being heard, or	
Idem, rights and duties of secured party			(a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in			(ii) a judge upon application by originating notice to all persons concerned.	
						(5) A secured party.	Idem
						(a) is liable for any loss or damage caused by his use of the collateral otherwise than as authorized by subsection (4); and	

required pursuant to subsection (1), but the debtor is entitled to a statement without charge once in every six months. R.S.O. 1980, c. 375, s. 20.

PART III

PERFECTION OF INTEREST

Time when perfected

21. A security interest is perfected when.

- (a) it has attached; and
 - (b) all steps required for perfection under any provision of this Act have been completed,
- regardless of the order of occurrence. R.S.O. 1980, c. 375, s. 21.

22.—(1) Except as provided in subsection (3), an unperfected security interest is subordinate to,

Where unperfected security interest subordinate

(a) the interest of a person,

(i) who is entitled to a priority under this or any other Act, or

(ii) who, without knowledge of the security interest and before it is perfected, assumes control of the collateral through legal process, or

(iii) who represents the creditors of the debtor as assignee for the benefit of creditors, trustee in bankruptcy or receiver; and

(b) the interest of a transferee who is not a secured party to the extent that he gives value without knowledge of the security interest and before it is perfected,

(i) of chattel paper, documents of title, securities, instruments or goods in bulk or otherwise, not in the ordinary course of the business of the transferor and where the transferee receives delivery of the collateral, or

(ii) of intangibles.

(2) The rights of a person under subclause (1) (a) (iii) in respect of the collateral are referable to the date from which

(b) is subject to being ordered or restrained as provided in subsection 63(1). R.S.O. 1980, c. 375, s. 19.

20.—(1) A debtor or a person having an interest in the collateral or an execution creditor may, by a notice in writing, require the secured party to furnish to him any one or more of,

Statements of account

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

(b) a statement in writing approving or correcting as of the date specified in the notice a statement of the collateral attached to the notice;

(c) a statement in writing approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof; or

(d) a true copy of the security agreement.

(2) In the case of clause (1) (b), if the secured party claims a security interest in all of a particular type of collateral owned by the debtor, he may so indicate in lieu of approving or correcting the itemized list of such collateral contained in the statement of the collateral and attached to the notice.

(3) Subject to payment of any fee required pursuant to subsection (6), the secured party shall answer a notice given under subsection (1) within fifteen days after he receives it, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, he is liable for any loss or damage caused thereby to the debtor or any other person.

Time for compliance with notice, liability for failure to answer

(4) Where the person receiving a notice under subsection (1) no longer has an interest in the obligation or collateral, he shall, within fifteen days after he receives the notice, disclose the name and address of the latest successor in interest known to him, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, he is liable for any loss or damage caused thereby to the debtor or any other person.

Successors in interest

(5) A successor in interest shall be deemed to be the secured party for the purposes of this section when he receives a notice under subsection (1).

(6) The secured party may require payment to him of a fee of \$2 for each statement or copy of the security agreement

his status has effect and arise without regard to the personal knowledge of the representative if any represented creditor was, on the relevant date, without knowledge of the unperfected security interest.

Purchase-money security interest

(3) A purchase-money security interest that is registered before or within ten days after the debtor's possession of the collateral commences has priority over.

- (a) an interest set out in subclause (1) (a) (ii) or (iii); and
- (b) transfers in bulk or otherwise, not in the ordinary course of business, occurring between the security interest's attaching and its being registered. R.S.O. 1980, c. 375, s. 22.

Continuity of perfection

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

Assignees

(2) An assignee of a security interest succeeds in so far as its perfection is concerned to the position of the assignor at the time of the assignment. R.S.O. 1980, c. 375, s. 23.

Perfection by possession

24. Except as provided in section 26, possession of the collateral by the secured party, or on his behalf by a person other than the debtor or the debtor's agent, perfects a security interest in,

- (a) chattel paper;
- (b) goods;
- (c) instruments;
- (d) securities;
- (e) letters of credit and advices of credit; or
- (f) negotiable documents of title.

but subject to section 23, only during its actual holding as collateral. R.S.O. 1980, c. 375, s. 24.

Perfection by registration

25.—(1) Subject to section 21, registration perfects a security interest in,

- (a) chattel paper;
- (b) goods;
- (c) intangibles; or
- (d) documents of title.

(2) A security interest is not perfected until it is registered, except in the case of a security interest,

- (a) in collateral in possession of the secured party under section 24; or
- (b) temporarily perfected in instruments, securities or negotiable documents of title under section 26. R.S.O. 1980, c. 375, s. 25.

Temporary perfection

26.—(1) A security interest in instruments, securities or negotiable documents of title is a perfected security interest for the first ten days after it attaches to the extent that it arises for new value given under a security agreement signed by the debtor and the secured party.

Idem

(2) A perfected security interest in,

- (a) an instrument that a secured party delivers to the debtor for the purpose of,
 - (i) ultimate sale or exchange.
 - (ii) presentation, collection or renewal, or
 - (iii) registration of transfer; or

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

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

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

(3) Beyond the period of ten days referred to in subsection (1) or (2), a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest. R.S.O. 1980, c. 375, s. 26.

27.—(1) Subject to this Act, a security interest in collateral that is dealt with so as to give rise to proceeds,

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

(2) The security interest in proceeds is a perfected security interest if the security interest in the collateral is perfected but it ceases to be a perfected security interest and becomes unperfected after ten days after receipt of the proceeds by the debtor unless,

- (a) a financing statement in the prescribed form in respect of the collateral is registered; or
- (b) the security interest in the proceeds is perfected before the expiration of the ten day period,

but there is no perfected security interest in proceeds that are not identifiable or traceable. R.S.O. 1980, c. 375, s. 27.

28.—(1) A security interest in goods in the possession of a bailee who has issued a negotiable document of title covering them is perfected by perfecting a security interest in the document, and any security interest in them otherwise perfected while they are so covered is subject thereto.

(2) A security interest in goods in the possession of a bailee, other than a bailee mentioned in subsection (1), is perfected by,

- (a) issuance of a document of title in the name of the secured party;
- (b) a holding on behalf of the secured party pursuant to section 24; or
- (c) registration as to the goods. R.S.O. 1980, c. 375, s. 28.

29.—(1) A security interest in goods that are the subject of a sale or exchange and that are returned to, or repossessed by,

- (a) the person who sold or exchanged them; or
- (b) a transferee of an intangible or chattel paper resulting from the sale of them,

reattaches to the extent that the secured indebtedness remains unpaid.

(2) Where the security interest was perfected by a registration that is still effective at the time of the sale or exchange, it reattaches as a perfected interest, but otherwise requires for its perfection a registration or a taking of possession by the secured party.

(3) A transferee of,

- (a) an intangible resulting from a sale; or
- (b) except as otherwise provided in section 30, chattel paper resulting from a sale,

has, as against the transferor, a security interest that is,

- (c) subordinate to a security interest under subsection (1) that was a perfected interest when the goods became the subject of the sale or exchange; and
- (d) otherwise subject to section 35.

(4) A transferee of an intangible or chattel paper resulting from a sale is, with respect to persons asserting interests in the goods under provisions other than subsections (1), (2) and (3), subject to the provisions of this Act for perfecting a security interest. R.S.O. 1980, c. 375, s. 29.

30.—(1) A purchaser of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by his seller even though it is perfected and the purchaser actually knows of it.

(2) A purchaser of chattel paper who takes possession of it in the ordinary course of his business has, to the extent that he gives new value, priority over any other security interest in it.

Perfecting as to goods held by bailee

Idem

Idem

Transferees

Idem

Effect of perfection on purchasers of goods in ordinary course of business

Idem. purchasers of chattel paper

- (a) that was perfected under section 25 if he did not actually know at the time he took possession that the chattel paper was subject to a security interest; or
- (b) that has attached to proceeds of inventory under section 27, whatever the extent of his knowledge.

(3) A purchaser of a non-negotiable instrument who takes possession of it in the ordinary course of his business has priority to the extent that he gives new value over a security interest in it that was perfected under section 26 if he did not actually know at the time he took possession that the instrument was subject to a security interest. R.S.O. 1980, c. 375, s. 30.

Idem.
purchasers of
non-nego-
table
instruments

31.—(1) The rights of.

- (a) a holder in due course of a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada);
- (b) a holder of a negotiable document of title who takes it in good faith for value; or
- (c) a *bona fide* purchaser of securities.

Bona fide
purchasers of
negotiable
instruments,
etc.
R.S.C. 1970,
c. B-5

are to be determined without regard to this Act.

(2) Registration under this Act is not such notice as to affect the rights of persons mentioned in subsection (1). R.S.O. 1980, c. 375, s. 31.

Idem

32. Where a person in the ordinary course of business furnishes materials or services with respect to goods in his possession that are subject to a security interest, any lien that he has in respect of such materials or services has priority over a perfected security interest unless the lien is given by an Act that does not provide that the lien has such priority. R.S.O. 1980, c. 375, s. 32.

Priority of
liens for
materials and
services

33. The rights of a debtor in collateral may be transferred voluntarily or involuntarily notwithstanding a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise. R.S.O. 1980, c. 375, s. 33.

Alienation of
rights of
debtors

34.—(1) A perfected security interest in crops or their proceeds given for a consideration to enable the debtor to

Special
priorities,
crops

produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise has priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving the consideration knew of the earlier security interest.

(2) A purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral.

Idem.
purchase-
money
security
interests,
inventory

- (a) if the purchase-money security interest was perfected at the time the debtor received possession of the collateral; and
- (b) if any secured party, whose security interest was actually known to the holder of the purchase-money security interest or who, prior to the registration by the holder of the purchase-money security interest, had registered a financing statement in the prescribed form covering the same items or type of inventory, had received notification of the purchase-money security interest before the debtor received possession of the collateral covered by the purchase-money security interest; and

- (c) if such notification states that the person giving the notice had or expected to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by item or type.

(3) A purchase-money security interest in collateral or its proceeds, other than inventory, has priority over any other security interest in the same collateral if the purchase-money security interest was perfected at the time the debtor obtained possession of the collateral or within ten days thereafter. R.S.O. 1980, c. 375, s. 34.

Idem.
purchase-
money
security
interests,
other than
inventory

35.—(1) If no other provision of this Act is applicable, priority between security interests in the same collateral shall be determined,

Priorities,
general rule

- (a) by the order of registration, if the security interests have been perfected by registration;
- (b) by the order of perfection, unless the security interests have been perfected by registration; or

caused by the absence of the goods removed or by the necessity for replacement, but a person so entitled to reimbursement may refuse permission to remove until the secured party has given adequate security for any reimbursement arising under this subsection.

Retention of collateral

(5) A person having an interest in real property that is subordinate to a security interest by virtue of subsection (1) or (2) and subsection (3) may, before the collateral has been removed from the real property by the secured party in accordance with subsection (4), retain the collateral upon payment to the secured party of the amount owing under the security interest having priority over his claim. R.S.O. 1980, c. 375, s. 36.

Priority of security interests, rental payments

36a.—(1) A security interest in a right to payment under a lease of real property, to which this Act applies, is subordinate to the interest of a person who acquires for value the lessor's interest in the lease if the interest, or notice thereof, of the person is registered in the proper land registry office before the interest, or notice thereof, of the secured party is registered in the proper land registry office.

Idem. mortgage payments

(2) A security interest in a right to payment under a mortgage or charge of real property, to which this Act applies, is subordinate to the interest of a person who acquires the mortgagee's or chargee's interest in the mortgage or charge if the interest of the person is registered in the proper land registry office before a notice of the security interest is registered in the proper land registry office. 1981, c. 58, s. 2.

37.—(1) Subject to subsection (2) and to section 38 and notwithstanding subsection 34 (3),

(a) a security interest in an accession that attached before the goods became an accession has priority as to the accession over the claim of any person in respect of the whole; and

(b) a security interest in goods that attached after the goods became an accession has priority over the claim of any person who subsequently acquired an interest in the whole, but not against a person who had an interest in the whole at the date of attachment of the security interest in the accession and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.

(c) by the order of attachment under subsection 12 (1), if no security interest has been perfected.

(2) For the purposes of subsection (1), a continuously perfected security interest shall be treated at all times as if perfected by registration, if it was originally so perfected, and it shall be treated at all times as if perfected otherwise than by registration if it was originally perfected otherwise than by registration. R.S.O. 1980, c. 375, s. 35.

Priority of security interests, fixtures

36.—(1) Subject to subsection (3) of this section and notwithstanding subsection 34 (3), a security interest that attached to goods before they became fixtures has priority as to the goods over the claim of any person who has an interest in the real property.

Idem

(2) Subject to subsection (3), a security interest that attached to goods after they became fixtures has priority over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered interest in the real property at the time the security interest attached to the goods and who has not consented in writing to the security interest or disclaimed an interest in the goods as fixtures.

Exceptions

(3) The security interest referred to in subsections (1) and (2) are subordinate to the interest of,

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

(b) a creditor with a lien on the real property subsequently obtained as a result of judicial process; or

(c) a creditor with a prior encumbrance of record on the real property in respect of subsequent advances,

if the subsequent purchase or mortgage was made or the lien was obtained or the subsequent advance under the prior encumbrance was made or contracted for, as the case may be, without actual notice of the security interest.

Removal of collateral

(4) If a secured party, by virtue of subsection (1) or (2) and subsection (3), has priority over the claim of a person having an interest in the real property, he may on default: subject to the provisions of this Act respecting default, remove his collateral from the real property if, unless otherwise agreed, he reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury excluding diminution in the value of the real property

Exceptions

(2) A security interest referred to in subsection (1) is subordinate to the interest of:

- (a) a subsequent purchaser for value of an interest in the whole; or
- (b) a creditor with a lien on the whole, subsequently obtained as a result of judicial process; or
- (c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances.

if the subsequent purchase was made, the lien was obtained or the subsequent advance under the prior perfected security interest was made or contracted for without notice of the security interest.

Removal of collateral

(3) If a secured party, by virtue of subsections (1) and (2), has an interest in an accession that has priority over the claim of any person having an interest in the whole, he may, on default, subject to the provisions of this Act respecting default, remove his collateral from the whole if, unless otherwise agreed, he reimburses any encumbrancer or owner of the whole who is not the debtor for the cost of repairing any physical injury excluding diminution in value of the whole caused by the absence of the goods removed or by the necessity for replacement, but a person so entitled to reimbursement may refuse permission to remove until the secured party has given adequate security for any reimbursement arising under this subsection.

Retention of collateral

(4) A person having a security interest in the whole that is subordinate to a security interest by virtue of subsections (1) and (2) may, before the collateral has been removed by the secured party in accordance with subsection (3), retain the collateral upon payment to the secured party of the amount owing under the security interest having priority over his claim. R.S.O. 1980, c. 375, s. 37.

Commingled goods

38. A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass, and, if more than one security interest attaches to the product or mass, the security interest ranks equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. R.S.O. 1980, c. 375, s. 38.

39. A secured party may, in the security agreement or otherwise, subordinate his security interest to any other security interest. R.S.O. 1980, c. 375, s. 39.

Priority subject to subordination

40.—(1) Unless an account debtor has made an enforceable agreement not to assert defences or claims arising out of a sale as provided by section 16, the rights of an assignee are subject to:

Account debtors

- (a) all the terms of the contract between the account debtor and the assignor and any defence or claim arising therefrom; and
- (b) any other defence or claim of the account debtor against the assignor that accrued before the account debtor received notice of the assignment.

(2) The account debtor may pay the assignor until the account debtor receives notice, reasonably identifiable with the relevant rights, that the account has been assigned, and, if requested by the account debtor, the assignee shall furnish proof within a reasonable time that the assignment has been made, and, if he does not do so, the account debtor may pay the assignor. R.S.O. 1980, c. 375, s. 40.

Idem

PART IV

REGISTRATION

41.—(1) A registration system, including a central office and branch offices, shall be established for the purposes of this Act.

Registration system

(2) The central office of the registration system shall be located at or near the City of Toronto.

Central office

(3) Branch offices of the registration system shall be established at such places as are designated by the regulations. R.S.O. 1980, c. 375, s. 41.

Branch offices

42.—(1) There shall be a registrar of personal property security and a branch registrar for each branch office.

Registrar, appointment

(2) It shall be the function of the registrar, under the direction of the Director of Land Registration appointed under the *Registry Act*, to supervise the operation of the registration system established for the purposes of this Act.

function

R.S.O. 1980, c. 445

seal of office

(3) The registrar and each branch registrar shall have a seal of office in such form as the Lieutenant Governor in Council approves. R.S.O. 1980, c. 375, s. 42.

Signing officers

43. The registrar and each branch registrar may designate one or more persons on the staff of his office to act on his behalf. R.S.O. 1980, c. 375, s. 43.

Certificate of registrar

44.—(1) Upon the request of any person for a search of the individual debtor index, business debtor index or motor vehicle serial number index and upon payment of the prescribed fee, the registrar shall,

- (a) issue a certificate stating whether there is registered at the time mentioned in the certificate a financing statement or financing change statement the registration of which is still effective in which the person named or the motor vehicle serial number shown in the certificate is shown in the designated place on the financing statement or financing change statement as a debtor or as a serial number, as the case may be, and, if there is, the registration number of it and any other related information recorded in the central file of the registration system; or

- (b) furnish a certified copy of a registered financing statement or a registered financing change statement.

Proof of certificates

(2) A certificate issued under clause (1) (a) is *prima facie* evidence of the contents thereof.

Proof of certified copies

(3) A certified copy furnished under clause (1) (b) is *prima facie* evidence of the contents of the document so certified. R.S.O. 1980, c. 375, s. 44.

Assurance Fund

45.—(1) There shall be an account in the Consolidated Revenue Fund to be known as "The Personal Property Security Assurance Fund", referred to in this section as "the Fund", into which shall be paid the prescribed portion of the fees received under this Act.

Interest

(2) Interest shall be credited to the Fund out of the Consolidated Revenue Fund at a rate to be determined from time to time by the Lieutenant Governor in Council, and such interest shall be made up at the close of each fiscal year upon the balance in the Fund at the end of the previous calendar year.

Persons suffering damage to be compensated

(3) Any person who suffers loss or damage as a result of his reliance upon a certificate of the registrar issued under section

44 that is incorrect because of an error or omission in the operation of the system of registration, recording, and production of information under this Part, is entitled to have compensation paid to him out of the Fund so far as the Fund is sufficient for that purpose, having regard to any other charges thereon, if he makes a claim therefor under subsection (4) within one year from the time of his having suffered the loss or damage.

(4) A person claiming to be entitled to payment of compensation out of the Fund shall make application therefor in writing to the registrar, setting out therein his full name and address and the particulars of his claim.

Claim for compensation

(5) The registrar shall refer the application to a Master of the Supreme Court who shall issue such directions as he thinks proper, hold a hearing, determine the claimant's entitlement to compensation, the amount thereof, and, if awarded, the costs of the proceedings.

Reference to Master

(6) The Master shall make his findings and embody his conclusions in the form of a certificate and send by registered mail one copy thereof to the claimant at the address shown in the application and one copy to the registrar.

Master's certificate

(7) The certificate of the Master shall be deemed to be confirmed at the expiration of thirty days from the date of mailing it to the claimant, unless notice of appeal is served within that time.

Confirmation of certificate

(8) The claimant or the registrar may appeal to the Divisional Court at any time before the certificate of the Master is confirmed, and the procedure thereon shall be in accordance with the rules of court.

Appeal

(9) When the registrar receives a certificate of the Master under subsection (6) and the time for any appeal has expired or, where an appeal is taken, it is disposed of, and it is finally determined that the claimant is entitled to payment of compensation out of the Fund, the registrar shall certify to the Treasurer of Ontario the sum found to be payable, including any costs awarded to the claimant, and the Treasurer shall pay such sum to the claimant out of the Fund. R.S.O. 1980, c. 375, s. 45.

Payment out of Fund

46. A financing statement or financing change statement to be registered under this Act may be tendered for registration.

Place of registration and effective time of registration

(a) by personal delivery to any branch office; or

- (b) by mail addressed to an address fixed by the regulations.

and the registration is effective from the time assigned to the registration by the registrar or branch registrar. R.S.O. 1980, c. 375, s. 46.

Registration of financing statement

47.—(1) In order to register under this Act for the purpose of perfecting a security interest that is created in or provided for in a security agreement, a financing statement in the prescribed form shall be registered.

Before security agreement signed

(2) Where the collateral is goods to be held for sale or lease, a financing statement in the prescribed form may be registered before a security agreement is signed for the purpose of perfecting a security interest in such goods.

Time for registration

(3) The financing statement referred to in subsection (1) shall not be registered before the execution of the security agreement or after thirty days from the date of the execution of the security agreement.

Failure to register

(4) Subject to section 64, a financing statement that is not registered in accordance with the provisions of subsection (3) does not constitute notice or perfection under subsection 53 (1).

Errors

(5) An error of a clerical nature or in an immaterial or non-essential part of a financing statement or financing change statement that has not misled does not invalidate the registration or destroy the effect of the registration. R.S.O. 1980, c. 375, s. 47.

Assignments

48.—(1) Where a security interest is perfected by registration and the secured party has assigned his interest, a financing change statement in the prescribed form may be registered.

Idem

(2) Where a security interest has not been perfected by registration and the secured party has assigned his interest, a financing statement in the prescribed form may be registered in which the assignee is shown as the secured party.

Idem

(3) Upon the registration of the financing change statement under subsection (1) or the financing statement under subsection (2), the assignee becomes the secured party of record. R.S.O. 1980, c. 375, s. 48.

Transfer of collateral

49.—(1) Where a security interest has been perfected by registration and the debtor with the consent of the secured

party transfers his interest in the collateral, the transferee becomes a debtor and the security interest becomes unperfected and the registration ceases to constitute notice unless the secured party registers a financing change statement in the prescribed form within fifteen days of the time he consents to the transfer.

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

- (a) the debtor has transferred his interest in the collateral; or

- (b) the debtor has changed his name,

the security interest becomes unperfected and the registration ceases to constitute notice fifteen days after the secured party learns of,

- (c) the transfer and the name of the transferee; or

- (d) the change of name and the new name of the transferee.

as the case may be, unless he registers a financing change statement in the prescribed form within such fifteen days.

Financing change statement

(3) A security interest that becomes unperfected under subsection (1) or (2) may thereafter be perfected by registering a financing change statement in the prescribed form at any time during the remainder of the unexpired registration period. R.S.O. 1980, c. 375, s. 49.

50. Where a security interest is perfected by registration, and,

- (a) the security agreement to which it relates is amended;

- (b) the name or address of the secured party or debtor is changed; or

- (c) an error or omission of a clerical nature was made in the preparation of the financing statement or financing change statement that is registered in respect of the security interest.

a financing change statement in the prescribed form may be registered at any time during the period that the registration is effective. R.S.O. 1980, c. 375, s. 50.

(d) a financing change statement under subsection 49 (3) extends the effect of the registration of the financing statement to which it relates for the remainder of the unexpired registration period, but when such registration has prejudiced the rights that any person acquired by an act or thing done by him during the period that the security interest was unperfected, the registration shall be presumed not to have occurred for the purpose of obtaining such rights;

(e) any other financing change statement constitutes notice thereof to all persons claiming any interest in such collateral during the remainder of the period for which the registration of the financing statement is effective.

(2) For the purposes of this section, the period of three years in respect of the registration of a financing statement or a financing change statement is a period of time commencing with the time assigned to the registration of the statement by the registrar or branch registrar and ending with the expiry of the third anniversary of the date of the registration. R.S.O. 1980, c. 375, s. 53.

54.—(1) A notice in the prescribed form may be registered in the proper land registry office, where,

(a) the collateral is or includes fixtures or goods that may become fixtures or crops, or oil, gas or other minerals to be extracted, or timber to be cut; or

(b) the security interest is a security interest in a right to payment under a mortgage or charge of real property to which this Act applies. 1981, c. 58, s. 4.

(2) A notice registered under subsection (1) may be discharged by a certificate in the prescribed form and the certificate may be registered in the proper land registry office.

(3) The registration of the notice under subsection (1) shall, for the purposes of subsection 36 (3), constitute actual notice of the security interest. R.S.O. 1980, c. 375, s. 54 (2, 3).

55.—(1) Where a security interest is perfected by registration and the collateral or proceeds, as the case requires, is released or partially released, the registration may be discharged or partially discharged by the registration of a financing change statement in the prescribed form.

51. Where a secured party of record has subordinated his interest to the interest of another person, a financing change statement in the prescribed form may be registered at any time during the period that the registration of the subordinated interest is effective. R.S.O. 1980, c. 375, s. 51.

52. Where a security interest has been perfected by registration, the registration may be renewed.

(a) before the expiration of the registration period, by the registration of a financing change statement in the prescribed form; or

(b) notwithstanding subsection 47 (3), after the expiration of the registration period, by the registration of a financing statement in the prescribed form. R.S.O. 1980, c. 375, s. 52.

53.—(1) Where the collateral is other than instruments, securities, letters of credit, advices of credit or negotiable documents of title, registration under this Act of,

(a) a financing statement constitutes,

(i) notice of the security interest to which it relates to all persons claiming any interest in such collateral, and

(ii) subject to section 21, perfection of the security interest,

during the period of three years following such registration;

(b) a financing change statement under clause 52 (a) extends the effect of the registration of the financing statement to which it relates during the period of three years following the registration of the financing change statement;

(c) a financing statement under clause 52 (b) extends the effect of the registration of the original financing statement during the period of three years following the registration of the financing statement under clause 52 (b), but when such registration has prejudiced the rights that any person acquired by an act or thing done by him during the period that the security interest was unperfected, the registration shall be presumed not to have occurred for the purpose of obtaining such rights;

Three year period

Fixtures, mortgages, charges

Discharge of notice

Effect of registration

Discharge or partial discharge of registration

Idem

(2) The financing change statement referred to in subsection (1) shall not be registered unless financing change statements in respect of all assignments by the secured party or transfers by the debtor are registered.

Demand

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

(a) all the obligations under the security agreement to which it relates have been performed; or

(b) it is agreed to release part of the collateral covered by the security agreement to which it relates upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of such obligations,

any person having an interest in the collateral covered by the security agreement may deliver a written demand to the secured party, either personally or by registered mail, demanding a financing change statement referred to in subsection (1) and the secured party shall sign and deliver personally or by registered mail to the person demanding it at the place set out in the demand the financing change statement together with financing change statements in respect of all assignments by the secured party of the security interest or transfers by the debtor of his interest in the collateral in respect of which financing change statements have not been registered.

Failure to deliver

(4) Where the secured party, without reasonable excuse, fails to deliver the financing change statements required under subsection (3) within ten days after receipt of a demand therefor, he shall pay \$100 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

Security or payment into court

(5) Upon application to the county or district court by originating notice to all persons concerned or to such persons as the judge may determine, the judge may,

(a) allow security for or payment into court of the amount claimed by the secured party and such costs as he may fix, and thereupon order the secured party to discharge or partially discharge, as the case may be, the registration of the financing statement; or

(b) order upon any ground he considers proper that the registrar amend the recorded information to indicate that the registration of the financing statement

has been discharged or partially discharged, as the case may be. R.S.O. 1980, c. 375, s. 55.

PART V

DEFAULT—RIGHTS AND REMEDIES

56.—(1) The rights and remedies referred to in this Part are cumulative.

Rights and remedies cumulative

(2) Where the debtor is in default under a security agreement, the secured party has, in addition to any other rights and remedies, the rights and remedies provided in the security agreement except as limited by subsection (5), the rights and remedies provided in this Part and, when in possession, the rights, remedies and duties provided in section 19.

Secured party's rights and remedies

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

Secured party's remedies

(4) Where the debtor is in default under a security agreement, he has, in addition to the rights and remedies provided in the security agreement and any other rights and remedies, the rights and remedies provided in this Part and in section 19.

Debtor's rights and remedies

(5) Except as provided in sections 61 and 62, the provisions of subsections 59 (3), (4) and (5) and of sections 60, 61, 62 and 63, to the extent that they give rights to the debtor and impose duties upon the secured party, shall not be waived or varied, but the parties may by agreement determine the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as such standards are not manifestly unreasonable having regard to the nature of such rights and duties.

Waiver and variation of rights and duties

(6) Where a security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case this Part does not apply.

Where agreement covers both real and personal property

vided for in the security agreement and not prohibited by law, any other reasonable expenses incurred by the secured party;

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

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

Request for
proof of
interest

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

Methods of
disposition

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

Secured
party's right
to delay
disposition of
collateral

(4) The secured party may, subject to subsection (1), retain the collateral in whole or in part for such period of time as is commercially reasonable.

Notice to be
given by
secured party

(5) Unless the collateral is perishable or unless the secured party believes on reasonable grounds that the collateral will decline speedily in value, the secured party shall give to the debtor and to any other person who has a security interest in the collateral that is perfected by registration against the name of the debtor and to any other person who is known by the secured party to have a security interest in the collateral not less than fifteen days notice in writing containing:

(a) a brief description of the collateral;

(b) the amount required to satisfy the obligation secured by his security interest;

(c) the amount of the applicable expenses referred to in clause (1) (a) or, in a case where the amount of such expenses has not been determined, his reasonable estimate thereof;

(7) A security interest does not merge merely because a secured party has reduced his claim to judgment. R.S.O. 1980, c. 375, s. 56.

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

(a) to notify any account debtor or any obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral; and

(b) to take control of any proceeds to which he is entitled under section 27.

Idem

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors on instruments shall proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. R.S.O. 1980, c. 375, s. 57.

Secured
party's right
to take
possession
upon default

58. Upon default under a security agreement,

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

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

(c) the secured party may dispose of collateral under section 59 on the debtor's premises. R.S.O. 1980, c. 375, s. 58.

Secured
party's right
to dispose of
collateral
upon default

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

(a) the reasonable expenses of retaking, holding, repairing, processing, preparing for disposition and disposing of the collateral; and, to the extent pro-

(d) a statement that upon payment of the amounts due the debtor may redeem the collateral;

(e) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency; and

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

(6) The notice required by subsection (5) shall be served personally upon or left at the residence or last known place of abode of the party to be served or may be sent by registered mail to his last known post office address.

(7) The secured party may purchase the collateral or any part thereof only at a public sale.

(8) Where collateral is disposed of in accordance with this section, the disposition discharges the security interest of the secured party making the disposition and, if such disposition is made to a *bona fide* purchaser for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

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

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

(b) in any other case, if the purchaser acts in good faith,

the disposition discharges the security interest of the secured party making the disposition and, where the disposition is made to a purchaser for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

(10) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral. R.S.O. 1980, c. 375, s. 59.

Service of
notice

Secured
party's right
to purchase
collateral

Effect of
disposition of
collateral

Idem

Certain
transfers of
collateral

60. Where a security agreement secures an indebtedness and the secured party has dealt with the collateral under section 57 or has disposed of it in accordance with section 59 or otherwise, he shall account for any surplus to any person, other than the debtor, whom the secured party knows to be the owner of the collateral, and, in the absence of such knowledge, he shall account to the debtor for any surplus. R.S.O. 1980, c. 375, s. 60.

61.—(1) Where the security agreement secures an indebtedness and the collateral is consumer goods and the debtor has paid at least 60 per cent of the indebtedness secured and has not signed, after default, a statement renouncing or modifying his rights under this Part, the secured party who has taken possession of the collateral shall, within ninety days after taking possession, dispose of or contract to dispose of the collateral under section 59, and, if he fails to do so, the debtor may proceed under section 63, or in an action for damages or loss sustained.

(2) In any case other than that mentioned in subsection (1), a secured party in possession of the collateral may, after default, propose to retain the collateral in satisfaction of the obligation secured, and notification of such proposal shall be given to the debtor and to any other person whom such secured party knows to be the owner of the collateral and, except in the case of consumer goods, to any other person who has a security interest in the collateral and who has registered a financing statement in the prescribed form under this Act indexed in the name of the debtor or who is known by the secured party in possession to have a security interest in the collateral.

(3) If any person entitled to notification under subsection (2) objects in writing within fifteen days after being notified, the secured party in possession shall dispose of the collateral under section 59, and, in the absence of any such objection, such secured party shall, at the expiration of such period of fifteen days, be deemed to have irrevocably elected to retain the collateral in satisfaction of the obligation secured, and thereafter is entitled to hold or dispose of the collateral free of all rights and interests therein of any person entitled to notification under subsection (2) who was given such notification. R.S.O. 1980, c. 375, s. 61.

62. At any time before the secured party has disposed of the collateral by sale or exchange or contracted for such disposition under section 59 or before the secured party shall be deemed to have irrevocably elected to retain the collateral in satisfaction of the obligation under subsection 61 (2), the

debtor, or any person other than the debtor who is the owner of the collateral, or any secured party other than the secured party in possession, may, unless he has otherwise agreed in writing after default, redeem the collateral by tendering fulfillment of all obligations secured by the collateral together with a sum equal to the reasonable expenses of retaking, holding, repairing, processing, preparing the collateral for disposition and in arranging for its disposition, and, to the extent provided for in the security agreement, the reasonable solicitor's costs and legal expenses. R.S.O. 1980, c. 375, s. 62.

Remedies for failure of secured party to comply with this Part

63.—(1) Where a secured party in possession of collateral is not complying with any of the obligations imposed by section 19 or, after default, is not proceeding in accordance with this Part or the account is disputed, the debtor or any person who is the owner of the collateral or the creditors of either of them or any person other than such secured party who has an interest in the collateral may apply to the Supreme Court or to a county or district court having jurisdiction with respect thereto, and the court may, upon hearing any such application, direct that the secured party comply with the obligations imposed by section 19, or that the collateral be or be not disposed of, or order an account to be taken or make such other or further order as the court considers just.

Idem

(2) If the disposition of the collateral has been made otherwise than in accordance with this Part.

(a) the debtor or any other person entitled to notice under subsection 59 (5) or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss or damage caused by his failure to comply with this Part; and

(b) where the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10 per cent of the principal amount of the debt or the time price differential plus 10 per cent of the cash price.

Removal of proceedings into Supreme Court

(3) Where an application under subsection (1) is made to a county or district court, a respondent may, by notice served on the applicant and on the other respondents, if any, and filed with proof of service thereof with the clerk of the county or district court not later than the two days preceding the day of the return of the application, require the proceedings to be removed into the Supreme Court.

(4) Upon the filing of the notice and proof of service thereof, the clerk of the county or district court shall forthwith transmit the papers and proceedings to the proper office of the Supreme Court in the county or district in which the application is made.

Transmission of proceedings

(5) When the papers and proceedings are received at the proper office of the Supreme Court, the proceedings are *ipso facto* removed into the Supreme Court.

Removal of proceedings

(6) Where an application under subsection (1) is made to or is removed into the Supreme Court, the court may refer any question to a master or other officer for inquiry and report.

Reference to master

(7) An appeal lies to the Divisional Court from any order made under this section. R.S.O. 1980, c. 375, s. 63.

Appeal

PART VI

MISCELLANEOUS

64. Where in this Act any time is prescribed within which or before which any act or thing must be done, a judge on application may, upon such terms and conditions and with such notice, if any, as he may order, extend such time for compliance upon being satisfied that no interest of any other person will be prejudiced by such extension, but, in the event that it later appears that any such act or thing done within the period so extended has prejudiced the rights that any person acquired before the doing of such act or thing, such act or thing shall be presumed not to have been done in conformity with this Act for the purpose of obtaining the right that such person acquired before the doing of such act or thing. R.S.O. 1980, c. 375, s. 64.

Extension of time

65.—(1) Except as otherwise provided herein, this Act applies only to a security agreement made on or after the 1st day of April, 1976, and does not apply to a security agreement made before that day.

Application of Act

(2) Subject to section 66, a security agreement made before the 1st day of April, 1976, that required a registration in order to comply with *The Assignment of Book Debts Act, The Bills of Sale and Chattel Mortgages Act or The Conditional Sales Act* continues to have such force and effect as if those Acts had not been repealed if a financing statement was registered pursuant to this Act within ninety days after the execution of the security agreement, and section 64 applies with necessary modifications in respect of any extension of such time. R.S.O. 1980, c. 375, s. 65.

Application re prior unregistered security R.S.O. 1970, c. 33, 45, 76

Transitional provision
R.S.O. 1970,
c. 33, 45,
76

66.—(1) Where a security interest was covered by an unexpired filing or registration under *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act* or *The Conditional Sales Act*, and in respect of which a financing statement was filed before the 1st day of April, 1976.

- (a) the financing statement and any filed financing change statement relating thereto shall be deemed to be registered; and
- (b) the security interest to which the financing statement relates shall be deemed to be perfected.

under this Act and, subject to this Act, the effect of the prior filing or registration is continued for the unexpired portion of the filing or registration period.

Inspection of documents

(2) Upon the request of any person and upon payment of the prescribed fee, any chattel mortgage registered under *The Bills of Sale and Chattel Mortgages Act*, any contract registered under *The Conditional Sales Act* or any assignment of book debts registered under *The Assignment of Book Debts Act* shall, subject to section 68, be provided for inspection. R.S.O. 1980, c. 375, s. 66.

Saving

R.S.O. 1980,
c. 94

66a. Notwithstanding clause 3 (1) (c) of this Act, a mortgage, charge or assignment the registration of which is provided for in the *Corporation Securities Registration Act* shall not be invalid by reason only that it has not been registered under that Act, if the security interest created by the mortgage, charge or assignment is perfected by registration in compliance with this Act and this Act shall be deemed always to have applied to any such security interest. 1981, c. 2, s. 1.

Rules of practice

67. Unless otherwise provided by this Act or the regulations, the Rules of Practice and Procedure of the Supreme Court apply to proceedings under this Act. R.S.O. 1980, c. 375, s. 67.

Destruction of documents

68.—(1) Where.

- (a) books, documents, records or papers have been preserved for the purposes of this Act; or
- (b) chattel mortgages, conditional sale contracts or assignments of book debts registered under *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act* or *The Conditional Sales Act* have been preserved.

R.S.O. 1970,
c. 33, 45,
76

for so long that it appears they need not be preserved any longer, the Director of Land Registration appointed under the *Registry Act* may authorize their destruction.

R.S.O. 1980,
c. 445

(2) The registrar may remove from the registration system information relating to a financing statement or financing change statement that is no longer effective. R.S.O. 1980, c. 375, s. 68.

Removal from registration system

69. Where there is conflict between a provision of this Act and a provision of the *Consumer Protection Act*, the provision of the *Consumer Protection Act* prevails and, where there is conflict between a provision of this Act and a provision of any general or special Act, other than the *Consumer Protection Act*, the provision of this Act prevails. R.S.O. 1980, c. 375, s. 69.

Conflict R.S.O. 1980,
c. 87

70.—(1) The Lieutenant Governor in Council may make Regulations.

- (a) designating branch offices;
- (b) approving the form of the seal of the registrar and each branch registrar;
- (c) prescribing the duties of the registrar and branch registrars;
- (d) prescribing business hours for the offices of the registration system or any of them;
- (e) respecting the registration system;
- (f) requiring the payment of fees and prescribing the amounts thereof;
- (g) prescribing the portion of the fees received under this Act that shall be paid into The Personal Property Security Assurance Fund;
- (h) governing practice and procedure applicable to proceedings under this Act;
- (i) prescribing forms, the information to be contained in forms, the manner of recording the information and the persons who shall sign forms;
- (j) requiring that the forms to be used shall be those provided or approved by the registrar.

(k) governing the time assigned to the registration of financing statements and financing change statements;

(ka) extending the time for registration of financing statements where, in the opinion of the Lieutenant Governor in Council, registration within the time prescribed by this Act is impracticable because of a general interruption in mail service;

(l) prescribing abbreviations, expansions or symbols that may be used in a financing statement or financing change statement or in the recording or production of information by the registrar;

(m) fixing the address to which financing statements and financing change statements shall be addressed when tendered by mail for registration;

(n) providing for the approval by the registrar of the forms to be used for the purposes of this Act, and for the withdrawal by the registrar of any such approval;

(o) prescribing the particulars referred to in section 46;

(p) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1980, c. 375, s. 70; 1981, c. 58, s. 5 (1).

Retrospective regulation

(2) A regulation made under clause (1) (ka) may apply to the time for registration of financing statements that relate to security agreements that were entered into before the regulation comes into force and notwithstanding that the time for their registration has expired. 1981, c. 58, s. 5 (2).

REGULATION 747

under the Personal Property Security Act

BRANCH OFFICES

1. The following places are designated as locations of the branch offices of the registration system.
O. Reg. 207/72, s. 1, revised.

- | | |
|------------------|----------------------|
| 1. Barrie | 23. L'Orignal |
| 2. Belleville | 24. Millon |
| 3. Bracebridge | 25. Nanawee |
| 4. Brampton | 26. North Bay |
| 5. Brantford | 27. Oranville |
| 6. Brockville | 28. Ottawa |
| 7. Cayuga | 29. Owen Sound |
| 8. Chatham | 30. Parry Sound |
| 9. Cobourg | 31. Pembroke |
| 10. Cochrane | 32. Perth |
| 11. Cornwall | 33. Peterborough |
| 12. Fort Frances | 34. Picton |
| 13. Goderich | 35. Thunder Bay |
| 14. Gore Bay | 36. St. Catharines |
| 15. Guelph | 37. St. Thomas |
| 16. Haliburton | 38. Sarnia |
| 17. Hamilton | 39. Sault Ste. Marie |
| 18. Kenora | 40. Simcoe |
| 19. Kingston | 41. Stratford |
| 20. Kitchener | 42. Sudbury |
| 21. Lindsay | 43. Toronto |
| 22. London | 44. Walkerton |
| | 45. Welland |
| | 46. Whitby |
| | 47. Windsor |
| | 48. Woodstock |
| | 49. Newmarket |

O. Reg. 207/72, Sched.; O. Reg. 616/84, s. 1.

REGULATION 748

under the Personal Property Security Act

FEES CONCERNING SECURITY DOCUMENTS

1. In this Regulation,

(a) "document" means a chattel mortgage registered under *The Bills of Sale and Chattel Mortgages Act*, being chapter 45 of the Revised Statutes of Ontario, 1970, a contract registered under *The Conditional Sales Act*, being chapter 76 of the Revised Statutes of Ontario, 1970 or an assignment of book debts registered under *The Assignment of Book Debts Act*, being chapter 33 of the Revised Statutes of Ontario, 1970;

(b) "statement" means a financing statement, financing change statement or financing change statement amendment. R.R.O. 1980, Reg. 748, s. 1.

2. The fees to be paid in respect of the following matters are:

1. For registration of a statement \$ 5.00

2. For a search \$ 2.00

3. For a registrar's certificate 10.00

4. For production of a document for inspection (including production of the branch office copy of the statement relating thereto)30

5. For a copy of a document and statement relating thereto for each page required (including production of the document)50

6. For production of the central office copy of a statement for inspection 5.00

7. For a copy of the central office copy of a statement (not including production of the statement) 1.00

8. For certifying a copy to which item 6 or 7 applies50
R.R.O. 1980, Reg. 748, s. 2; O. Reg. 137/84, s. 1;
O. Reg. 249/86, s. 1.

REGULATION 749

under the Personal Property Security Act

GENERAL

INTERPRETATION

1. In this Regulation,

(a) "artificial body" includes a partnership, corporations, association, organization, estate of a deceased natural person, trade union, church or other religious organization, syndicate, joint venture, trust or trustee in bankruptcy, but does not include a natural person;

(b) "authorized signature of the secured party" means the name of the secured party, typed, printed or stamped, and

(i) the signature of the secured party, or

(ii) the signature of a person with actual, implied or apparent authority to sign on behalf of the secured party together with the typed, printed or stamped name of such person;

(c) "branch filing office" means a branch office established under the Act;

(d) "central filing office" means the central office established under the Act;

(e) "maturity date" or "date of maturity" means the date, excluding days of grace, on which the debt will be fully paid if every payment is made according to the original terms of the security agreement;

(f) "motor vehicle" means an automobile, motorcycle, motorized snow vehicle and any other vehicle propelled or driven otherwise than by muscular power, but does not include,

(i) the cars of electric or steam railways or other vehicles running only upon rails,

(ii) a traction engine,

(iii) a farm tractor,

(iv) a self-propelled implement of husbandry,

(v) a road-building machine, or

(vi) a craft intended primarily for use in the air or in or upon the water;

(g) "person" means an artificial body or a natural person;

(h) "principal amount" means the amount that is secured or is intended to be secured under the original terms of the security agreement and may include interest, pre-calculated interest, carrying charges, insurance premiums or any other cost or charge;

(i) "registering agent" means the person who is acting as agent for the secured party when submitting a statement for registration but does not include a clerk or other employee of the secured party;

(j) "specific page of a registration" means in respect of a single page registration, the financing statement or financing change statement that is registered and in respect of a multiple page registration, one of the financing statements or financing change statements that is registered and comprises a page of the multiple page registration;

(k) "transition filing" means a chattel mortgage registered under *The Bills of Sale and Chattel Mortgages Act*, being chapter 45 of the Revised Statutes of Ontario, 1970, a contract registered under *The Conditional Sales Act*, being chapter 76 of the Revised Statutes of Ontario, 1970 or an assignment of book debts registered under *The Assignment of Book Debts Act*, being chapter 33 of the Revised Statutes of Ontario, 1970, as the case may be, that at the time of registration was not accompanied by a financing statement and,

(i) the registration of which has not been renewed, or

(ii) the registration of which has been renewed but at the time of registration the renewal statement was not accompanied by a financing statement. R.R.O. 1980, Reg. 749, s. 1.

FORM OF STATEMENT AND WHEN REQUIRED

2.—(1) Where the Act requires a statement in the prescribed form to be registered, the form to be used shall be the form of financing statement or financing change statement provided or approved by the registrar.

(2) Each line on which information is to be set out on a financing statement or a financing change statement shall be numbered. R.R.O. 1980, Reg. 749, s. 2.

CONTENT OF FINANCING STATEMENT

3.—(1) A financing statement,

(a) shall set out,

(i) the information required under section 14 and, where the name is the name of a natural person, his date of birth and sex,

(ii) the name and address of the secured party or his assignor,

(iii) the classification of the collateral as consumer goods, inventory, equipment, book debts or that the classification is other than consumer goods, inventory, equipment or book debts or any combination thereof,

(iv) whether a motor vehicle is or is not included in the collateral,

(v) where the collateral is classified as consumer goods, the principal amount,

(vi) where the collateral is classified as consumer goods, the date of maturity, or where there is no fixed date of maturity, an indication that there is no fixed maturity date, and

(vii) the authorized signature of the secured party;

(b) may set out the name and address of the registering agent, if any.

(2) Where the collateral includes a motor vehicle and the motor vehicle is,

(a) classified as consumer goods, the motor vehicle shall; or

(b) not classified as consumer goods, the motor vehicle may,

be described on line numbered 11 or 12 on the financing statement and the description may include the body style and shall include the last two digits of the model year if any, the make or where there is no make, the name of the manufacturer and the serial number which may include the model number.

(3) Collateral other than collateral described in clause (2) (a) may be described on line number 13, 14

or 15 of the financing statement. R.R.O. 1980, Reg. 749, s. 3.

COLLATERAL BROUGHT INTO ONTARIO

4. A financing statement tendered for registration in respect of,

(a) collateral brought into Ontario that is subject to a security interest in another jurisdiction at the time it is brought into Ontario; or

(b) goods brought into Ontario that are subject to the seller's right to revendicate or to resume possession of the goods,

shall be designated as a caution filing and shall set out the information required by section 3 except that the date of birth of a natural person need not be set out. R.R.O. 1980, Reg. 749, s. 4.

RENEWAL OF A REGISTRATION

5. Where a registration is renewed,

(a) before the expiration of the registration period, the financing change statement referred to in clause 52 (a) of the Act shall be designated as a renewal, and shall set out the information required by section 17; or

(b) after the expiration of the registration period, the financing statement referred to in clause 52 (b) of the Act,

(i) in respect of a registration that is a transition filing,

(A) shall set out that the registration is a transition filing on line numbered 13, 14 or 15,

(B) shall set out the information required by section 3, except that the date of birth of a natural person need not be set out, and

(C) may set out the registration number of the charged mortgage, contract or assignment of book debts, as the case may be, on line numbered 13, 14 or 15, or

(ii) in respect of any filing other than a registration referred to in subclause (i),

(A) shall set out the information required by section 3, and

(B) may set out that the registration is a late renewal on line numbered 13, 14 or 15. R.R.O. 1980, Reg. 749, s. 5.

ASSIGNMENT BY SECURED PARTY

6. Where the assignment by a secured party of his interest is to be recorded, the financing change statement referred to in subsection 48 (1) of the Act shall be designated as an assignment by the secured party and shall set out,

(a) the information required by section 17;

(b) the name of the assignor as set out on the statement to which it relates; and

(c) the name and address of the assignee. R.R.O. 1980, Reg. 749, s. 6.

TRANSFER OF COLLATERAL

7. Where the transfer by a debtor of his interest in the collateral is to be recorded, the financing change statement referred to in section 49 of the Act shall be designated as a transfer by debtor and shall set out,

(a) the information required by section 17;

(b) the name of the transferee in the manner prescribed in section 14;

(c) where the transferee is a natural person, the sex and date of birth of the person, where known to the secured party; and

(d) the address of the transferee. R.R.O. 1980, Reg. 749, s. 7.

DEBTOR NAME CHANGE

8. Where the change of a debtor name is to be recorded, the financing change statement referred to in section 49 of the Act shall be referred to as an amendment and shall set out the information required under clause 13 (c). R.R.O. 1980, Reg. 749, s. 8.

REGISTRATION OF A DISCHARGE

9. Where the release of collateral or proceeds is to be recorded, the financing change statement referred to in subsection 55 (1) of the Act shall be designated as a discharge and shall set out the information required by section 17. R.R.O. 1980, Reg. 749, s. 9.

10.—(1) Where the partial release of collateral or proceeds is to be recorded, the financing change statement referred to in subsection 55 (1) of the Act shall be designated as a partial discharge, and

(a) shall set out the information required by section 17;

(b) where the collateral that is partially released is or includes a motor vehicle

classified as consumer goods, shall set out a description of the motor vehicle; and

(c) may set out a description of any collateral other than the collateral referred to in clause (b).

(2) Where the released collateral referred to in subsection (1) includes a motor vehicle and the motor vehicle is,

(a) classified as consumer goods, the motor vehicle shall; or

(b) not classified as consumer goods, the motor vehicle may,

be described on line numbered 42 of the financing change statement and the description may include the body style and shall include the last two digits of the model year, if any, the make or where there is no make the name of the manufacturer and the serial number which may include the model number.

(3) Collateral other than collateral described in clause (2) (a) may be described on line numbered 43 of the financing change statement. R.R.O. 1980, Reg. 749, s. 10.

OTHER CHANGE (SUBORDINATION)

11. Where the subordination of the interest of a secured party of record is to be recorded, the financing change statement referred to in section 51 of the Act shall be designated as another change, and shall set out,

(a) the information required by section 17;

(b) the type of change as a subordination on line numbered 44; and

(c) the particulars of the subordination on line numbered 45, 46 or 47. R.R.O. 1980, Reg. 749, s. 11.

AMENDMENT OF INFORMATION

12. Where a change to the record is to be recorded in respect of,

(a) an amendment to the security agreement;

(b) a change in the name or address of the secured party or the address of the debtor; or

(c) an error or omission of a clerical nature made in the preparation of a statement,

the financing change statement referred to in section 50 of the Act shall be referred to as an amendment and shall set out,

(d) the information required by section 13;

22.—(1) The punctuation mark or symbol set out in column 2 of Schedule 1 may be used in a financing statement or a financing change statement in lieu of the information set out opposite thereto in column 1 of Schedule 1.

(2) The abbreviations or expansions set out in column 2 of Schedule 2 may be used for.

(a) item 1 to 9, on line numbered 03, 06, 08 and 16 in a financing statement and on line numbered 36, 37, 40, 48, 56, 57 and 66 in a financing change statement;

(b) item 10 to 30, on line numbered 04, 07, 09 and 17 in a financing statement and on line numbered 38, 41, 49, 58 and 67 in a financing change statement; and

(c) item 31 to 58, on line numbered 11, 12, 13, 14 and 15 in a financing statement and on line numbered 42, 43, 60, 61, 62 and 63 in a financing change statement.

in lieu of the information set out opposite thereto in column 1 of Schedule 2. R.R.O. 1980, Reg. 749, s. 22.

23. The time assigned to a registration shall correspond with the time at the central office. R.R.O. 1980, Reg. 749, s. 23.

NOTICE FOR REGISTRATION IN LAND REGISTRY OFFICES

24.—(1) A notice to be registered in the proper land registry office, of a security interest in,

(a) collateral that is fixtures, goods that may become fixtures, crops, oil, gas or minerals to be extracted shall be in Form 1; and

(b) a right to payment under a mortgage or charge of real property shall be in Form 2, and shall be signed by the secured party or his solicitor or personal representative.

(2) A notice registered in Form 1 or 2 may be discharged by registering a certificate of discharge in Form 3 and the certificate shall be signed by the secured party or his solicitor or personal representative. O. Reg. 838/81, s. 1.

Form 1

Personal Property Security Act

NOTICE OF SECURITY INTEREST UNDER
THE PERSONAL PROPERTY SECURITY ACT

(2) Where a statement referred to in subsection (1) is accepted by the branch registrar, the branch registrar shall number the statement, separate the copies and forward the central filing office copy to the central office.

(3) Except as provided in subsection (4), where a registrant requests the return to him of the registrant's copy, if any, of the statement referred to in subsection (1),

(a) by post and provides a prepaid addressed envelope; or

(b) by delivery to a branch office,

the branch registrar shall comply with the request.

(4) Clause (3) (b) does not apply to the central registration branch. R.R.O. 1980, Reg. 749, s. 19.

MANNER OF RECORDING

25.—(1) The information required or permitted by this Regulation to be set out on a financing statement or a financing change statement shall be set out in a manner suitable for filing and, without limiting the generality of the foregoing,

(a) the information shall be typewritten or machine printed in black ink with clear, neat and legible characters without erasures, interlineation or alterations;

(b) alphabetic characters shall be in upper case only; and

(c) subject to subsection 22 (1), the information shall be without punctuation marks or symbols.

(2) An error in transcribing information on to a financing statement or a financing change statement in respect of,

(a) the name or address of a person;

(b) the name or address of a secured party;

(c) the description of the collateral; or

(d) the name or address of a registering agent,

may be corrected before the statement is tendered for registration by typing an "X" over the error but the registrar may refuse to accept a statement where the correction may, in the opinion of the registrar, create an ambiguity. R.R.O. 1980, Reg. 749, s. 20.

21. A financing statement or financing change statement tendered for registration by mail shall be addressed to:

The Personal Property Security Registrars,
Central Registration Branch,
Box 21100,
Postal Station "A",
Toronto, Ontario M5W 1W6.

R.R.O. 1980, Reg. 749, s. 21.

49

16. The date of birth or date of maturity in a financing statement or financing change statement shall be set out to show,

(a) the day of the month in numerals;

(b) the first three letters of the name of the month;

(c) the last two digits of the number of the year. R.R.O. 1980, Reg. 749, s. 16.

17. A financing change statement other than a statement described as an amendment shall set out,

(a) the registration number of,

(i) the financing statement,

(ii) the last financing change statement designated as a renewal, or

(iii) the last financing change statement;

(b) one of the names as prescribed by section 14, as the name is set out on the financing statement;

(c) the name and address of one of the secured parties or of the registering agent, if any; and

(d) the authorized signature of the secured party. R.R.O. 1980, Reg. 749, s. 17.

APPROVED FORMS

18.—(1) Upon application, the registrar may approve a form of financing statement or financing change statement.

(2) An approval granted under subsection (1) may be for a limited time period and may be otherwise qualified and may require that the qualification or approval be printed on the form.

(3) The registrar may withdraw an approval granted under subsection (1) upon written notice sent by registered post and the approval shall be deemed to be withdrawn ten days after the mailing of such notice.

(4) An application under subsection (1) shall be accompanied by a self-addressed envelope. R.R.O. 1980, Reg. 749, s. 18.

PROCEDURE

19.—(1) A financing statement or financing change statement submitted to a branch registrar shall be in duplicate or in triplicate, unseparated, and the original shall be known as the central filing office copy, one copy shall be known as the branch filing office copy and the remaining copy, if any, shall be known as the registrant's copy.

48

(B) an artificial body, the information required under this subsection,

whether or not the trustee creates a security interest;

(g) an estate of a bankrupt and the bankrupt is,

(i) a natural person, the first given name of the person, followed by the initial of the second given name, if any, followed by the surname, followed by the word "bankrupt" or

(ii) an artificial body, the name of the person followed by the word "bankrupt" or

(A) any artificial body other than one described in clauses (a) to (g),

(i) the name of the artificial body, and

(ii) the name of each person signing the security agreement on behalf of the artificial body, and where the person signing is,

(A) a natural person, the information required under subsection (1), or

(B) an artificial body, the information required under this subsection,

whether or not the person signing creates a security interest.

(3) Where a person identifies himself or itself to the public by a name or style other than his or its own name, as the case may be, the name may be set out in the financing statement on a line designated for business debtor.

(4) Where the name of a person is required to be set out on a financing statement under subsection (1) or (2), the name shall be set out for,

(a) a natural person, on a line designated for individual debtor; or

(b) an artificial body, on a line designated for business debtor. R.R.O. 1980, Reg. 749, s. 14.

15. The registrar may assign a code to a secured party and the code may be set out in a financing statement or a financing change statement with or in lieu of the name and address of the secured party. R.R.O. 1980, Reg. 749, s. 15.

NOTICE IS HEREBY GIVEN THAT:

1. By a security agreement made between

(name of debtor)

of
(address)

as debtor, and

(name of secured party)

as secured party, a security interest has been created in

(brief description of collateral)

2. The following is a description of the land upon which the collateral is located or is affixed or is to be affixed:

(registrable description of land)

3. (Where appropriate) The security interest was assigned to

(name of assignee)

of
(address)

on
(date of assignment)

[who subsequently assigned the security interest to

(name of subsequent assignee)

of
(address)

on
(date of subsequent assignment)

etc.]

4. (Where appropriate) The assignee last named in paragraph 3 is the secured party as of the date of this notice.

The address of the secured party for service is

Dated at this day of

19

(name of secured party)

50

(signature of secured party or of his solicitor or personal representative and where a corporation is the secured party or where a solicitor or personal representative signs this notice, the title or capacity of the person signing shall be stated)

O. Reg. 838/81, s. 2, part.

Form 2

Personal Property Security Act

NOTICE OF SECURITY INTEREST UNDER THE PERSONAL PROPERTY SECURITY ACT

NOTICE IS HEREBY GIVEN THAT:

1. By a security agreement made between

(name of debtor)

of
(address of debtor)

as debtor, and

(name of secured party)

as secured party, a security interest in a right to payment under a (mortgage) (charge) of real property has been created.

2. The following is a description of the land which is subject to the (mortgage) (charge):

(registrable description of land)

3. The Registration Number of the (mortgage) (charge) is

4. (Where appropriate) The security interest was assigned to

(name of assignee)

of
(address)

on
(date of assignment)

[who subsequently assigned the security interest to

(name of subsequent assignee)

of
(address)

on
(date of subsequent assignment)

etc.]

5. (Where appropriate) The assignee last named in paragraph 4 is the secured party as of the date of this notice.

The address of the secured party for service is

Dated at this day of

19

(name of secured party)

(signature of secured party or of his solicitor or personal representative and where a corporation is the secured party or where a solicitor or personal representative signs this notice, the title or capacity of the person(s) signing shall be stated)

O. Reg. 838/81, s. 2, part.

Form 3

Personal Property Security Act

CERTIFICATE OF DISCHARGE UNDER THE PERSONAL PROPERTY SECURITY ACT

The notice of security interest of
(name of secured party)

of
(address)

upon the following lands:

(registrable description of land)

dated the day of 19, and registered the day of 19, as

Number in the Land Registry Office for the Land Titles (or Registry) Division of is discharged.

(here mention the particulars of any assignments)

Dated at this day of 19

(signature of secured party or of his solicitor or personal representative and where the secured party is a corporation or where a solicitor or personal representative signs this certificate, the title or capacity of the person(s) signing shall be stated)

O. Reg. 838/81, s. 2, part.

NOTE: Subsection 3 (1) of Ontario Regulation 838/81 provided for the use of Form 1, as that Form read prior to the 17th day of December, 1981, if the Form was registered on or before the 1st day of May, 1982.

Subsection 3 (2) of Ontario Regulation 838/81 provides for the continued use of a certificate of discharge in Form 2, as that Form read prior to the 17th day of December, 1981, if the Form was executed on or before the 1st day of May, 1982.

Schedule 1

ITEM	COLUMN 1	COLUMN 2
1.	Parentheses	()
2.	Apostrophe	'
3.	Period	.
4.	Plus sign	+
5.	Ampersand	&
6.	Hyphen	-
7.	Virgule	/
8.	Comma	,
9.	Percent sign	%
10.	Quotation marks	" "
11.	Dollar sign	\$

Schedule 2

ITEM	COLUMN 1	COLUMN 2
1.	COMPANY	CO
2.	LIMITED	LTD
3.	INCORPORATED	INC
4.	CORPORATION	CORP
5.	BROTHERS	BROS
6.	DIVISION OF	DIV OF
7.	CANADA	CAN
8.	INTERNATIONAL	INT
9.	CONSTRUCTION	CONST
10.	1/2	A HALF
11.	STREET	ST
12.	AVENUE	AVE
13.	ROAD	RD
14.	BOULEVARD	BLVD
15.	CIRCLE	CIR
16.	CRESCENT	CRES
17.	DRIVE	DR
18.	COURT	CT
19.	HIGHWAY	HWY
20.	APARTMENT	APT
21.	EAST	E
22.	WEST	W
23.	NORTH	N
24.	SOUTH	S
25.	LOT	L
26.	CONCESSION	CON. C
27.	TOWNSHIP	TWSP. TWP
28.	RURAL ROUTE	RR
29.	TORONTO	TOR
30.	ONTARIO	ONT

ITEM	COLUMN 1	COLUMN 2
31.	INTERNATIONAL HARVESTER	IH. INTERNAT HARV
32.	MASSEY FERGUSON	MF
33.	CHEVROLET	CHEV
34.	PONTIAC	PONT
35.	OLDSMOBILE	OLDS
36.	CHRYSLER	CHRS
37.	PLYMOUTH	PLY
38.	AMERICAN MOTORS	AM. AM MOTORS
39.	MOTORS	MTRS
40.	VOLKSWAGEN	VW
41.	RAMBLER	RAMBL
42.	1/2 TON TRUCK	HLF TON TRK
43.	1/2 TON PICKUP TRUCK	HALF TON PU TRK
44.	3/4 TON TRUCK	3 QTR TON TRK
45.	STATION WAGON	STN WGN
46.	4 DOOR HARDTOP	4 DR HDTP
47.	CONVERTIBLE	CONV
48.	COUPE	CPE
49.	DELIVERY VAN	DEL VAN
50.	SEDAN	SDN
51.	SUPERSPORT	SS
52.	SERIAL NUMBER	SERIAL
53.	SERIAL NUMBER	SERIAL
54.		INCH. IN'
55.	TELEVISION	TV
56.	1/2	HLF
57.	1/4	QTR
58.	BEDROOM SUITE	BDRM STE

REGULATION 750

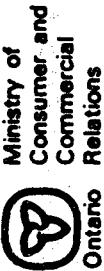
under the Personal Property Security Act

PERSONAL PROPERTY SECURITY ASSURANCE FUND

L. Twenty cents of each fee received under the Act in respect of forms of statements submitted for registration shall be paid into The Personal Property Security Assurance Fund. O. Reg. 779/75, s. 1.

APPENDIX C

LEGISLATION AND FORMS (ONT.)



FINANCING STATEMENT FORM 1B

412 PITCH CAREFULLY ALIGN TYPEWRITER		REGISTRATION NUMBER (FILING OFFICE USE ONLY)				79-0934786	
410 PITCH		VR	MT	DAY	HOUR	MINUTE	SEQUENCE
TYPE 1: COLLATERAL CLASSIFICATION (TYPE "X" IN AT LEAST ONE BOX)		COMPLETE SECTIONS 1 AND 2					COMPLETE SECTIONS 3 AND 4 IF COLLATERAL IS CLASSIFIED AS CONSUMER GOODS
SECTION 1: COLLATERAL CLASSIFICATION (TYPE "X" IN AT LEAST ONE BOX)		SECTION 2: MOTOR VEHICLE OR MOTORIZED SNOW VEHICLE INCLUDED IN COLLATERAL (TYPE "X" IN ONE BOX)					SECTION 3: SECTION 4:
IF INSUFFICIENT SPACE COMPLETE ADDITIONAL STATEMENTS AND SHOW THIS IS PAGE NUMBER OF TOTAL PAGES REQUIRED		BUSINESS DEBTOR BUSINESS CORPORATE PARTNERSHIP OR OTHER NAME (AS APPROPRIATE)					
DATE OF BIRTH DAY MONTH YEAR		INDIVIDUAL DEBTOR FIRST NAME INITIAL SURNAME (LAST NAME)					
SHOW ONE DEBTOR NAME ADDRESS		CITY TOWN ETC PROV					
DATE OF BIRTH DAY MONTH YEAR		INDIVIDUAL DEBTOR FIRST NAME INITIAL SURNAME (LAST NAME)					
ADDITIONAL DEBTOR NAME (IF ANY) ADDRESS IF DIFFERENT FROM ABOVE		CITY TOWN ETC PROV					
SECURED PARTY		NAME ADDRESS CITY TOWN ETC PROV					
DEBTOR		COMPLETE LINES 02 & 04 OR LINES 03 & 04					
DEBTOR		IF ADDITIONAL DEBTOR NAME IS SHOWN COMPLETE LINES 05 OR LINE 06					
DEBTOR		COMPLETE LINES 08 AND LINE 09					

[Continued on page ONTARIO-57]

FORMS

LAW SOCIETY LIBRARY		10419 (Ed 1/79)		ANY REPRINTING OF THIS FORM MUST HAVE PRIOR APPROVAL OF THE REGISTRAR	
CONSUMER GOODS A B C D E F G H I J K L M N O P Q R S T U V W X Y Z		BOOK DEBITS C D E F G H I J K L M N O P Q R S T U V W X Y Z		INVENTORY EQUIPMENT A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
YES NO PRINCIPAL AMOUNT SECURED DATE OF MATURITY DAY MONTH YEAR OR MATURITY DATE		BODY STYLE SERIAL NUMBER		REGISTERING AGENT NAME ADDRESS CITY, TOWN, ETC. PROV.	
10 COLLATERAL		11 MOTOR VEHICLE OR SNOW VEHICLE DESCRIPTION MUST BE SHOWN IF CLASSIFIED AS CONSUMER GOODS		12 MAKE	
13 GENERAL		14 COLLATERAL		15 DESCRIPTION (OPTIONAL)	
16 REGISTERING AGENT		17 NAME AND SIGNATURE OF SECURED PARTY		18 NAME AND SIGNATURE OF AGENT OF SECURED PARTY	

REGISTRANT: DO NOT DETACH YOUR COPY IF YOU WISH IT RETURNED (SHOWING REGISTRATION NUMBER).
 IF COPY TO BE RETURNED BY MAIL YOU MUST PROVIDE A SELF-ADDRESSED STAMPED ENVELOPE OF SUFFICIENT SIZE.

CENTRAL FILING OFFICE COPY

AUTHORIZED SIGNATURE

AGENT

PART VI — LEGISLATION AND FORMS

FINANCING CHANGE STATEMENT									
REGISTRATION NUMBER (FILING OFFICE USE ONLY)									
YR.	MTH	DAY	HOUR	MINUTE	BRANCH OFFICE	SEQUENCE			
31							79-437604		
IF INSUFFICIENT SPACE COMPLETE ADDITIONAL STATEMENTS AND SHOW TOTAL PAGES REQUIRED							THIS IS PAGE NUMBER		
IF INSUFFICIENT SPACE COMPLETE ADDITIONAL STATEMENTS AND SHOW TOTAL PAGES REQUIRED							THIS IS PAGE NUMBER		
TYPE AN 'X' IN THE APPROPRIATE BOX TO DESIGNATE THE CHANGE REQUIRED							COMPLETE PARTS 1 & 6		
RENEWAL							DISCHARGE		
ASSIGNMENT BY SECURED PARTY							TRANSFER BY DEBTOR		
COMPLETE PARTS 1 & 6							COMPLETE PARTS 1, 2 & 6		
COMPLETE PARTS 1, 3 & 6							COMPLETE PARTS 1, 4 & 6		
COMPLETE PARTS 1, 5 & 6							COMPLETE PARTS 1, 5 & 6		
RECORD TO BE CHANGED									
REGISTRATION NUMBER									
YR. MTH. DAY HOUR. MINUTE BRANCH OFFICE SEQUENCE									
DEBTOR NAME (AS RECORDED)									
INDIVIDUAL DEBTOR, FIRST NAME INITIAL SURNAME (LAST NAME)									
COMPLETE EITHER BUSINESS DEBTOR, BUSINESS, CORPORATE, PARTNERSHIP OR OTHER NAME (AS APPROPRIATE) LINE 34 OR LINE 35.									
BUT NOT BOTH									
ASSIGNMENT BY SECURED PARTY									
SECURED PARTY NAME									
ASSIGNOR (AS RECORDED)									
ASSIGNEE (TO BE RECORDED)									
ASSIGNEE ADDRESS									
CITY, TOWN, ETC									
PROV									
TRANSFER BY DEBTOR									
DEBTOR NAME (TRANSFEREE)									
BUSINESS DEBTOR, BUSINESS, CORPORATE, PARTNERSHIP OR OTHER NAME (AS APPROPRIATE)									
INDIVIDUAL DEBTOR, FIRST NAME INITIAL SURNAME (LAST NAME)									
DATE OF BIRTH SEX YEAR MONTH DAY									

Form 3B


 Ministry of
 Consumer and
 Commercial
 Relations

79-437604

31

 PARTIAL
 DISCHARGE
 OTHER
 CHANGE

 TRANSFER BY
 DEBTOR
 COMPLETE PARTS 1, 3 & 6

 ASSIGNMENT BY
 SECURED PARTY
 COMPLETE PARTS 1, 2 & 6

 DISCHARGE
 COMPLETE PARTS 1 & 6

 RENEWAL
 COMPLETE PARTS 1 & 6

TYPE AN 'X' IN THE APPROPRIATE BOX TO DESIGNATE THE CHANGE REQUIRED

RECORD TO BE CHANGED

REGISTRATION
NUMBER

YR. MTH. DAY

HOUR. MINUTE

BRANCH OFFICE

SEQUENCE

DEBTOR NAME
(AS RECORDED)

INDIVIDUAL DEBTOR, FIRST NAME

INITIAL

SURNAME (LAST NAME)

COMPLETE EITHER
BUSINESS DEBTOR, BUSINESS, CORPORATE, PARTNERSHIP OR OTHER NAME (AS APPROPRIATE)
LINE 34 OR LINE 35.

BUT NOT BOTH

ASSIGNMENT BY SECURED PARTY

SECURED
PARTY
NAME

ASSIGNOR (AS RECORDED)

ASSIGNEE (TO BE RECORDED)

ASSIGNEE ADDRESS

CITY, TOWN, ETC

PROV

TRANSFER BY DEBTOR

DEBTOR NAME
(TRANSFEREE)

BUSINESS DEBTOR, BUSINESS, CORPORATE, PARTNERSHIP OR OTHER NAME (AS APPROPRIATE)

INDIVIDUAL DEBTOR, FIRST NAME

INITIAL

SURNAME (LAST NAME)

DATE OF BIRTH SEX YEAR MONTH DAY

PART 1

PART 2

PART 3

FORMS

41	ADDRESS	CITY, TOWN, ETC.	PROV.	41
PART 4	PARTIAL DISCHARGE			
42	MOTOR VEHICLE DESCRIPTION	MAKE	BODY STYLE	SERIAL NUMBER
43	GENERAL COLLATERAL DESCRIPTION			
PART 5	OTHER CHANGE			
44	DESCRIBE TYPE OF CHANGE ON THIS LINE (EG. SUBORDINATION)			
45	PARTICULARS OF CHANGE			
46				
47				
PART 6	NAME AND SIGNATURE OF SECURED PARTY			
48	SECURED PARTY OR REGISTERING AGENT	CITY, TOWN, ETC.	PROV.	48
49				
AUTHORIZED SIGNATURE	NAME AND SIGNATURE OF SECURED PARTY - OR - NAME OF SECURED PARTY AND NAME AND SIGNATURE OF AGENT OF SECURED PARTY			

DO NOT DETACH YOUR COPY IF YOU WISH IT RETURNED (SHOWING REGISTRATION NUMBER)
IF COPY TO BE RETURNED BY MAIL YOU MUST PROVIDE A SELF-ADDRESSED STAMPED ENVELOPE OF SUFFICIENT SIZE

CENTRAL FILING OFFICE COPY

REGISTRANT:

ANY REPRINTING OF THIS FORM MUST HAVE PRIOR APPROVAL OF THE REGISTRAR

PART VI — LEGISLATION AND FORMS

FINANCING CHANGE STATEMENT — AMENDMENT

↑↑↑↑ 12 PITCH
CAREFULLY ALIGN TYPEWRITER

↑↑↑↑ 10 PITCH
CAREFULLY ALIGN TYPEWRITER

IF INSUFFICIENT SPACE
COMPLETE ADDITIONAL
STATEMENTS AND SHOW

TOTAL PAGES
PAGE NUMBER

OF

REGISTRATION NUMBER (FILING OFFICE USE ONLY)

SEQUENCE

BRANCH OFFICE

HOUR/MINUTE

YR/MTH/DAY

FORM 28 (ONTARIO)

56072667

RECORD TO BE AMENDED

TYPE "X"
IF NO SPECIFIC
PAGE IS TO BE
AMENDED

SHOW PAGE NUMBER OF
PAGE TO BE AMENDED

OR

SEQUENCE

BRANCH OFFICE

HOUR/MINUTE

YR/MTH/DAY

REGISTRATION
NUMBER

INDIVIDUAL DEBTOR: FIRST NAME

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SURNAME (LAST NAME)

DEBTOR NAME
(AS RECORDED)

BUSINESS DEBTOR: BUSINESS, CORPORATE, PARTNERSHIP OR OTHER NAME (AS APPROPRIATE)

COMPLETE EITHER LINE 53
OR LINE 54, BUT NOT BOTH

AMENDMENTS TO BE RECORDED

ENTER LINE NUMBER OF THE LINE TO BE AMENDED

INDIVIDUAL DEBTOR: FIRST NAME

INITIAL

SURNAME (LAST NAME)

SEX
M/F

DATE OF BIRTH
DAY MONTH YEAR

INITIAL

SURNAME (LAST NAME)

SEX
M/F

DATE OF BIRTH
DAY MONTH YEAR

BUSINESS DEBTOR: BUSINESS, CORPORATE, PARTNERSHIP OR OTHER NAME (AS APPROPRIATE)

SECURED
PARTY

NAME

ADDRESS

CITY, TOWN, ETC.

PROV.

COMPLETE SECTIONS 3 AND 4 IF COLLATERAL IS CLASSIFIED AS CONSUMER GOODS

SECTION 3:

SECTION 4:

DATE OF MATURITY

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MONTH

YEAR

OR

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FORMS

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64	01 THE FINANCING STATEMENT SHOULD HAVE BEEN DESIGNATED AS A CAUTION FILING.				64
65	THE INFORMATION THAT IS RECORDED ON THE FOLLOWING LINES SHOULD BE DELETED FROM THE RECORD AND THE LINES LEFT BLANK (SHOW COMPLETE LINE NUMBER, e.g., 02)				65
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PART 3		NAME		NAME AND SIGNATURE OF SECURED PARTY	
SECURED PARTY OR REGISTERING AGENT		ADDRESS		OR NAME OF SECURED PARTY AND NAME AND SIGNATURE OF AGENT OF SECURED PARTY	
67		67		67	
		CITY, TOWN, ETC.		PROV.	
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CHAPTER P-6.1

An Act respecting Security Interests in Personal Property

SHORT TITLE

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

INTERPRETATION

2. In this Act:

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

- (i) "other goods" means goods to which accession goods are affixed or attached; and
- (ii) "the whole" means the accession goods and the other goods;

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

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

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

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

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

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

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

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

- (i) in the ordinary course of his business deals in goods of that description; and
- (ii) reserves a proprietary interest in the goods after they have been delivered;

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

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

(i) "court" means Her Majesty's Court of Queen's Bench;

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

(k) "debtor" means a person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes:

- (i) the person who receives goods from another person under a consignment;
- (ii) the lessee under a lease;
- (iii) the assignor of an account or chattel paper;
- (iv) the transferee of a debtor's interest in collateral; and

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(v) any one or more of the persons mentioned in subclauses (i) to (iv) where the context so requires;

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

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

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

(n) "equipment" means goods that are not inventory or consumer goods;

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

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

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

(r) "future advance" means the payment of money, the provision of credit or the giving of value by the secured party pursuant to the terms of a security agreement, whether or not the secured party is obligated to pay the money, advance the credit or give the value, and includes all advances and expenditures made by the secured party for the protection, maintenance, preservation or repair of the collateral;

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

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

"default"

"document
of title""equip-
ment""financing
change
state-
ment"
"financing
statement"

"fixtures"

"fungi-
ble""future
advance"

"goods"

"indebt-
edness"

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(u) "instrument" means a bill of exchange, note or cheque within the meaning of the *Bills of Exchange Act* (Canada), or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, but does not include:

(i) a writing that is chattel paper;

(ii) a document of title; or

(iii) a security other than a security that is a bill of exchange or note within the meaning of the *Bills of Exchange Act* (Canada);

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

(w) "inventory" means goods:

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

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

(iii) that are raw materials, work in process or materials used or consumed in a business or profession;

(x) "judge" means a judge of the court;

(y) "lease for a term of more than one year" includes:

(i) a lease for an indefinite term even though the lease is determinable by one or both parties within one year of its execution;

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

(iii) a lease initially for less than one year, where the lessee retains uninterrupted or substantially uninterrupted possession of the goods leased for a period in excess of one year after the day he first acquired possession of the goods, and the lease is deemed to be a lease for more than one year as soon as the lessee's possession extends beyond one year; but does not include:

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

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

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

"instru-
ment""intan-
gible""invent-
ory"

"judge"

"lease for
a term of
more than
one year"

"money"

P-6.1 PERSONAL PROPERTY SECURITY

- (iv) the interest of a person who delivers goods to another person under a consignment;
- (hh) "purchaser" means a person who takes by purchase;
- (ii) "registrar" means the Registrar of Personal Property Security appointed under section 42;
- (jj) "registry" means the Personal Property Registry established under section 41;
- (kk) "secured party" means a person who has a security interest and, where a security agreement is embodied in a trust indenture, means the trustee;
- (ll) "security" means a share, stock, warrant, bond, debenture, debenture stock or the like issued by a body corporate or other person that is:
- (i) in a form recognized in the area in which it is issued or dealt with as evidencing a share, participation, or other interest in property or in an enterprise, or that evidences an obligation of the issuer; and
- (ii) of a type which, in the ordinary course of business, is transferred by delivery with necessary endorsement, assignment, registration in the books of the issuer or agent for the issuer, or compliance with the restrictions on transfers;
- (mm) "security agreement" means an agreement that creates or provides for a security interest, and includes a document evidencing a security agreement when the context permits;
- (nn) "security interest" means an interest in goods, documents of title, securities, chattel paper, instruments, money or intangibles that secures payment or performance of an obligation and is deemed to include:
- (i) an interest arising from an assignment of accounts or transfer of chattel paper;
- (ii) the interest of a person who delivers goods to another person under a consignment; and
- (iii) the interest of a lessor under a lease for a term of more than one year;
- notwithstanding that the interests described in subclause (i) to (iii) may not secure payment or performance of an obligation, but does not include the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading to his own order or to the order of his agent, unless the parties have otherwise evidenced an intention to create or provide for a security interest;
- (oo) "specific goods" means goods identified and agreed upon at the time a security agreement in respect to those goods is made;

"purchaser"

"registrar"

"registry"

"secured party"

"security"

"security agreement"

"security interest"

"specific goods"

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PERSONAL PROPERTY SECURITY P-6.1

- (aa) "obligation secured" means, when determining the amount payable under a lease, the amount originally contracted to be paid under the lease, any other amounts payable pursuant to the terms of the lease and any other amount required to be paid by the lessee to obtain full ownership of the collateral;
- (bb) "pawnbroker" means a person who engages in the business of granting consumer credit and who takes a security interest in the form of a pledge of goods to secure the consumer credit or who purchases goods under an agreement or undertaking, express or implied, that those goods may be afterwards repurchased or redeemed on terms, and "consumer credit" means credit granted to an individual for personal, family or household purposes by a person or organization in the business of granting credit, and, unless the agreement under which credit is granted or the context of the transaction indicates otherwise, a grant of credit is presumed to be a grant of consumer credit;
- (cc) "person" includes an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative;
- (dd) "prescribed" means prescribed in the regulations;
- (ee) "proceeds" means identifiable or traceable personal property in any form or fixtures derived directly or indirectly from any dealing with the collateral or proceeds therefrom, and includes insurance payments or any other payments as indemnity or compensation for loss of or damage to the collateral or proceeds therefrom, or any right to such payment, and any payment made in total or partial discharge of an intangible, chattel paper, instrument or security; and money, cheques and deposit accounts in banks, credit unions, trust companies or similar institutions are cash proceeds and all other proceeds are non-cash proceeds;
- (ff) "purchase" includes taking by sale, lease, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in personal property;
- (gg) "purchase-money security interest" means:
- (i) a security interest that is taken or reserved by a seller, lessor or consignee of personal property to secure payment of all or part of its sale or lease price;
- (ii) a security interest that is taken by a person who gives value for the purpose of enabling the debtor to acquire rights in or to the personal property, to the extent that the value is applied to acquire such rights;
- (iii) the interest of a lessor of goods under a lease for a term of more than one year; or

"obligation secured"

"pawnbroker"

"person"

"prescribed"

"proceeds"

"purchase"

"purchase-money security interest"

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PERSONAL PROPERTY SECURITY

P-6.1

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

(qq) "value" means any consideration sufficient to support a simple contract and includes an antecedent debt or liability. 1979-80, c. P-6.1, s. 2.

PART I
GENERAL

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

- (a) a chattel mortgage, conditional sale, floating charge, pledge, debenture, trust indenture or trust receipt, lease, assignment, consignment or transfer of chattel paper; and
- (b) an assignment of accounts, transfer of chattel paper, consignment, or a lease for a term of more than one year, notwithstanding that such interests may not secure payment or performance of an obligation. 1979-80, c. P-6.1, s. 3.

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

- (a) a lien, charge or other interest given by statute or a lien given by rule of law for the furnishing of goods, services or materials;
- (b) an assignment of an interest or claim in or under any contract of annuity or policy of insurance, except insofar as the money payable under a policy of insurance is or would be indemnity or compensation for loss of or damage to collateral, or any right to any such moneys payable;
- (c) an assignment of present or future wages, salary, pay, commission or any other compensation for labour or personal services;
- (d) an assignment of a right to payment under a contract to an assignee who is to perform the assignor's obligations under the contract;
- (e) the creation or assignment of an interest in or a lien on real property including chattels real;

PERSONAL PROPERTY SECURITY

P-6.1

(j) the assignment of any right to payment that arises in connection with an interest in or a lease on real property other than:

- (i) an assignment of rental payments payable under a lease of real property; or
- (ii) a right to payment evidenced by a security;
- (g) a sale of accounts or chattel paper as part of a sale of the business out of which they arose, unless the vendor remains in apparent control of the business after the sale;
- (h) an assignment of accounts made solely to facilitate the collection of accounts for the assignor;
- (i) an assignment of a claim for damages or a judgment representing a right to damages;
- (j) an assignment for the general benefit of creditors made pursuant to an Act of the Parliament of Canada relating to insolvency. 1979-80, c. P-6.1, s. 4.

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

- (a) a security interest in goods; and
- (b) a possessory security interest in securities, instruments, negotiable documents of title, money and chattel paper;

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

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

- (a) as against a buyer in good faith who acquires an interest in the goods after they are brought into the province, if the security interest is perfected in the province prior to the acquisition; and
 - (b) as against all other persons, if the security interest is perfected in the province:
 - (i) within 60 days after the day the goods are brought into the province;
 - (ii) within 15 days after the day the secured party receives notice that the goods have been brought into the province; or
 - (iii) prior to the day that perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached;
- whichever is earliest. 1979-80, c. P-6.1, s. 5

Validity
of
security
interest
in
collateralPerfection
of
security
interest
continued

P-6.1 PERSONAL PROPERTY SECURITY

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

whichever is earliest.

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

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

(6) Notwithstanding section 6 and subsection (1) of this section, the validity, perfection and effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like, including oil and gas, before extraction and which attaches thereto upon extraction, or attaches to an account resulting from the sale thereof at the wellhead or minehead, is governed by the law of the jurisdiction in which the wellhead or minehead is located. 1979-80, c. P-6.1, s. 7.

Perfection
in province

Same

Conflict
of laws
rules re
minerals

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

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

(b) the priority rules of the last jurisdiction, in which a conflicting possessory security interest in the collateral was taken, prevail.

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

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

Conflict
in priority
rules

Same

Dealing
with
collateral

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P-6.1 PERSONAL PROPERTY SECURITY

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

(4) Where a security interest mentioned in subsection (1) is not perfected under the law of the jurisdiction in which the collateral was situated when the security interest attached before being brought into the province, it may be perfected under this Act. 1979-80, c. P-6.1, s. 5.

6. — (1) Subject to section 7, if the parties to a security agreement creating a security interest in goods in one jurisdiction understand at the time the security interest attaches that the goods will be kept in another jurisdiction, and the goods are removed to the other jurisdiction within 30 days after the security interest attached for purposes other than transportation through the other jurisdiction, the validity, perfection and effect of perfection or non-perfection of the security interest are determined by the law of the other jurisdiction.

(2) Where the jurisdiction to which the goods are removed is other than this province and the goods are later brought into this province, the security interest in the goods is deemed to be one to which subsection 5(2) applies if it had been perfected under the law of the jurisdiction to which the goods were removed. 1979-80, c. P-6.1, s. 6.

Perfection
otherwise

Perfection
in
province

Conflict
of laws
where
goods
brought
into
province

Perfection
in province

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

(a) a security interest in intangibles or in goods which are of a type that are normally used in more than one jurisdiction, if such goods are classified as equipment or as inventory leased or held for lease by a debtor to others; and

(b) a non-possessory security interest in securities, instruments, negotiable documents of title, money and chattel paper;

are governed by the law of the jurisdiction where the debtor is located when the security interest attaches.

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

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

(a) within 60 days after the day the debtor changes his location;

(b) within 15 days after the day the secured party receives notice that the debtor has changed his location; or

Conflict
of laws

Deter-
mination
of location
of debtor

Continuity
of re-
location
change in
debtor's
location

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PERSONAL PROPERTY SECURITY P-6.1

12. — (1) A security interest attaches when:

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

When security interest attaches

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

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

- (a) in goods purchased by him under an agreement to sell, when he obtains possession of them pursuant to the sales contract;
- (b) in goods leased to him, hired by him or delivered to him under a consignment, when he obtains possession of them pursuant to the lease, hiring agreement or consignment;
- (3) For the purposes of subsection (1), a debtor has no rights in:
 - (a) crops until they become growing crops;
 - (b) the young of animals until they are conceived;
 - (c) oil, gas or other minerals until they are extracted; or
 - (d) timber until it is cut. 1979-80, c. P-6.1, s. 12.

When he has rights

Same

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

After-acquired property

Crops

(2) No security interest in crops attaches under an after-acquired property clause in a security agreement unless the crops are grown within one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if the parties so agree, attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage. 1979-80, c. P-6.1, s. 13.

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

Future advances

(2) No obligation to make future advances is binding on a secured party if the collateral has been seized, attached or charged under circumstances described in clause 20(1)(b) or (c), and the secured party receives notice of this fact. 1979-80, c. P-6.1, s. 14.

When rights are not binding

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

(4) Notwithstanding sections 5, 6 and 7 and subsections (1) and (2) of this section:

- (a) all procedural issues involved in the enforcement of the rights of a secured party against collateral other than intangibles are governed by the law of the jurisdiction in which the collateral is located at the time of the exercise of such rights;
- (b) all procedural issues involved in the enforcement of the rights of a secured party against intangibles are governed by the law of the forum;
- (c) all substantive issues involved in the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor. 1979-80, c. P-6.1, s. 8.

Conflict of laws or procedural issues and substantive issues

PART II

VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

9. Except as otherwise provided in this or any other Act, a security agreement is effective according to its terms. 1979-80, c. P-6.1, s. 9.

Effectiveness of security agreement

10. — (1) No security interest is enforceable against a third party unless:

- (a) the collateral is in the possession of the secured party; or
- (b) the debtor has signed a security agreement that contains a description of the collateral which enables the type or kind of collateral taken under the security agreement to be distinguished from types or kinds of collateral which are not collateral under the security agreement, and, in the case of a security interest taken in all of the debtor's present and after-acquired property, a statement indicating that a security interest has been taken in all of the debtor's present and after-acquired property is sufficient.

Enforceability of security interest

(2) A security interest in proceeds is not unenforceable against a third party by reason only that the security agreement does not contain a description of the proceeds as required by clause (1)(b). 1979-80, c. P-6.1, s. 10.

Delivery of copy of security agreement

11. The secured party shall deliver a copy of the security agreement to the debtor within 10 days after it is executed, and, if the secured party fails to do so after a request by the debtor, a judge may, on application by the debtor, make an order for the delivery of such a copy to the debtor and may make any order as to costs that he considers just. 1979-80, c. P-6.1, s. 11.

15. Where a seller retains a purchase-money security interest in goods, all sales law including, but without limiting the generality of the foregoing, *The Sale of Goods Act*, *The Consumer Products Warranties Act* and *The Agricultural Implements Act*, where applicable, governs the sale, including any disclaimer, limitation or modification of express or implied conditions and warranties. 1979-80, c. P-6.1, s. 15.

16. Where a security agreement provides that the secured party may accelerate payment or performance by the debtor when the secured party deems himself insecure or decides that the collateral is in jeopardy, that provision is to be construed to mean that the secured party has the right to do so only if he has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed in jeopardy. 1979-80, c. P-6.1, s. 16.

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

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

- (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in the custody and preservation of the collateral, are chargeable to the debtor and are secured by the collateral;
 - (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;
 - (c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and shall apply any money so received, unless remitted to the debtor, immediately upon its receipt in reduction of the obligation secured;
 - (d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled.
- (3) The secured party may create a security interest in the collateral upon terms that do not impair the debtor's rights under Part V.
- (4) A secured party does not lose his security interest for failing to meet any obligations imposed by subsection (1) or (2).
- (5) A secured party may use the collateral:
- (a) in the manner and to the extent provided in the security agreement;
 - (b) for the purpose of preserving the collateral or its value; or

Secured party may create security interest

Security interest not lost

Use of collateral by secured party

(c) pursuant to an order of:

- (i) the court before which a question relating to the collateral is being heard; or
- (ii) a judge upon application with notice to all persons concerned. 1979-80, c. P-6.1, s. 17.

Debtor, etc., may request payment from secured party

18.—(1) A debtor, creditor, sheriff or person with a legal or equitable interest in the collateral may, by a demand in writing, containing an address for reply and served on the secured party, require the secured party to send or deliver to him at the address for reply:

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

Service of demand

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

Security interest in type of collateral

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

Reply by secured party

(4) The secured party shall reply to a demand served under subsection (1) within 10 days after it is served and if, without reasonable excuse, he fails to do so or his answer is incomplete or incorrect, the person who has served the demand is entitled, in addition to any other remedy provided by this Act, to apply to a judge for an order requiring the secured party to comply with the demand.

Failure to reply

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

- (a) declare the security interest of the secured party void and order registration of the security interest removed from the registry; or

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(b) make any order that he considers necessary to ensure compliance with the order granted under subsection (4).

(6) Where the person served with a demand under subsection (1) no longer has an interest in the obligation or collateral, he shall, within 10 days after it is served, disclose the name and address of any successor in interest known to him, and if, without reasonable excuse, he fails to do so or his reply is incomplete or incorrect, the person who has served the demand is entitled to the same remedies as provided in subsections (4) and (5).

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

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

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

(b) make any order as to costs that he considers fair and reasonable.

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

(10) The secured party is not required to provide a copy of any document registered in the registry. 1979-80, c. P-6.1, s. 18.

Disclosure of
successor's
interest

Successor
in interest
deemed
secured
party

Applic-
ation
to judge

Charges
for reply

Criteria
when
secured
party
is
satisfied

Time when
secured
party
is
perfected

Where un-
perfected
security
interest
subordinate

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

(c) a sheriff who has seized or has obtained a right to the collateral under *The Creditors' Relief Act*;

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

(e) a transferee who is not a secured party and who acquires his interest for value without notice of the security interest and before it is perfected:

(i) in documents of title, securities, instruments or goods, where the transferee receives delivery of the collateral;

(ii) in intangibles other than accounts;

(iii) in accounts acquired through a transaction not otherwise governed by this Act;

(iv) in chattel paper acquired through a transaction not otherwise governed by this Act, where the transferee receives possession of the chattel paper.

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

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

(b) advances made before the secured party receives notice of the interest of such persons;

(c) reasonable costs incurred and expenses made by the secured party for the protection, maintenance, preservation or repair of the collateral. 1979-80, c. P-6.1, s. 20.

Where
perfected
security
interest
subordinate

PART III

PERFECTION AND PRIORITIES

19. A security interest is perfected when:

(a) it has attached; and

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

regardless of the order of occurrence. 1979-80, c. P-6.1, s. 19.

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

(a) a person who has a perfected security interest or who is otherwise entitled to priority under this Act;

Priority of
purchase-
money
security
interest

Security
interest
subordinate
payments

21. A purchase-money security interest in:

(a) collateral, other than intangibles, that is registered within 15 days after the day the debtor obtains possession of the collateral;

(b) intangibles that is registered within 15 days after the day the security interest attaches;

has priority over the interest of a person mentioned in clauses 20(1)(b) to (d). 1979-80, c. P-6.1, s. 21.

22. A security interest in rental payments is subordinate to the interest of a person who acquires, without fraud under a transaction to which *The Land Titles Act* applies, an interest in the lease providing for the rental payments. 1979-80, c. P-6.1, s. 22.

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Continuity
of per-
fection

23. — (1) If a security interest is originally perfected in a way permitted under this Act and is again perfected in some other way under this Act without an intermediate period when it is unperfected, the security interest is deemed to be perfected continuously for the purposes of this Act, and is deemed, for the purposes of section 35, to be continuously perfected in the way in which it was originally perfected.

Assignees

(2) An assignee of a security interest succeeds insofar as its perfection is concerned to the position of the assignor at the time of the assignment. 1979-80, c. P-6.1, s. 23.

Perfection
by possession

24. — (1) Subject to section 19, possession of the collateral by the secured party, or on his behalf by a person other than the debtor or the debtor's agent, perfects a security interest in:

- (a) chattel paper;
- (b) goods;
- (c) instruments;
- (d) securities;
- (e) negotiable documents of title;
- (f) money;

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

Possession

(2) For the purposes of subsection (1), a secured party is deemed not to have taken or retained possession of collateral which is in the apparent possession or control of the debtor or the debtor's agent. 1979-80, c. P-6.1, s. 24.

Perfection
by registration

25. Subject to section 19, registration of a financing statement perfects a security interest in any collateral but only during the period in which the registration of the financing statement or a financing change statement renewing the registration relating thereto is effective. 1979-80, c. P-6.1, s. 25.

Temporary
perfection

26. — (1) A security interest in instrument, securities or negotiable documents of title is a perfected security interest for the first 15 days after it attaches to the extent that it arises for new value given under a written security agreement.

Same

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

- (a) an instrument or securities that a secured party delivers to the debtor for the purpose of:
 - (i) ultimate sale or exchange;
 - (ii) presentation, collection or renewal; or
 - (iii) registration of transfer; or

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

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

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

(3) After the expiration of the periods of time mentioned in subsection (1) or (2), a security interest under this section is subject to the provisions of this Act for perfecting a security interest. 1979-80, c. P-6.1, s. 26.

Perfection
subject
to Act

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

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

Perfection
of goods
in possession
of bailee

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

Other
security
interest
may arise

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

Priority
of
interests

Same

(4) Notwithstanding subsection (3), a perfected security interest in goods takes priority over the security interest in a negotiable document of title covering goods, where the security interest in the goods was registered at the time the security interest in the negotiable document of title was perfected. 1979-80, c. P-6.1, s. 27.

Perfection
as
proceeds

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

- (a) continues as to the collateral unless the secured party expressly or impliedly authorizes such dealing; and

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(b) extends to the proceeds.

Community
of
perfection

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

(a) by the registration of a financing statement which covers the original collateral and proceeds therefrom and contains a prescribed description;

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

(c) by the registration of a financing statement which covers the original collateral and proceeds therefrom, where the proceeds are cash proceeds.

Same

(3) In a case other than one mentioned in subsection (2), a security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, and the security interest in the proceeds remains perfected for a period of 15 days after receipt of the proceeds by the debtor but becomes unperfected thereafter, unless the security interest in the proceeds is otherwise perfected by any of the methods and under the circumstances prescribed in this Act for original collateral of the same type or kind. 1979-80, c. P-6.1, s. 28.

Goods
returned
or re-
possessed:
perfection
of security
interest

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

(a) the debtor;

(b) a transferee of chattel paper or a person having a security interest in an intangible resulting from the sale or lease of the goods;

(c) a secured party who had a security interest in the goods at the time they were sold or leased or anyone claiming from or under him;

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

Priority

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

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Where
sale or
lease
creates
security
interest
in
chattel
paper

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

Where
sale or
lease
creates
security
interest
in
intangibles

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

Interest
unperfected
return or
repossession
of goods

(5) A security interest asserted under subsections (3) and (4) is a perfected security interest in the goods when the security interest in the chattel paper or intangible was perfected, but it becomes unperfected 15 days after the day of return or repossession of the goods, unless the secured party perfects his interest in the goods by taking possession of them or registering his security interest in them before the expiry of that 15 day period. 1979-80, c. P-6.1, s. 29.

Buyer or
lessee
takes free
of security
interest

30. — (1) A buyer or lessee of goods sold or leased in the ordinary course of business of the seller or lessor takes free of any perfected or unperfected security interest therein given by or reserved against the seller or lessor or arising under section 29, whether or not the buyer or lessee knows of it, unless the secured party proves that the buyer or lessee also knows that the sale or lease constitutes a breach of the security agreement.

Same

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

(a) he gives new value for his interest;

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

(c) he receives delivery of the goods.

Exception

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

(a) a motor vehicle as defined in the regulations;

(b) fixtures; or

(c) goods whose purchase price exceeds \$500 or, in the case of a lease, whose retail market value exceeds \$500.

Sale

(4) For the purposes of subsections (1) and (2), a sale may be for cash, by exchange for other property or on credit, and includes

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delivering goods or documents of title under a pre-existing contract for sale, but does not include:

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

(5) A buyer or lessee of goods takes free of a security interest that is temporarily perfected under subsection 26(2), 28(3) or 29(5), or a security interest, the perfection of which is continued under subsection 49(2) during any of the 15-day periods mentioned in that subsection, if:

- (a) he gives new value for his interest;
- (b) he bought or leased the goods without notice of the security interest; and
- (c) he receives delivery of the goods. 1979-80, c. P-6.1, s. 30.

Priority of buyer or lessee

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

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

Priority of holder of money

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

Priority of creditor

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

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

Priority of purchaser of instrument or security

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

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

Priority of holder of negotiable document of title

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

Priority of purchaser of chattel paper

(a) any security interest that, in the case of chattel paper claimed as original collateral, was perfected under section 25 or any security interest in it as proceeds of equipment or consumer goods, if the purchaser acquired the chattel paper without notice that it was subject to a security interest;

(b) any security interest in it as proceeds of inventory, whether or not the purchaser has notice of the security interest. 1979-80, c. P-6.1, s. 31.

32. Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien that he has in respect of such materials or services has priority over a perfected security interest unless the lien is given by an Act that provides that the lien does not have such priority. 1979-80, c. P-6.1, s. 32.

Priority of lien

33. The rights of a debtor in collateral may be transferred voluntarily or involuntarily notwithstanding a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise, including the right to treat a prohibited transfer as an act of default. 1979-80, c. P-6.1, s. 33.

Alienation of rights of debtor

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

Priority of purchase-money security interest

(a) collateral or its proceeds, other than intangibles or inventory, that is perfected within 15 days after the day the debtor obtains possession of the collateral; or

(b) an intangible or its proceeds that is perfected within 15 days after the day the security interest in the intangible attaches;

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

Same

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

(a) the purchase-money security interest in the inventory is perfected at the time the debtor receives possession of it; and

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

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

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

Notice

Purchase-money security interest subordinate

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

Priority of non-proceeds purchase-money security interest

- (5) A non-proceeds purchase-money security interest has priority over a purchase-money security interest in proceeds under subsections (1) and (2) in the same collateral if the non-proceeds purchase-money security interest is perfected at the time the debtor obtains possession of the collateral or within 15 days thereafter.

Priority between perfected security interests

- (6) A perfected security interest in crops or their proceeds, given, not more than three months before the crops become growing crops by planting or otherwise, to enable the debtor to produce the crops during the production season, has priority over an earlier perfected security interest to the extent that the earlier interest secures obligations that were contracted more than six months before the crops become growing crops by planting or otherwise, even though the person giving the consideration has notice of the earlier security interest. 1979-80, c. P-6.1, s. 34.

Priority between security interests

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

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

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

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

Same

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

Date for determining priority

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

Future advances

- (5) Where the registration of a security interest lapses as a result of the secured party's failure to renew the registration or where the registration of a security interest has been discharged fraudulently, in error or without authorization, the secured party may reregister his security interest within 30 days after the lapse or discharge, and where he reregisters, the prior lapse or discharge does not affect the priority status of the security interest in relation to competing interests in the collateral which arose prior to the lapse or discharge, except insofar as subsequent advances are made or contracted for following the lapse or discharge and prior to the reregistration.

Priority in case lapse

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

Priority where debtor transfers interest

- (7) Subsection (6) does not apply where the transferee acquires the debtor's interest free from the security interest granted by the debtor. 1979-80, c. P-6.1, s. 35.

Where debtor's interest unperfected

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

Priority of fixtures

(a) before they become fixtures has priority as to the goods over the claim of any person who has an interest in the real property;

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

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

(a) is subordinate to the interest of:

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

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

(b) is subordinate to the interest of:

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

who has acquired through legal process a lien or charge against the land to enforce a judgment if the lien or charge arises before the security interest is filed in accordance with section 54.

(3) No lien or charge mentioned in clause (2) (b) takes priority over a purchase-money security interest in the goods that is filed in accordance with section 54 before, on or within 15 days after the day the debtor obtains possession of the goods.

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

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

Interest
in fixtures
subordinate

Priority
over
purchase-
money
security
interest

Exercising
right to
remove
goods

Reimburse-
ment for
damage
to interest

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

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

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

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

(9) The secured party who has the right to remove goods from real property shall serve, on each person who appears by the records of the land titles office to have an interest in the land, a notice in writing of his intention to remove the goods which notice shall contain:

- (a) the name and address of the secured party;
- (b) a description of the goods to be removed sufficient to enable them to be identified;
- (c) the amount required to satisfy the obligation secured by his security interest;
- (d) a description of the land to which the goods are affixed; and
- (e) a statement of intention to remove the goods unless the amount secured is paid on or before a specified day that is not less than 12 days after service of the notice in accordance with subsection (10).

(10) A notice mentioned in subsection (9) shall be served at least 15 days before removal of the goods and may be served in accordance with subsection 67(1) or by registered mail addressed to the post office address to the person to be served as it appears in the records of the land titles office.

(11) Any person entitled to receive a notice under subsection (9) may apply to a judge for an order postponing removal of the goods from the real property, and the judge may make any order that he considers just and reasonable. 1979-80, c. P-6.1, s. 36.

Security
for re-
imbursement

Application
to court

Retention
of goods

Notice of
intention
to remove
goods

Service
of notice

Appli-
cation
for order
postponing
removal

PERSONAL PROPERTY SECURITY

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Priority of
accessions

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

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

Interest in
accessions
subordinate

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

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

(b) is subordinate to the interest of:

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

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

Priority
over
purchase-
money
security
interest

(3) No interest of a creditor or the sheriff mentioned in clause (2)(b) takes priority over a purchase-money security interest in the accession goods that is perfected before or within 15 days after the day the debtor obtains possession of the collateral.

Exercising
right to
remove
accession
goods

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

Reimburse-
ment for
damage
to interest

(5) Any person, other than the debtor, who has an interest in the other goods at the time the goods subject to a security interest become an accession to the other goods is entitled to reimbursement for any damage to his interest in the other goods resulting from the removal of the accession goods, but is not entitled to

P-6.1 PERSONAL PROPERTY SECURITY

reimbursement for diminution in the value of the other goods resulting from the removal of the accession goods caused by the absence of the accession goods removed or by the necessity for replacement.

Security
for
reimburse-
ment

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

Applica-
tion in
court

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

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

Retention
of accession
goods

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

Notice of
intention
to remove
accession
goods

(9) The secured party who has the right to remove accession goods from the whole shall serve, on each person known to him as having an interest in the other goods and on any person who has registered a financing statement indexed in the name of the debtor and referring to the other goods or according to the serial number where such is required, a notice in writing of his intention to remove the accession goods which notice shall contain:

- (a) the name and address of the secured party;
- (b) a description of the accession goods to be removed sufficient to enable them to be identified;
- (c) the amount required to satisfy the obligations secured by his security interest;
- (d) a description of the other goods sufficient to enable them to be identified; and
- (e) a statement of intention to remove the accession goods from the whole unless the amount secured is paid on or before a specified day that is not less than 12 days after service of the notice in accordance with subsection (10).

Service
of notice

(10) A notice mentioned in subsection (9) shall be served at least 15 days before removal of the accession goods and may be served in accordance with subsection 67(1) or, in the case of a person who has registered a financing statement, by registered mail

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addressed to the post office address of the person to be served as it appears on the security agreement or financing statement.

(11) Any person entitled to receive a notice under subsection (9) may apply to a judge for an order postponing removal of the accession goods from the whole, and the judge may make any order that he considers just and reasonable. 1979-80, c.P-6.1, s.37.

38(1) A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass.

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

(3) This section does not apply to a security interest in accession goods to which section 37 applies. 1979-80, c.P-6.1, s.38.

39 A secured party may, in the security agreement or otherwise, subordinate his security interest to any other security interest. 1979-80, c.P-6.1, s.39.

40(1) Unless a debtor on an intangible or chattel paper has made an enforceable agreement not to assert defences or claims arising out of a contract, the rights of an assignee are subject to:

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

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

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

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

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

(6) A term in any contract between a debtor on an intangible and an assignor which prohibits assignment of the whole of an account or intangible for money due or to become due is void. 1979-80, c.P-6.1, s.40.

PART IV
REGISTRATION

41 A registration system, to be known as the Personal Property Registry, is hereby established for the purposes of registration under this Act and for registrations that are authorized or required under any other Act to be made in the registry. 1979-80, c.P-6.1, s.41.

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

(2) The registrar shall, under the direction of the Minister of Justice, supervise the operation of the registry.

(3) The registrar may designate one or more persons or deputy registrars on the staff of his office to act on his behalf. 1979-80, c.P-6.1, s.42; 1983, c.11, s.61.

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

- (a) requisition a search against the name of any individual or business debtor or according to the serial number of the collateral, if the collateral is required by the regulations to be described by serial number, and obtain the results of the search;
- (b) requisition the printed results of the search mentioned in clause (a);
- (c) obtain a certified copy of any registered document.

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

- (a) verbal or printed search results of a search against the name of any individual or business debtor or according to

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the serial number of the collateral, if the collateral is required by the regulations to be described by serial number;

(b) a certified copy of any registered document.

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

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

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

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

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

(8) A copy of any registered document certified by the registrar, or by a deputy registrar designated to do so, is receivable in evidence as prima facie proof for all purposes, without proof of his signature or official position. 1979-80, c.P-6.1, s.43; 1983, c.11, s.61.

44(1) A financing statement or financing change statement may be tendered for registration, by personal delivery or by mail, at the office of the registry in Regina, and the registration of the document is effective from the time assigned to the document by the registrar.

(2) Except as otherwise provided in this Act, a financing statement may be registered at any time and may be registered before a security agreement is made or before a security interest attaches. 1979-80, c.P-6.1, s.44.

45(1) Where a financing statement is registered and the secured party has assigned his interest, a financing change statement in the prescribed form may be registered.

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

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

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

(5) A financing statement disclosing an assignment may be registered before or after an agreement to assign the security interest has been completed. 1979-80, c.P-6.1, s.45.

46 An amendment, in the prescribed form, to a financing statement or other document registered under this Act may be registered at any time during the period that the registration of the amended document is effective, and the amendment is effectively registered as to the change from the time of registration of the amendment. 1979-80, c.P-6.1, s.46.

47 Where a secured party has subordinated his interest to the interest of another person, a financing change statement may be registered at any time during the period that the registration of the subordinated interest is effective. 1979-80, c.P-6.1, s.47.

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

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

- (a) a financing statement is effective for the length of time indicated on the financing statement;
- (b) a financing change statement renewing the registration is effective for the length of time indicated on the financing change statement;
- (c) any other document is effective for the remainder of the period for which the financing statement to which the document relates or any financing change statement is effective.

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

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transferee is deemed to be the debtor for the purposes of registration, and the security interest is unperfected as against any interest arising subsequent to the transfer and before the secured party registers a financing change statement amending the original financing statement.

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

- (a) the debtor has:
 - (i) transferred his interest in the collateral or part of the collateral; or
 - (ii) changed his name;
- (b) the security interest as against any interest arising subsequent to the transfer or change of name and before the secured party registers a financing change statement, is unperfected;
- (c) where the secured party has notice that the debtor has transferred his interest in the collateral or part of the collateral, 15 days after the secured party has notice of the debtor's transfer;
- (d) where the secured party has notice that the debtor has changed his name, 15 days after the secured party has notice of the debtor's change of name;

When security interest becomes unperfected

- (a) when the financing statement is no longer effective;
- (b) upon the receipt of a financing change statement discharging or partially discharging the financing statement;
- (c) when the secured party fails to register a judge's order maintaining the financing statement under subsection 50(4);
- (d) upon receipt of a court order compelling the discharge or partial discharge of a financing statement or a financing change statement. 1979-80, c.P-6.1, s.48.

49(1) Where a security interest has been perfected by registration and the debtor has the consent of the secured party to transfer his interest in the collateral or part of the collateral, the

Where debtor transfers interest in collateral

(i) transfer his interest in the collateral or a part of the collateral; or

(ii) change his name;

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

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

- (A) on the date of the transfer; or
- (B) 15 days after the secured party has notice that the debtor is about to transfer his interest in the collateral or a part of the collateral;

whichever is later;

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

- (A) on the day the debtor changes his name; or
- (B) 15 days after the secured party has notice that the debtor is about to change his name;

whichever is later.

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

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

Effect of section

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

(4) A security interest that becomes unperfected under this section may thereafter be perfected by registering a financing statement or as may otherwise be provided in this Act. 1979-80, c. P-6.1, s. 49.

Registering security interest

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

Financing change statement acts as discharge

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

Prohibition

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

Demand for financing change statement

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

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

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

any person having an interest in the collateral which is the subject of the security agreement, financing statement or financing change statement may serve a written demand on the secured party, demanding a financing change statement mentioned in subsection (1), and the secured party shall sign and deliver or send to the registry the financing change together with financing change statement in respect of all assignments by the secured party or transfers by the debtor in respect of which financing change statements have not been registered, within 15 days after a service of the demand.

(4) Where the secured party fails to deliver the required financing change statements within the time provided by subsection (3), the person who has made the demand may require the registrar to serve a notice in writing on the secured party stating that registration of the financing statement will be discharged or that a part of the collateral will be released, as the case may be, upon the expiration of 40 days after the day the registrar serves notice on the secured party, unless in the meantime the secured party registers

Notice of discharge

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with the registrar a judge's order accompanied by a financing change statement maintaining the registration of the interest of the secured party.

(5) The notice mentioned in subsection (3) or (4) may be served in accordance with subsection 67(1) or by registered mail addressed to the post office address of the secured party as it appears on the security agreement or financing statement.

Service of notice

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

Application to judge

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

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

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

No discharge of certain documents

(8) Where the secured party under a registration to which *The Corporation Securities Registration Act* applies or under a trust indenture fails to deliver the financing change statements demanded in subsection 50(3), the person making the demand may apply to a judge, upon notice to all persons concerned, for an order directing that the financing statement or financing change statements be removed from the registry. 1979-80, c. P-6.1, s. 50.

Application to judge

51 Registration of a document in the registry does not constitute constructive notice or knowledge of its contents to third parties. 1979-80, c. P-6.1, s. 51.

No constructive notice

52(1) Where, in the opinion of the registrar or deputy registrar, a document tendered for registration in the registry does not comply with this Act or the regulations or with any other Act under which registration of the document in the registry is authorized, he may refuse to register it, and shall give the reason why he is of the opinion that it does not comply.

Registrar may refuse registration

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

Document to be original

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

Agent

Certificate of registrar

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

Microfilm

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

Destruction of records

(6) When directed to do so by the Minister of Justice, the registrar shall authorize the destruction of any books, documents, records, cards, papers or forms that have been preserved in the registry for so long that it appears that they need not be preserved any longer. 1979-80, c.P-6.1, s.52; 1983, c.11, s.61.

Action against registrar

53(1) Subject to the other provisions of this section, any person who suffers loss or damage, as a result of his reliance upon a prescribed registry document or printed search results that are incorrect because of an error in the operation of the registry, may bring an action against the registrar in the court for recovery of damages, but no award of damages to any single claimant shall exceed the prescribed amount.

Limitation of actions

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

Claim action

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

Same

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

Proof of reliance

(5) In an action brought by a trustee under a trust indenture or by any person with an interest in a trust indenture, proof that each person relied on the prescribed registry document or printed search

results is not necessary if it is established that the trustee relied on the prescribed registry document or printed search results, but no person is entitled to recover damages under this section if he knew at the time he acquired his interest that the prescribed registry document or printed search results relied on by the trustee were incorrect.

Total claims

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

Powers of court

(7) In proceedings under subsections (3) and (4) the court may make any order that it considers appropriate to give notice to members of the class.

Payment of damages

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

Payment of claim

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

Payment of judgment

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

Registrar subrogated

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

Immunity from action

(12) Notwithstanding *The Proceedings Against the Crown Act*, no action shall be brought against the Crown in right of Saskatchewan, the registrar or any officer or employee of the registry for any act or omission of the registrar or an officer or employee of the registry in respect of the discharge or purported discharge of any duty or function under this or any other Act or under the regulations, other than as is provided in this section. 1979-80, c.P-6.1, s.53; 1983, c.11, s.61.

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Notice filed in
land titles
office

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

Renewal of
notice

(2) Where a notice has been filed in the land titles office under subsection (1) and the filing of the notice has not expired, notice of a document renewing, amending, assigning or discharging the security interest to which the original notice relates, or of a document subordinating the security interest to another security interest, may be filed in the land titles office in the form prescribed, and, upon such filing, the registrar of the land titles office shall make a memorandum thereof on the proper certificate of title.

Application of
section 48

(3) Section 48 applies, *mutatis mutandis*, to any notice filed under this section.

Fixtures

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

Registrar may
vacate notice

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

Discharge of
notice

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

Contesting
filing of notice

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

- (a) all the obligations under the security agreement are performed;
- (b) it is agreed to release part of the collateral in which a security interest is taken upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of those obligations; or
- (c) the notice purports to give the secured party a security interest in property of the debtor in which the secured party does not have, or is not entitled to claim, a security interest;

any person having an interest in the collateral, the registered owner of the real property or any other person claiming an interest in the real property may contest the registration of the notice according to the procedure established in *The Land Titles Act* for contesting the filing of a caveat. 1979-80, c.P-6.1, s.54.

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PART V

RIGHTS AND REMEDIES ON DEFAULT

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

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

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

(4) Subject to any other Act or rule of law to the contrary, where a security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both real and personal property, in which case this Part applies as to the personal property only to the extent that is not inconsistent with laws applicable to proceedings against real and personal property in a single action.

(5) A security interest does not merge merely because a secured party has reduced his claim to judgment. 1979-80, c. P-6.1, s. 55.

Receiver or
receiver-
manager

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

Application
to court

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

- (a) appoint a receiver or receiver-manager;
- (b) remove, replace or discharge a receiver or receiver-manager whether appointed by a court or pursuant to a security agreement;
- (c) give directions on any matter relating to the duties of a receiver or receiver-manager;
- (d) approve the accounts and fix the remuneration of a receiver or receiver-manager;
- (e) make any order he thinks fit in the exercise of the jurisdiction of the court over receivers or receiver-managers.

Application
of Act to
receivers
and
receiver-
managers

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

Same

(4) Unless a court orders otherwise:

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(a) a receiver-manager is only required to comply with sections 17 and 57 to 60 when he disposes of collateral other than in the course of carrying on the business of the debtor; and

(b) sections 61 and 62 do not apply whenever a receiver or receiver-manager has been appointed.

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

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

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

(8) Except as provided in sections 17, 61 and 62, no provision of section 17 or sections 59 to 63, to the extent that they give rights to the debtor and impose duties upon the secured party, shall be waived or varied. 1979-80, c. P-6.1, s. 56.

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

(a) to notify any debtor on an intangible or chattel paper or any obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral; and

(b) to take control of any proceeds to which he is entitled under section 28.

(2) A secured party who by agreement is entitled to charge back the collected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the debtors on intangibles or chattel paper or obligors on instruments may deduct his reasonable expenses of realization from the collections. 1979-80, c. P-6.1, s. 57.

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

Rights and remedies of secured party

Enforcement rights

Rights and remedies of debtor

Waiver and variation prohibited

Collection rights of secured party

Expenses of collection

Rights of secured party to take possession, etc., in default

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

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

(c) the secured party may dispose of collateral under section 59 on the debtor's premises. 1979-80, c. P-6.1, s. 58.

Right of secured party to dispose of collateral on default

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

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

(b) the satisfaction of the obligations secured by the security interest of the party making the disposition.

(2) Collateral may be disposed of:

(a) by public or private sale;

(b) at any commercially reasonable time of day or place;

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

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

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

(4) Not less than 20 days prior to disposition of the collateral, the secured party shall serve a notice on:

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

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

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

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

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

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

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

(6) The notice mentioned in subsection (4) shall contain:

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

(7) The notice mentioned in subsection (5) shall contain:

- (a) a description of the collateral by type or kind; and
- (b) the date, time and place of any public sale or the date after which any private disposition of the collateral is to be made.

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

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

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

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

(12) When a secured party disposes of collateral by sale to a bona fide purchaser for value who takes possession of it, the purchaser acquires the collateral free from the interests of the debtor and from any interest subordinate to that of the secured party, whether or not the requirements of this section have been complied with by the secured party, and all obligations secured by such subordinate interests are deemed to be performed for the purposes of section 50.

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

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

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

- (a) the collateral is perishable;

Same

Reference to deficiency limited

Service of notice

Secured party may purchase collateral

Sale to bona fide purchaser

Non-application of subsection (12)

Transfer of collateral to guarantor, etc.

When notice not required

Contents of notice

Same

Same

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- (b) the collateral will decline substantially in value if not disposed of immediately after default;
- (c) the cost of care and storage of the collateral is disproportionately large relative to its value;
- (d) due to market conditions, a delay in disposing of the collateral would likely reduce the amount recovered from a disposition of it;
- (e) for any other reason, a judge, on an *ex parte* application, is satisfied that a notice is not required;
- (f) after default, every person entitled to receive a notice of disposition under subsection (4) consents in writing to the immediate disposition of the collateral. 1979-80, c. P-6.1, s. 59.

Application of surplus

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

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

Proof of interest

(2) The secured party may request a person who has a subordinate security interest or a person who has delivered a written demand to furnish him with proof of that person's interest, and, unless the person furnishes such proof within 10 days after the secured party's demand, the secured party need not pay over any portion of the surplus to him.

Debtor liable for deficiency

(3) Unless otherwise agreed, or unless otherwise provided in any Act, the debtor is liable for any deficiency. 1979-80, c. P-6.1, s. 60.

Retention of collateral in sale; fraction of obligation

61. — (1) After default, the secured party in possession of the collateral may propose to retain the collateral in satisfaction of the obligations secured, and shall serve a notice of the proposal on:

- (a) the debtor or any other person who is known by the secured party to be the owner of the collateral;
- (b) any creditor or person who has a security interest in the collateral;
- (c) whose interest is subordinate to that of the secured party; and

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- (ii) who has registered a financing statement in the name of the debtor or according to the serial number of the collateral when it is required for registration; and
- (c) any other person with an interest in the collateral who has delivered a written notice to the secured party of an interest in the collateral prior to the date that notice is served on the debtor.

Objection

(2) If any person who is entitled to notification under subsection (1), and whose interest in the collateral would be adversely affected by the secured creditor's proposal, delivers to the secured party a written objection within 15 days after service of the notice, the secured party shall dispose of the collateral under section 59.

Irrevocable election to retain collateral

(3) If no objection is made, the secured party in possession is, at the expiration of the 15-day period or periods mentioned in subsection (2), deemed to have irrevocably elected to retain the collateral in full satisfaction of the obligations secured, and thereafter is entitled to hold or dispose of the collateral free from all rights and interests therein of any person entitled to notification under clause (1)(b) who has been served with such notice and any person entitled to notification under clauses (1)(a) and (c) whose interest is subordinate to that of the secured party and who has been served with such notice.

Service of notice

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

Proof of interest

(5) The secured party may require any person who has made an objection of his proposal to furnish him with proof of that person's interest in the collateral and, unless the person furnishes proof within 10 days of the secured party's demand, the secured party may proceed as if he had received no objection from such person.

Application to judge

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

- (a) the person made the objection for a purpose other than the protection of his interest in the collateral or the proceeds of a disposition of the collateral; or
- (b) the market value of the collateral is less than the total amount owing to the secured party and the costs of disposition.

Disposal of collateral and purchase

(7) When a secured party in possession disposes of the collateral after expiration of the period mentioned in subsection (3) to a *bona fide* purchaser for value who takes possession of it, the purchaser acquires the collateral free from any interest subordinate to that of the secured party, whether or not the requirements of this section

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have been complied with by the secured party, and all obligations secured by such subordinate interests are deemed to be performed for the purposes of section 50.

New application
in subsection
(1)

(8) Subsection (7) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 72 who has not been given a written notice under this section. 1979-80, c. P-6.1, s. 61.

Redemption
of collateral

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

(a) any person entitled to receive a notice of disposition under subsection 59(4) may, unless he has otherwise agreed in writing after default, redeem the collateral by tendering fulfillment of all obligations secured by the collateral;

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

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

Right of
debtor to
reinstate
security
agreement

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

(a) more than twice, if the security agreement or any agreement modifying the security agreement provides for payment in full by the debtor within 12 months after the day value was given by the secured party;

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

1979-80, c. P-6.1, s. 62.

Application
to judge

63. Upon application by a debtor, a creditor of a debtor, a secured party, any person who has an interest in collateral which may be affected by an order under this section or a receiver or a receiver-manager, whether appointed by a court or pursuant to a security agreement and after notice has been given to any person that the judge directs, a judge or court may:

(a) make any order, including binding declarations or right and injunctive relief, that is necessary to ensure compliance with this Part or section 17;

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(b) give directions to any party regarding the exercise of his rights or discharge of his obligations under this Part or section 17;

(c) relieve any party from compliance with the requirements of this Part or section 17, but only on terms that are just and reasonable for all parties concerned;

(d) stay enforcement of rights provided in this Part or section 17 under any terms and conditions that the judge, in his discretion, considers just and reasonable;

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

(f) make an order requiring a receiver or receiver-manager, or a person by or on behalf of whom he is appointed, to make good any default in connection with the receiver's or receiver-manager's custody, management or disposition of the collateral of the debtor or to relieve such person from any default on such terms as the court thinks fit, and to confirm any act of the receiver or receiver-manager. 1979-80, c. P-6.1, s. 63.

PART VI

MISCELLANEOUS AND TRANSITIONAL

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

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

Right to
loss or
damage

(2) Where a person fails to discharge any duties or obligations imposed upon him by this Act, any person has a right to recover loss or damage which he suffered and which was reasonably foreseeable as liable to result from such failure.

Agreement
to limit
liability - void

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

Assess-
ment of
damages

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

Common
law -
applies

(5) The principles of the common law, equity and the law merchant, except insofar as they are inconsistent with the express provisions of this Act, supplement this Act and continue to apply. 1979-80, c. P-6.1, s. 64.

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Extension
of time

65. Where in this Act, other than in sections 5 to 7, 13 and 34, Part IV and this Part, any time is prescribed within which or before which any act or thing must be done, a judge, on application, may extend or abridge the time for compliance on any terms and conditions that he considers just and reasonable. 1979-80, c. P-6.1, s. 65.

Error,
omission,
etc.

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

Failure to
provide
description

(2) Failure to provide a description required by this Act or the regulations in relation to any type or kind of collateral in a document does not affect the validity or effectiveness of the document as it relates to any other collateral. 1979-80, c. P-6.1, s. 66.

Service

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

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

(b) a partnership:

(i) by personal service upon:

(A) any one or more of the partners;

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

(ii) by registered mail addressed to:

(A) the partnership;

(B) any one or more of the partners;

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

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

(d) an extra-provincial body corporate, by delivery to the attorney for the body corporate appointed under section 268 of *The Business Corporations Act* or section 251 of *The Non-profit Corporations Act* or by registered mail addressed to the body corporate at the address of such attorney.

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Registered
mail

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

Knowledge
or notice

(3) For the purposes of this Act, a person knows or has notice when:

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

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

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

(i) a managing director or officer of the corporation; or
(ii) a senior employee of the corporation with responsibility for matters to which the information relates;

under circumstances in which a reasonable person would take cognizance of it, or the information in writing has been delivered to the registered office of the body corporate or attorney for an extra-provincial body corporate appointed under section 268 of *The Business Corporations Act* or section 251 of *The Non-profit Corporations Act*.

Service by
registered
mail

(4) Where a notice or any other written matter may be served by registered mail to the post office address as it appears on a registered financing statement or security agreement and:

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

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

the notice or other written matter shall be served in accordance with subsection (1). 1979-80, c. P-6.1, s. 67.

Appeal

68. An appeal lies from an order, judgment or decision of a judge or the court to the Court of Appeal within the time and in accordance with the practice and procedure established in the rules of the Court of Appeal. 1979-80, c. P-6.1, s. 68.

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

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

(3) Except as otherwise provided in this or any other Act, where there is a conflict between a provision of this Act and a provision of any general or special Act other than those mentioned in subsections (1) and (2), the provision of this Act prevails. 1979-80, c. P-6.1, s. 69.

References

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

Same

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

Same

(3) A reference in this Act to:

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

is deemed to be a reference to that Act as it existed on the day before the coming into force of this Act. 1979-80, c. P-6.1, s. 70.

Transitional: application of Act

71. — (1) This Act applies:

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

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

(3) The order of priorities:

Validity of prior security interest

Priorities

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

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

Application of Act

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

- (a) renewal, extension, refinancing or consolidation agreements made after this Act comes into force;
- (b) revolving credit transactions entered into force and continuing after this Act comes into force. 1979-80, c. P-6.1, s. 71.

Interpretation

72. — (1) In this section:

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

Prior security interest

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

Prior security interest

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

(a) is covered by:

- (i) an unexpired filing or registration under a prior registration law is, subject to subclause (ii), deemed to have been registered and perfected under this Act and, subject to this Act, such filing or registration continues for the unexpired portion of the filing or registration period; and
- (ii) an unexpired registration under *The Assignment of Book Debts Act*, or section 19 of *The Bills of Sale Act*, is deemed to have been registered and perfected under this Act, and such registration continues for a period of three years from the day this section comes into force;

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

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

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

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

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

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

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

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

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

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

(8) A prior security interest that, when this section comes into force, could have been, but was not, covered by a filing or registration under a prior registration law and that, under this Act, may be perfected without registration of a financing statement and without possession of the collateral by the secured party is perfected under this Act provided that all other conditions for the perfection of the security interest are satisfied. 1979-80, c.P-6.1, s.72; 1980-81, c.72, s.2.

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

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(a) prescribing a list of goods the lease of which is not covered by this Act by virtue of subclause (2)(y)(v);

(b) prescribing the amount of any charge to which the secured party is entitled under section 18;

(c) prescribing the duties of the registrar;

(d) prescribing business hours for the offices of the registry or any of them;

(e) respecting the registry, including the transition from any prior registry systems to the system established under this Act;

(f) requiring the payment of fees and prescribing the amount thereof and their manner of payment;

(g) prescribing the form and content of:

(i) financing statements and financing change statements required or permitted to be registered in the registry under this or any other Act, and the manner of their use and for requiring that such documents used, or any of them, must be those provided by the registrar;

(ii) notices required or permitted to be filed under section 54 in a land titles office and the manner of their use;

(h) prescribing the form of any notices required or allowed to be given under this Act and providing for their use;

(i) prescribing the amounts of compensation payable under section 53;

(j) requiring or permitting the use of a statement to confirm the registration of any financing statement or financing change statement and permitting the amendment of an error in registering on the part of the registrar or the registry and prescribing the limits of such amendments;

(k) prescribing abbreviations, expansions or symbols that may be used in a financing statement, financing change statement, or any other form authorized or required by this Act or in the recording or production of information by the registrar;

(l) governing the right of a secured party to indicate the length of time during which a financing statement or a financing change statement renewing the financing statement shall be effective;

(m) defining any word or expression used in this Act that is required to be defined in the regulations;

(n) prescribing any matter required or authorized by this Act to be prescribed by regulation. 1979-80, c.P-6.1, s.73.

74. The Crown is bound by this Act. 1979-80, c.P-6.1, s.74.

Act binds
Crown

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(ii) where an agent is acting on behalf of a secured party, the signature of the agent where the agent has actual, implied or apparent authority to sign on behalf of the secured party together with the typed, printed or stamped name of such agent and, where the agent of the secured party is an artificial body, the typed, printed or stamped name of such artificial body;

(b) "registrant" means the person who is acting on behalf of a secured party for the purposes of submitting a statement for registration and for receiving verification of the registration, but does not include a clerk or other employee of the secured party receiving verification at the same address as the address shown for the secured party;

(c) "registrant code" means a seven digit number assigned to a registrant by the registrar pursuant to section 36.

(3) In these regulations, with respect to the registration of financing statements and financing change statements authorized to be registered in the registry under the Act, *The Sale of Goods Act* or *The Factors Act*:

(a) "mobile home" means any structure, whether ordinarily equipped with wheels or not, that is designed, constructed or manufactured:

- (i) to be moved from one place to another by being towed or carried; and
- (ii) to be used as:

(A) a dwelling house or premises;

(B) a business office or premises; or

(C) accommodation for a purpose other than one described in paragraph (A) or (B);

(b) "motor vehicle" means motor cars, motor homes, motorcycles, pedal bicycles with motor attachment, snowmobiles, snowplanes, power units, trucks, buses or vans, but does not include motor vehicles running only upon railway company property, fire engines, fire department apparatus, road rollers, street sprinklers, snowploughs and machinery used for the removal of snow and road building and maintenance machinery;

(b.1) "power unit" means a motor vehicle designed and used primarily for pulling a semi-trailer;

(c) "trailer" means a vehicle that is at any time drawn upon a public highway by a motor

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1 These regulations may be cited as *The Personal Property Title Regulations*.

PART I
Interpretation

2(1) In these regulations:

(a) "Act" means *The Personal Property Security Act*;

(b) "artificial body" includes a partnership, corporation, association, organization, estate of a deceased individual or bankrupt, trade union, trust, church or other religious organization, syndicate, joint venture or trustee in bankruptcy, but does not include an individual;

(c) "business debtor" means any artificial body named as debtor;

(d) "individual debtor" means any individual named as debtor;

(e) "registering party" means either a secured party or a registrant;

(f) "Saskatchewan court" means Her Majesty's Court of Queen's Bench for Saskatchewan or the District Court for Saskatchewan;

(g) "secured party code" means a seven digit number assigned to a secured party by the registrar pursuant to section 36.

(2) In these regulations, with respect to the registration of financing statements and financing change statements authorized to be registered in the registry under the Act, *The Sale of Goods Act*, *The Factors Act* or *The Garage Keepers Act*:

(a) "authorized signature of the secured party" means:

- (i) where a secured party is acting on his own behalf, the signature of the secured party and, where the secured party is an artificial body, the typed, printed or stamped name of the individual signing on behalf of the artificial body together with the signature of such individual; or

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vehicle and is designed for the conveyance of goods, and a trailer is deemed to be a separate vehicle and not a part of the motor vehicle by which it is drawn.

20 Feb 81 cP-6.1 Reg 1 s2;
20 Jly 84 SR 75/84 s3.

3 Where any statute requires a financing statement or Form to be filed, the financing change statement in the prescribed form to be registered in the registry, the form to be used is that which is provided by the registrar.

20 Feb 81 cP-6.1 Reg 1 s3.

PART II

Registrations under *The Personal Property Security Act*

4 This Part applies to the registration of financing statements authorized to be registered in the registry under the Act.

20 Feb 81 cP-6.1 Reg 1 s4.

5(1) The registering party shall ensure that a financing statement registered pursuant to this Part contains, in the appropriate area designated on the form:

- (a) an "X" to indicate the type of registration as a security agreement under the Act;
- (b) a whole number from one to 25 to indicate the number of years, or an "X" to indicate an infinite number of years, in the registration life;
- (c) the secured party code or the full name and address of each secured party or, where the interest of the secured party is assigned before registration, of each assignee;
- (d) the full name of each debtor in the manner required pursuant to section 35 and, in the case of individual debtors, their dates of birth, if known;
- (e) the full address of each debtor;
- (f) where a purchase-money security interest is claimed in all or part of the collateral, an "M" to indicate that a purchase-money security interest is claimed;
- (g) where proceeds are claimed, a "P" to indicate that proceeds are claimed;
- (h) where the security agreement under which the security interest is claimed is a trust indenture, a "T" to indicate that the security agreement is a trust indenture;

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(i) where a security interest is claimed in a motor vehicle, trailer, mobile home or airplane and the collateral is consumer goods or equipment, a description by serial number, which description must include:

(i) the last 18 characters of the serial number or, in the case of an airplane, the registration marks assigned to the airplane by the Ministry of Transport, omitting the hyphen which is normally part of such registration marks;

(ii) the make, or where there is no make the manufacturer, and the model;

(iii) the type code as one of airplane, bus, car, mobile home, motorcycle or motor bike, motor home, snowmobile or motor toboggan, trailer, truck, van or other;

and may include:

(iv) the last two digits of the model year;

(v) the colour code as one of grey, white, black, red, green, blue, yellow, orange, purple, brown or other;

(j) where a security interest is claimed in collateral other than that required to be described in accordance with clause (i), a description of the collateral which enables the type or kind of collateral taken under the security agreement to be distinguished from types or kinds of collateral which are not collateral taken under the security agreement, but, in the case of a security interest taken in all of the debtor's present and after-acquired property, a statement indicating that a security interest has been taken in all of the debtor's present and after-acquired property is sufficient; and

(k) the authorized signature of the secured party.

(1.1) Where a description by serial number is required pursuant to clause (1)(i) for a trailer, mobile home or motor vehicle, other than a motorcycle, and the trailer, mobile home or motor vehicle does not have a serial number, the serial number of the trailer, mobile home or motor vehicle is:

- (a) the serial number assigned by SGI; or
- (b) subject to subsection (1.2), where SGI has not assigned a serial number at the time of registration of a financing statement pursuant to this Part, the serial number assigned by the registering party, the debtor or any other person.

Description
where no
serial number

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(1.2) A person who assigns a serial number pursuant to clause (1.1)(b) shall ensure that it contains at least six numbers and is prominently affixed on the trailer, mobile home or motor vehicle.

(1.3) Where a description by serial number is required pursuant to clause (1)(i) for a motorcycle, the serial number of the motorcycle is:

- (a) the serial number on its frame;
- (b) where there is no serial number on its frame, the serial number assigned by SGI for the purposes of the serial number being affixed on the frame of the motorcycle; or
- (c) subject to subsection (1.4), where SGI has not assigned a serial number at the time of registration, the serial number assigned by the registering party, the debtor or any other person.

(1.4) A person who assigns a serial number pursuant to clause (1.3)(c) shall ensure that it contains at least six numbers and is prominently affixed on the frame of the motorcycle.

(2) Where proceeds are required to be described by subsection 28(2) of the Act or a registration is made pursuant to subsection 28(3) of the Act, the description of the proceeds must be provided in the same manner as required in clauses (1)(i) and (j) of this section.

(3) Where it is desired that a registrant receive verification of the registration, the registering party shall ensure that the financing statement contains the registrant code or the full name and address of the registrant.

20 Feb 81 cP-6.1 Reg 1 s5:
20 Jly 84 SR 75/84 s4.

PART III
Registrations under *The Sale of Goods Act*
and *The Factors Act*

6 This Part applies to the registration of financing statements authorized to be registered in the registry under subsection 26(1.1) of *The Sale of Goods Act* and subsection 9(2) of *The Factors Act*.

20 Feb 81 cP-6.1 Reg 1 s6.

7 In this Part and, with respect to the registration of financing change statements authorized to be registered in the registry under *The Sale of Goods Act* or *The Factors Act*, in Parts VI to X:

- (a) "debtor" means a person who, having sold goods, continues or is in possession of the goods or of the documents of title to the goods;
- (b) "secured party" means a person who, having bought goods, leaves the goods or the documents of title to the goods in the possession of the seller.

20 Feb 81 cP-6.1 Reg 1 s7.

8(1) The registering party shall ensure that a financing statement registered pursuant to this Part contains, in the appropriate area designated on the form:

- (a) an "X" to indicate the type of registration as a registration under subsection 26(1.1) of *The Sale of Goods Act* or subsection 9(2) of *The Factors Act*;
- (b) a whole number from one to 25 to indicate the number of years, or an "X" to indicate an infinite number of years, in the registration life;
- (c) the secured party code or the full name and address of each secured party or, where the interest of the secured party is assigned before registration, of each assignee;
- (d) the full name of each debtor in the manner required pursuant to section 35 and, in the case of individual debtors, their dates of birth, if known;
- (e) the full address of each debtor;
- (f) where the registration is with respect to a motor vehicle, trailer, mobile home or airplane, a description by serial number, which description must include:

(i) the last 18 characters of the serial number or, in the case of an airplane, the registration marks assigned to the airplane by the Ministry of Transport, omitting the hyphen which is normally part of such registration marks;

(ii) the make, or where there is no make the manufacturer, and the model;

(iii) the type code as one of airplane, bus, car, mobile home, motorcycle or motor bike, motor home, snowmobile or motor toboggan, trailer, truck, van or other;

and may include:

(iv) the last two digits of the model year;

(v) the colour code as one of grey, white, black, red, green, blue, yellow, orange, purple, brown or other;

(g) where the registration is with respect to collateral other than that required to be described in accordance with clause (f), a description of the collateral which enables the type or kind of collateral to be distinguished from types or kinds of collateral which are not the subject matter of the registration; and

(h) the authorized signature of the secured party.

(1.1) Where a description by serial number is required pursuant to clause (1)(f) for a trailer, mobile home or motor vehicle, other than a motorcycle, and the trailer, mobile home or motor vehicle does not have a serial number, the serial number of the trailer, mobile home or motor vehicle is:

(a) the serial number assigned by SGI; or

(b) subject to subsection (1.2), where SGI has not assigned a serial number at the time of registration of a financing statement pursuant to this Part, the serial number assigned by the registering party, the debtor or any other person.

Requirements where no serial number
(1.2) A person who assigns a serial number pursuant to clause (1.1)(b) shall ensure that it contains at least six numbers and is prominently affixed on the trailer, mobile home or motor vehicle.

Serial number description for a motorcycle
(1.3) Where a description by serial number is required pursuant to clause (1)(f) for a motorcycle, the serial number of the motorcycle is:

(a) the serial number on its frame;

(b) where there is no serial number on its frame, the serial number assigned by SGI for the purposes of the serial number being affixed on the frame of the motorcycle; or

(c) subject to subsection (1.4), where SGI has not assigned a serial number to the motorcycle at the time of registration, the serial number assigned by the registering party, the debtor or any other person.

(1.4) A person who assigns a serial number pursuant to clause (1.3)(c) shall ensure that it contains at least six numbers and is prominently affixed on the frame of the motorcycle.

(2) Where it is desired that a registrant receive verification of the registration, the registering party shall ensure that the financing statement contains the registrant code or the full name and address of the registrant.

20 Feb 81 cP-6.1 Reg 1 s8;

20 July 84 SR-75/84 s5.

PART IV

Filing under *The Garage Keepers Act*

9 This Part applies to the filing of financing statements authorized to be filed in the registry under *The Garage Keepers Act*.

20 Feb 81 cP-6.1 Reg 1 s9.

10 In this Part and, with respect to the filing of financing change statements authorized to be filed in the registry under *The Garage Keepers Act*, in Parts VI to X:

(a) "debtor" means the owner of a motor vehicle with respect to which a lien is claimed under *The Garage Keepers Act*;

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- (b) "motor vehicle" means a vehicle propelled by any power other than muscular power and includes an airplane, but does not include a motor vehicle that runs only on tracks or rails;
- (c) "secured party" means a garage keeper.

20 Feb 81 cP-6.1 Reg 1 s10.

11(1) The registering party shall ensure that a financing statement filed pursuant to this Part contains, in the appropriate area designated on the form:

- (a) an "X" to indicate the type of registration as a garage keeper's lien;
- (b) the secured party code or the full name and address of the secured party;
- (c) the full name of each debtor in the manner required pursuant to section 35 and, in the case of individual debtors, their dates of birth, if known;
- (d) the full address of each debtor;
- (e) the date the garage keeper gave up possession of the motor vehicle;
- (f) the amount of the garage keeper's lien in dollars and cents;

(g) a description of the motor vehicle, including:

- (i) the last 18 characters of the serial number of the motor vehicle or, where a garage keeper's lien is claimed with respect to an airplane, the registration marks assigned to the airplane by the Ministry of Transport, omitting the hyphen which is normally part of such registration marks;
- (ii) the make, or where there is no make the manufacturer, and the model; and
- (iii) the type code as one of airplane, bus, car, motorcycle or motor bike, motor home, snowmobile or motor toboggan, truck, van or other;

and may include:

- (iv) the last two digits of the model year;
- (v) the colour code as one of grey, white, black, red, green, blue, yellow, orange, purple, brown or other; and
- (h) the authorized signature of the secured party.

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(1.1) Where a description by serial number is required pursuant to clause (1)(g) for a motor vehicle, other than a motorcycle, and the motor vehicle does not have a serial number, the serial number of the motor vehicle is:

- (a) the serial number assigned by SGI; or
- (b) subject to subsection (1.2), where SGI has not assigned a serial number to the motor vehicle at the time of registration of a financing statement pursuant to this Part, the serial number assigned by the registering party, the debtor or any other person.

(1.2) A person who assigns a serial number pursuant to clause (1.1)(b) shall ensure that it contains at least six numbers and is prominently affixed on the motor vehicle.

(1.3) Where a description by serial number is required by clause (1)(g) for a motorcycle, the serial number of the motorcycle is:

- (a) the serial number on its frame;
- (b) where there is no serial number on its frame, the serial number assigned by SGI for the purposes of the serial number being affixed on the frame of the motorcycle; or
- (c) subject to subsection (1.4), where SGI has not assigned a serial number at the time of registration, the serial number assigned by the registering party, the debtor or any other person.

(1.4) A person who assigns a serial number pursuant to clause (1.3)(c) shall ensure that it contains at least six numbers and is prominently affixed on the frame of the motorcycle.

Verification of filing (2) Where it is desired that a registrant receive verification of the filing, the registering party shall ensure that the financing statement contains the registrant code or the full name and address of the registrant.

20 Feb 81 cP-6.1 Reg 1 s11;
20 July 84 SR 75/84 s6.

PART V

Registrations under *The Executions Act* and *The Creditors' Relief Act*

Application of Part 12 This Part applies to the registration of financing statements authorized to be registered in the registry under *The Executions Act* and *The Creditors' Relief Act*.

20 Feb 81 cP-6.1 Reg 1 s12.

Interpretation 13 In this Part and, with respect to the registration of financing change statements authorized to be registered in the registry under *The Executions Act* and *The Creditors' Relief Act*, in Parts VI to X:

(a) "authorized signature of the secured party" means:

(i) where the execution creditor is acting on his own behalf, the signature of the execution creditor and, where the execution creditor is an artificial body, the typed, printed or stamped name of the person signing on behalf of the artificial body together with the signature of such person; or

(ii) where a solicitor is acting on behalf of the execution creditor, the signature of the solicitor for the execution creditor where the solicitor has actual, implied or apparent authority to sign on behalf of the execution creditor together with the typed, printed or stamped name of such solicitor;

(b) "creditors' relief certificate" means a certificate issued under section 19 of *The Creditors' Relief Act*;

(c) "debtor" means the execution debtor;

(d) "registrant" means the solicitor who acts on behalf of the execution creditor for the purposes of submitting a statement for registration and for receiving verification of the registration;

(e) "registrant code" means a seven digit number assigned to a firm of solicitors by the registrar pursuant to section 36;

(f) "secured party" means the execution creditor.

20 Feb 81 cP-6.1 Reg 1 s13; 26 Nov 82 SR 152 s2 s5.

14(1) The registering party shall ensure that a financing statement contains, in the appropriate area designated on the form:

(a) an "X" to indicate the type of registration as:

(i) a writ of execution or a creditors' relief certificate issued by a Saskatchewan court; or

(ii) a writ of execution issued by the Federal Court of Canada;

(b) the secured party code or the full name and address of the secured party;

(c) the full name of each debtor in the manner required pursuant to section 35 and, in the case of individual debtors, their dates of birth, if known;

(d) the date of:

(i) judgment, where the writ of execution or creditors' relief certificate is issued by a Saskatchewan court, and, with respect to a creditors' relief certificate, the date of judgment is deemed to be the date of issue; or

(ii) issue of the writ of execution, where the writ is issued by the Federal Court of Canada;

(e) the name of the judicial centre to which the writ of execution was originally directed or of the judicial centre where the proceedings were taken to obtain the creditors' relief certificate;

(f) the amount of the writ of execution or creditors' relief certificate in dollars and cents;

(g) in the area of the form provided for general collateral description, an indication of whether the writ of execution attaches goods only or goods and lands or, with respect to a creditors' relief certificate, the words "Creditors' Relief Certificate"; and

(h) the authorized signature of the secured party.

(2) Where it is desired that a registrant receive verification of the registration, the registering party shall ensure that the financing statement contains the registrant code or the full name and address of the registrant.

20 Feb 81 cP-6.1 Reg 1 s14.

Verification
Registrant

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PART VI

Registration of Financing Change Statement A

15(1) This Part applies to the registration of a financing change statement A.

(2) Where a change is to be recorded in respect of:

- (a) a renewal;
- (b) a total discharge;
- (c) a partial discharge of collateral or proceeds;
- (d) a debtor release;
- (e) an assignment by a secured party;
- (f) a transfer by a debtor;
- (g) a description of additional collateral or of proceeds;
- (h) the registration of a court order; or
- (i) any other change to a financing statement described in section 25;

a financing change statement A is to be registered.

20 Feb 81 cP-6.1 Reg 1 s15.

Contents of
financing
change
statement A

16 The registering party shall ensure that a financing change statement A contains, in the appropriate area designated on the form:

- (a) an "X" to indicate the type of change as a change described in one of clauses 15(2)(a) to (i);
- (b) the registration number, date and time of the financing statement or of the financing change statement to be changed;
- (c) the type of registration to be changed, as one of:
 - (i) a security agreement registered under the Act, which is to be designated as "SA";
 - (ii) a registration under subsection 26(1.1) of *The Sale of Goods Act* or subsection 9(2) of *The Factors Act*, which is to be designated as "SG";
 - (iii) a garage keeper's lien, which is to be designated as "GK";
 - (iv) a writ of execution or a creditors' relief certificate issued by a Saskatchewan court, which is to be designated as "WE";

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(v) a writ of execution issued by the Federal Court of Canada, which is to be designated as "FW";

(vi) a bill of sale, which is to be designated as "BS";

(vii) a chattel mortgage, which is to be designated as "CM";

(viii) a notice registered under section 19 of *The Bills of Sale Act*, which is to be designated as "FC";

(ix) a conditional sale, which is to be designated as "CS";

(x) a general assignment of book debts, which is to be designated as "BD"; or

(xi) a corporate security, which is to be designated as "CR";

(d) where a financing statement is to be changed, the first debtor name appearing on that financing statement;

(e) where a financing change statement is to be changed, the first new debtor name appearing on that financing change statement or, where that financing change statement does not contain a new debtor name, the debtor name appearing on that financing change statement in the area of the form designated as "record to be changed" or "record to be amended";

(f) the secured party or registrant code or the full name and address of the secured party or registrant to whom verification of the registration of the financing change statement is to be sent; and

(g) the authorized signature of the secured party.

20 Feb 81 cP-6.1 Reg 1 s16.

17(1) Where a renewal is to be registered with respect to a registration, other than a garage keeper's lien or a writ of execution, the registering party shall ensure that the financing change statement A contains, in the appropriate area designated on the form:

- (a) subject to clause (b), the information required by section 16;
- (b) where the registration has been renewed previously, the registration number, date and time of the last financing change statement renewing the registration;
- (c) the type of change, which is to be designated as "renewal"; and

- (d) where the financing change statement is renewing a registration, a whole number from one to 25 to indicate the number of years, or an "X" to indicate an infinite number of years, in the registration life.

Renewal life

- (2) The registration life selected in accordance with subsection (1) begins to run from the date and time of the registration of the financing change statement A.

20 Feb 81 cP-6.1 Reg 1 s17;

20 July 84 SR 75/84 s7.

Total discharge

- 18 Where a registration is to be totally discharged, the registering party shall ensure that the financing change statement A contains, in the appropriate area designated on the form:

- (a) the information required by section 16; and
- (b) the type of change, which is to be designated as "total discharge".

20 Feb 81 cP-6.1 Reg 1 s18.

Partial discharge

- 19 Where a partial discharge of collateral or proceeds is to be registered, the registering party shall ensure that the financing change statement A contains, in the appropriate area designated on the form:

- (a) the information required by section 16;
- (b) the type of change, which is to be designated as "partial discharge";
- (c) the page number and line letter where the description of the collateral to be discharged appears on the financing statement or on the financing change statement to be changed;

- (d) where the collateral that is to be discharged was described by serial number on the lines designated for vehicle description on the financing statement or on the financing change statement to be changed:

- (i) the last 18 characters of the serial number or, in the case of an airplane, the registration marks assigned to the airplane by the Ministry of Transport;
- (ii) the year, if the year was provided on the financing statement to be changed;
- (iii) the make, or where there is no make the manufacturer, and the model;

- (iv) the type code as one of airplane, bus, car, mobile home, motorcycle or motor bike, motor home, snowmobile or motor toboggan, trailer, truck, van or other;

exactly as this information appears on the financing statement or on the financing change statement to be changed; and

- (e) where the collateral that is to be discharged is described on the lines designated for general collateral description on the financing statement or on the financing change statement to be changed, a description of the collateral which is to be discharged that is sufficient to enable it to be distinguished from collateral which is not discharged.

20 Feb 81 cP-6.1 Reg 1 s19;

26 Nov 82 SR 152/82 s5.

Debtor release

- 20 Where the release of a debtor is to be registered, the registering party shall ensure that the financing change statement A contains, in the appropriate area designated on the form:

- (a) the information required by section 16;
- (b) the type of change, which is to be designated as "debtor release";
- (c) the page number and line letter where the name of the debtor to be released appears on the financing statement or financing change statement to be changed; and
- (d) the name of the debtor to be released exactly as it appears on the financing statement or on the financing change statement to be changed.

20 Feb 81 cP-6.1 Reg 1 s20.

Assignment by secured party

- 21 Where an assignment by a secured party of his interest is to be registered, the registering party shall ensure that the financing change statement A contains, in the appropriate area designated on the form:

- (a) the information required by section 16;
- (b) the type of change, which is to be designated as "assignment by secured party";
- (c) the page number where the name of the assignor appears on the financing statement or on the financing change statement to be changed;

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- (d) the secured party code or the full name of the secured party assigning his interest, exactly as this information appears on the financing statement or on the financing change statement to be changed; and
- (e) the secured party code or the full name and address of the assignee.

20 Feb 81 cP-6.1 Reg 1 s21;
20 July 84 SR 75/84 s8.

Transfer by
debtor

22 Where a transfer by a debtor is to be registered, the registering party shall ensure that the financing change statement A contains, in the appropriate area designated on the form:

- (a) the information required by section 16;
- (b) the type of change, which is to be designated as "transfer by debtor";
- (c) the page number and line letter where the individual or business debtor name of the debtor who is transferring his interest appears on the financing statement or on the financing change statement to be changed;
- (d) the name of the individual or business debtor who is transferring his interest, exactly as this name appears on the financing statement or on the financing change statement to be changed;
- (e) the full name of each individual or business debtor to whom the interest is being transferred in the manner required pursuant to section 35; and
- (f) the full address of each debtor described in clause (e).

20 Feb 81 cP-6.1 Reg 1 s22.

Addition of
collateral or
proceeds
description

23 Where a description of additional collateral or of proceeds is to be registered, the registering party shall ensure that the financing change statement A contains, in the appropriate area designated on the form:

- (a) the information required by section 16;
- (b) the type of change, which is to be designated as "addition of collateral or proceeds description"; and
- (c) a description of the additional collateral in accordance with the description requirements for the type of registration or a description of the proceeds in the manner provided in section 5.

20 Feb 81 cP-6.1 Reg 1 s23.

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Court order

24(1) Where a court order is to be registered, the registering party shall ensure that the financing change statement A contains, in the appropriate area designated on the form:

- (a) the information required by section 16;
- (b) the type of change, which is to be designated as "court order";
- (c) particulars of the court order, including the name of the court, the date and court file number of the order and the judicial centre out of which the order issued; and
- (d) the effect of the court order.

Name

(2) Where a financing change statement A recording a court order has the effect of discharging a registration and a copy of the court order accompanies the financing change statement A, the registry staff may accept the financing change statement A without an authorized signature of the secured party.

20 Feb 81 cP-6.1 Reg 1 s24.

Other change

25 Where a change to a financing statement is to be registered, other than:

- (a) a change described in sections 17 to 24; or
- (b) a change governed by a financing change statement B (amendment);

the registering party shall ensure that the financing change statement A contains, in the appropriate area designated on the form:

- (c) the information required by section 16;
- (d) the type of change, which is to be designated as "other change";
- (e) a description of the type of other change; and
- (f) particulars of the change, including its effect.

20 Feb 81 cP-6.1 Reg 1 s25.

Correction by
registry staff

26 Where a financing change statement A described in section 24 or 25 has the effect of:

- (a) adding or deleting collateral; or
- (b) correcting a debtor name or serial number or other line of a financing statement or financing change statement;

the registry staff may complete additional financing change statements to effect the change required.

20 Feb 81 cP-6.1 Reg 1 s26.

PART VII Financing Change Statement B (Amendment)

27(1) This Part applies to the registration of a financing change statement B (amendment).

(2) Where a change is to be registered in respect of:

- (a) an amendment to information on a financing statement or on a financing change statement that is of a type not provided for in Part VI; or
 - (b) an error on the part of the registry staff in recording information from a financing statement or a financing change statement;
- a financing change statement B (amendment) is to be registered.

20 Feb 81 cP-6.1 Reg 1 s27; 26 Nov 82 SR 152/82 s5.

28 The registering party shall ensure that the financing change statement B (amendment) contains, in the appropriate area designated on the form:

- (a) an "X" to indicate the type of amendment as an amendment described in one of clauses 27(2)(a) or (b);
- (b) the information required by section 16, other than that required by clause 16(a); and
- (c) except as provided in clause (f), the page number of the page of the financing statement or financing change statement to be amended;

and shall ensure that the financing change statement B (amendment) also contains, in the appropriate area designated on the form:

- (d) where the amendment is to substitute a line of information for a line of information on a financing statement or on a financing change statement:
- (i) the letter of the line where the information appears on the financing statement or on the financing change statement to be amended; and
- (ii) the line of information to be substituted;

(e) where the amendment is to add a line of information for a line on which no information is set out on a financing statement or on a financing change statement:

- (i) the letter of the blank line; and
- (ii) the line of information to be added;

(f) where the amendment is to add a line of information to a financing statement or to a financing change statement and there is no blank line on the statement on which to add the information:

- (i) a page number one digit greater than the highest page number corresponding to the applicable financing statement or financing change statement;
- (ii) a line letter that corresponds to an appropriate line letter on the statement; and
- (iii) the line of information to be added;

(g) where the amendment is to delete a line of information from a financing statement or from a financing change statement:

- (i) the letter of the line to be deleted; and
- (ii) the exact information to be deleted as it appears on the financing statement or the financing change statement to be amended.

20 Feb 81 cP-6.1 Reg 1 s28; 26 Nov 82 SR 152/82 s5.

29(1) Where a change is to be registered to indicate that the type of registration on a financing statement or on a financing change statement is incorrect, the registering party shall ensure that the financing change statement B (amendment) contains, in the appropriate area designated on the form, the correct type of registration as provided in clause 16(c).

(2) Where a change is to be registered to correct an error in a name or address, the correct full name and address must both appear.

20 Feb 81 cP-6.1 Reg 1 s29.

PART VIII

Use of Verification Statements

30 This Part provides for the sending of a verification statement and for the use of a verification financing change statement.

20 Feb 81 cP-6.1 Reg 1 s30.

P-6.1 REG 1

PERSONAL PROPERTY

Verification
statement

31(1) Upon processing by the registry of a registration of a financing statement or of a financing change statement, a verification statement which confirms the information recorded in the registry may be sent, by ordinary mail, to the secured party or, where a registrant code or the full name and address of a registrant is given, to the registrant.

Discharge
verification
statement

(2) Where a financing change statement totally discharges a registration, a discharge verification statement may be sent to both the secured party and the registrant whose code or full name and address appear on the financing statement or on the financing change statement.

20 Feb 81 cP-6.1 Reg 1 s31.

Use of
verification
financing
change
statement

32(1) The verification financing change statement which is attached to the verification statement mentioned in subsection 31(1) allows the secured party or registrant:

- (a) to correct an error made by the registry staff in recording the information provided on the financing statement or on the financing change statement in the registry;
- (b) subject to subsection (2), to amend information previously submitted by the secured party or registrant;
- (c) to totally discharge the financing statement and all accompanying financing change statements.

Limitation on
use

(2) No verification financing change statement may be registered to effect a change to which Part VI applies, other than a change described in clause (1)(c).

20 Feb 81 cP-6.1 Reg 1 s32.

Correction of
registry errors
and amending
information

33 Where the correction of an error made by the registry staff in recording information is to be registered or where an amendment to information previously submitted by the registrant or secured party is to be registered, the registering party shall ensure that the verification financing change statement contains:

- (a) in the appropriate area designated on the form, an "X" to indicate the type of change as a change described in one of clauses 32(1)(a) and (b);
- (b) the incorrect information, by drawing a line through the information;
- (c) the correct information; and
- (d) the authorized signature of the secured party.

20 Feb 81 cP-6.1 Reg 1 s33.

March 1984
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PERSONAL PROPERTY

P-6.1 REG 1

Total
discharge

34 Where the total discharge of a financing statement is to be registered, the registering party shall ensure that the verification financing change statement contains, in the appropriate area designated on the form:

- (a) an "X" to indicate "total discharge"; and
- (b) the authorized signature of the secured party.

20 Feb 81 cP-6.1 Reg 1 s34.

PART IX

Particulars of Content of Form

Individual
debtor name

35(1) Where an individual is a debtor, the name to be set out in the financing statement or financing change statement in the area designated for "individual debtor" is the surname followed by the first given name and the second given name or initial, if any.

Artificial body
debtor name

(2) Where an artificial body is a debtor, the name to be set out in the financing statement or financing change statement in the area designated for "business debtor" is, where the artificial body is:

- (a) a partnership, and the partnership is:
 - (i) registered under *The Business Names Registration Act*, the registered name of the partnership; or
 - (ii) not registered under *The Business Names Registration Act*:
 - (A) the name of the partnership; and
 - (B) the name of at least one of the partners, and where the partner is:
 - (I) an individual, the information required under subsection (1); or
 - (II) an artificial body, the information required under this subsection;
- (b) a body corporate, the name under which the body corporate is incorporated;
- (c) an unincorporated association, organization, syndicate, joint venture or church or other religious organization, and is:
 - (i) registered under *The Business Names Registration Act*, the registered name; or
 - (ii) not registered under *The Business Names Registration Act*:

March 1984
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- (A) the name as set out in the constitution, charter or other document creating the association, organization, syndicate, joint venture or church or other religious organization; and
- (B) the name of each person representing the debtor in the transaction giving rise to the registration and, where such person is:
- (I) an individual, the information required under subsection (1); or
 - (II) an artificial body, the information required under this subsection;
- (d) an estate of a deceased individual, the first given name, followed by the second given name or initial, if any, followed by the surname of the deceased, followed by the word "estate";
- (e) a trade union:
- (i) the name of the trade union; and
 - (ii) the information required under subsection (1) for each individual representing the trade union in the transaction giving rise to the registration;
- (f) a trust and the document creating the trust:
- (i) designates a name for the trust, that name followed by the word "trust";
 - (ii) does not designate a name for the trust, the name of one of the trustees and, where the trustee is:
 - (A) an individual, the information required under subsection (1); or
 - (B) an artificial body, the information required under this subsection;
- (g) an estate of a bankrupt and the bankrupt is:
- (i) an individual, the first given name followed by the second given name or initial, if any, followed by the surname of the individual, followed by the word "bankrupt"; or
 - (ii) an artificial body, the name of the artificial body followed by the word "bankrupt";
- (h) any artificial body, other than one described in clauses (a) to (g):
- (i) the name of the artificial body; and
 - (ii) the name of each person representing the artificial body in the transaction giving rise to the registration and, where such person is:

- (A) an individual, the information required under subsection (1); or
- (B) an artificial body, the information required under this subsection.

(2.1) Notwithstanding clause (2)(b), when a corporation has set out its name in its articles in an English form and a French form or in a combined English and French form, the name to be set out in a financing statement or financing change statement is to be in an English form on one line designated for the business debtor and in a French form on another line so designated.

- (3) Where the name of a person is required to be set out in a financing statement or in a financing change statement under subsections (1) and (2), the name is to be set out for:

- (a) an individual, on the line designated for "individual debtor";
- (b) an artificial body, on the line designated for "business debtor".

- (4) Where a person named as a debtor carries on business under a name or style other than his own name, this name may also be separately set out on a financing statement or on a financing change statement in the area of the form designated for business debtor name in accordance with subsection (2).

- (5) Where a name is set out on any form required for registration in the area designated for business debtor, the abbreviations set out in Column 2 of Appendix III may be used in lieu of the information set out opposite those abbreviations in Column 1 of Appendix III.

- (6) No punctuation marks, except the hyphen and apostrophe, are to be used on any form to be registered in the area designated for "individual debtor".

- (7) The comma and period must not be used in the area of any form to be registered which sets out business debtor name, and other symbols set out in Appendix II may only be used where necessary to comply with subsection (2).

20 Feb 81 cP.6.1 Reg 1 s35: 26 Nov
82 SR 152,82 s5: 20, Jly 84 SR
75, 84 s9: 28 Jne 85 SR 55, 85 s3.

- 36 The registrar may assign a code to a secured party or a registrant and the code may be set out in a financing statement or in a financing change statement in lieu of the full name and address of the registrant or secured party.

20 Feb 81 cP.6.1 Reg 1 s36.

P-6.1 REG 1

PERSONAL PROPERTY

37 Where these regulations require a date to be shown, the financing statement or the financing change statement must set out, in the following order:

- (a) the day of the month in numerals;
- (b) the first three letters of the name of the month; and
- (c) the last two digits of the number of the year.

20 Feb 81 cP-6.1 Reg 1 s37.

38(1) Where additional space is required, additional financing statements or financing change statements may be used, in which case each financing statement or financing change statement is to be numbered and the number of pages in total is to be set out on each financing statement or financing change statement in the area provided for that purpose.

(2) Where, after exhausting all applicable line space in a line designated for secured party name or business debtor name on any given page, additional space is required, the line may be continued in another line on the same page designated for that purpose, and, where that line is to be used, the letter of the line to be continued and the information to be continued must be set out, but, in the case of a business debtor name, the utilization of the additional space does not increase the searchable capacity of the name.

(3) A financing statement or financing change statement may contain a reference number supplied by the registering party, which reference number is provided only for the use of the registering party.

20 Feb 81 cP-6.1 Reg 1 s38.

PART X

Manner of Recording

39 The information required or permitted by these regulations to be set out on a financing statement or on a financing change statement must be set out in a manner suitable for microfilming and, without limiting the generality of the foregoing:

- (a) the information must be typewritten or machine printed in black ink with clear, neat and legible characters without erasure, interlineation or alteration;
- (b) alphabetical characters must be in upper case only; and
- (c) subject to the other provisions of these regulations, the information must be without punctuation marks or symbols.

20 Feb 81 cP-6.1 Reg 1 s39.

PERSONAL PROPERTY

P-6.1 REG 1

40(1) Subject to subsections 35(6) and (7), the punctuation marks or symbols set out in Column 2 of Appendix II may be used in any form to be used for registration.

(2) The abbreviations or expansions set out in Column 2 of Appendices III and IV may be used on any form mentioned in these regulations for:

- (a) secured party name and address;
- (b) debtor address; and
- (c) collateral description, including vehicle description:

in lieu of the information set out opposite to those abbreviations or expansions in Column 1 of Appendices III and IV.

(3) In entering information into the computerized system of the registry, any word set out in Column 1 of Appendix III may be entered by the registry staff in the abbreviated form set out opposite that word in Column 2 of Appendix III.

20 Feb 81 cP-6.1 Reg 1 s40.

40.1 No person who completes a financing statement or financing change statement shall use, in the categories or lines of a financing statement or financing change statement mentioned in Column 1 of Appendix V, a number of characters exceeding the number of characters mentioned in Column 2 of Appendix V.

20 July 84 SR 75/84 s10.

PART XI

Office Hours, Fees and Practice

41(1) The registry will be open to the public at 10:00 a.m. and kept open until 4:00 p.m. on all days except:

- (a) Saturdays and Sundays;
- (b) New Year's Day, Good Friday, Victoria Day, Canada Day, the first Monday in August, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day or any day authorized by the chairman of the Public Service Commission to be observed as a holiday in respect of any such day; and
- (c) any day or any specified portion of a day that the office is closed pursuant to an order of the Lieutenant Governor in Council or a non-working day declared by the chairman of the Public Service Commission.

P-6.1 REG 1

PERSONAL PROPERTY

Name

(2) The office hours of deputy registrars mentioned in subsection 43(2) of the Act are the same as those provided in subsection (1).

20 Feb 81 c.P.6.1 Reg 1-41: 25-June
84 SR 55 84 s.4

Fees

42(1) The fees provided in Appendix I are required to be paid for the services referred to in that Appendix.

Advances
required

(2) The registrar is entitled to demand and receive all fees in advance of the rendering of the service.

P-6.1 REG 1

PERSONAL PROPERTY

Notice to
discharge

(3) No person shall charge a fee for any service provided for Her Majesty in right of Saskatchewan except a service provided for any Crown Corporation.

20 Feb 81 c.P.6.1 Reg 1-42: 20-July
84 SR 75 84 s.11: 25-June 85 SR
55 85 s.5

Transitions

42.1 A financing change statement tendered for registration:

(a) with respect to:

(i) an assignment of book debts;

(ii) a bill of sale;

(iii) a chattel mortgage;

(iv) a notice registered pursuant to section 19 of *The Bills of Sale Act*;

(v) a conditional sale; or

(vi) a writ of execution;

which was registered in the Central Registration Office prior to January 1, 1979; or

(b) with respect to a corporate security which was registered with the Provincial Secretary prior to the coming into force of these regulations;

may have the following information added to it by the registry staff:

(c) page numbers and line letters corresponding to information to be amended or added;

(d) the first debtor name to meet the requirements of clause 16(d);

(e) a conversion prefix added to the registration number.

20 Feb 81 c.P.6.1 Reg 1-42: 20-July
84 SR 75/84 s.11.

Notice to
discharge

43(1) Where a person having an interest in collateral requires the registrar to serve a notice to discharge on a secured party pursuant to subsection 50(4) of the Act, he shall register with the registrar a requisition in Form 1 bearing the signature of the person requisitioning the notice to discharge.

Service

(2) Where the registrar accepts a requisition mentioned in subsection (1), he shall serve a notice on the secured party in Form 2.

20 Feb 81 c.P.6.1 Reg 1-43.

PART XII
Fixtures

Application of 4.4 This Part applies to the filing of notices with respect to fixtures in the land titles offices pursuant to section 54 of the Act.

20 Feb 81 c.P.6.1 Reg 1-44.

PERSONAL PROPERTY

P-6.1 REG 1

45(1) Where a secured party claims a security interest in goods which are or may become fixtures, he shall cause to be filed in the land titles office for the land registration district within which the land is situated a notice in Form 3, setting out:

- (a) the name and address of the secured party;
- (b) the full name and address of the debtor;
- (c) a description of the goods by which they may readily and easily be known and distinguished;
- (d) the amount owing with respect to which the security interest is granted or taken in the goods;
- (e) the registration life of the notice in multiples of one year or an infinite number of years;
- (f) a description of the land to which the goods are or are to be affixed, sufficient for the purpose of identification in the land titles office; and
- (g) the address within Saskatchewan at which notices may be served;

and any such notice is to be signed by the secured party or his agent and witnessed.

(2) Where a secured party who has filed a notice pursuant to subsection (1), renews, assigns, discharges, subordinates his interest to another or partially discharges his interest, he shall cause to be filed in the land titles office where the notice under subsection (1) was filed, a notice in Form 4, setting out:

- (a) the name and address of the secured party;
- (b) the description of the land given in accordance with clause (1)(f);
- (c) the date of the notice filed pursuant to subsection (1), the date of its registration and the instrument number assigned to it;
- (d) in the case of a notice of renewal, the registration life in multiples of one year or an infinite number of years;
- (e) in the case of a notice of subordination:
 - (i) the full name and address of the person to whom the interest of the secured party is being subordinated; and
 - (ii) the nature and instrument number of the interest to which the interest of the secured party is being subordinated;

Filing notice
or fixture

Filing changes
re notice

P-6.1 REG 1

PERSONAL PROPERTY

(f) in the case of a notice of amendment, the particulars of the amendment;

(g) in the case of a notice of discharge, a statement to the effect that the notice mentioned in subsection (1) is wholly discharged;

(h) in the case of a partial discharge, a description of the land to which the goods are affixed; and

(i) in the case of an assignment:

- (i) a statement to the effect that the notice has been assigned;
- (ii) the name and address of the person to whom the interest is being assigned; and
- (iii) an address for the assignee at which notices may be served in Saskatchewan;

and any notice filed pursuant to this subsection is to be signed by the secured party or his agent and witnessed.

Affidavit

(3) Subject to subsection (4), an affidavit of execution in Form 5 and, in any case where an agent is acting on behalf of the secured party, an affidavit verifying the notice in Form 6 is to be annexed to any notice filed pursuant to this section.

Execution by
corporation

(4) Where a notice mentioned in subsection (1) or (2) is executed by a corporation under its corporate seal, no affidavit of execution is required.

20 Feb 81 cP-6.1 Reg 1 s45.

PART XIII
Miscellaneous

46 A secured party is entitled to demand a fee of \$5 for responding to a demand in writing under section 18 of the Act and, where a copy of the security agreement is demanded, a reasonable fee not greater than 50¢ per page for each page of the security agreement and any amendment to the security agreement.

Fee under s.
18 of Act

20 Feb 81 cP-6.1 Reg 1 s46.

47 For the purposes of subsection 30(3) of the Act, "motor vehicle" has the meaning ascribed to it in clause 2(3)(b) of these regulations.

Definition re
subsection
30(3) of Act

20 Feb 81 cP-6.1 Reg 1 s47.

PERSONAL PROPERTY P-6.1 REG 1

48(1) The limit on the amount payable to any single claimant pursuant to subsection 53(1) of the Act is \$100,000.

(2) The limit on the total of all claims for compensation payable under subsections 53(3) and (4) of the Act is \$800,000.

20 Feb 81 CP-6.1 Reg 1 s48: 28 Jne
85 SR 55:85 s6.

Limitation

Same

49 A reference in these regulations to:

(a) *The Assignment of Book Debts Act*;

(b) *The Bills of Sale Act*;

(c) *The Conditional Sales Act*; or

(d) *The Corporation Securities Registration Act*;

is deemed to be a reference to that Act as it existed on the day before the coming into force of *The Personal Property Security Act*.

20 Feb 81 CP-6.1 Reg 1 s49.

50(1) In this section, "telephone switchboard" means electronic, automatic or manually operated local telephone office equipment that serves extensions in a business complex and provides access to the public switched network.

(2) *The Personal Property Security Act* does not apply to the leasing of:

(a) telephones;

(b) telephone switchboards;

(c) telephone switchboard consoles;

(d) telephone jacks;

(e) telephone plugs; or

(f) telephone wiring.

20 Jly 84 SR 75/84 s12.

SASKATCHEWAN REGULATIONS 6/87

The Personal Property Security Act

Section 73

Order in Council 54/87, dated January 28, 1987.

(Filed January 29, 1987)

ORDER

His Honour the Lieutenant Governor in Council, on the recommendation of the Minister of Justice, pursuant to section 73 of *The Personal Property Security Act*, makes *The Personal Property Amendment Regulations, 1987* in accordance with the attached Schedule.

SCHEDULE

1 These regulations may be cited as *The Personal Property Amendment Regulations, 1987*.

2 *The Personal Property Regulations* are amended in the manner set forth in these regulations.

3 Section 48 is amended:

(a) by striking out "\$100,000" in subsection (1) and substituting "\$300,000"; and

(b) by striking out "\$800,000" in subsection (2) and substituting "\$2,400,000".

4(1) Appendix I is amended in the manner set forth in this section.

(2) Items 1 to 5 under the heading "REGISTRATIONS" are repealed and the following substituted:

*1. To register a FINANCING STATEMENT covering:

(a) *Personal Property Security Act* Security Agreement or registration under *The Sale*

of Goods Act or *The Factors Act*

\$ 3 per year
for optional
registration

life from 1 to
25 years, or

\$100 for
infinity

registration
life

FEBRUARY 6, 1987

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PERSONAL PROPERTY

(b) Garage Keepers' Lien.....	5
(c) Writ of Execution issued by a Saskatchewan Court or a Creditors' Relief Certificate.....	10
(d) Writ of Execution issued by the Federal Court of Canada.....	5
2. To register a FINANCING CHANGE STATEMENT A covering:	
(a) Renewal.....	\$ 3 per year for optional renewal
registration life from 1 to 25 years, or \$100 for infinity renewal registration life	
(b) Total discharge.....	NO CHARGE
(c) Partial Discharge.....	5
(d) Debtor release.....	5
(e) Assignment by secured party.....	5
(f) Transfer by debtor.....	5
(g) Addition of collateral or addition of proceeds description.....	5
(h) Court order.....	5
(i) Other change.....	5
3. To register a FINANCING CHANGE STATEMENT B covering:	
(a) Secured Party or Registrant amendment.....	5
(b) Correction of Personal Property Registry error.....	NO CHARGE
4. To register a VERIFICATION FINANCING CHANGE STATEMENT covering:	
(a) Correction of Personal Property Registry error.....	NO CHARGE
(b) Secured Party or Registrant amendment.....	5
(c) Total Discharge.....	NO CHARGE

APPENDIX II
Punctuation

COLUMN 2

COLUMN 1

Amperсанд
Apostrophe
Comma
Dollar sign
Hyphen
Parentheses
Percent sign
Period
Plus sign
Quotation marks
Virgule

20 Feb 81 cP-6.1 Reg 1.

APPENDIX III
Abbreviations

COLUMN 2

COLUMN 1

CAN
CO
CORP
DIV OF
INC
INC
LTD
LTÉE

20 Feb 81 cP-6.1 Reg 1.

APPENDIX IV
Abbreviations

COLUMN 2

COLUMN 1

ALTA
AM. AM MOTORS
APT
AVE
BDRM
BLVD
EC
BROS
CAISSE POP
CHEV
CHRYSLER
CIR
CON C
CONST
CONV
CO-OP
CPE
CT
CREDIT U
CRES
DEL VAN
DR
DR
E
EQPT
4DR HDTOP
HLF 1/2
HTCH BK
HWY

INCH IN
INTERNATIONAL
INTERNATIONAL HARVESTER
JOHN DEERE
LIVING ROOM
LOT
MANITOBA
MASSEY FERGUSON
MOTORCYCLE
MOTORS
NEW BRUNSWICK
NEWFOUNDLAND
NORTH
NORTHWEST TERRITORIES
NOVA SCOTIA
OLDSMOBILE
1/4
1/4 TON PICKUP TRUCK
1/4 TON TRUCK
ONTARIO
PLYMOUTH
PONTIAC
PRINCE EDWARD ISLAND
QUARTER
QUEBEC
RAMBLER
ROAD
RURAL ROUTE
SASKATCHEWAN
SEDAN
SERIAL NUMBER
SOUTH
STATION WAGON
STREET
SUITE
SUPERSPORT
TELEVISION
1/4 TON TRUCK
TON
TOWNSHIP
VOLKSWAGEN
WEST
YUKON

IN
INTL
IHC
JD
LR
L
MAN
MF
MTRCYCLE
MTES
NB
NFLD
N
NWT
NS
OLDS
A HALF
1/4 TPU
1/4 T TRK
ONT
PLY
PONT
PEI
QTR 1/4
QUE
RAMBL
RD
RR
SASK
SDN
SERIAL
S
STN WGN
ST
STE
SS
TV
1/4 T TRK
T
TWSP, TWP
VW
W
YUK

20 Feb 81 cP-6.1 Reg 1.

APPENDIX V

Spacing on Financing Statements
and Financing Change Statements

COLUMN 1

Your reference #
Lines B, U - Secured Party/Registrant Name
Lines C, F, I, V - Address

Lines D, G - Individual Debtor Surname
- Individual Debtor First Name
- Individual Debtor Second Name
Lines E, H - Business Debtor Name
Line J - Amounts

Lines K, L, M, N - Vehicle Description Lines
- Serial Number
- Make/Model

Lines O, P, Q, R, S, W, X, Y

Lines T, Z - Information

Pages of financing statements

Page to be amended on a financing change statement

20 Jly 84 SR 75/84.

COLUMN 2

7 characters
50 characters
28 characters
16 characters
18 characters
12 characters
12 characters
50 characters
12 characters
18 characters
24 characters
50 characters
49 characters
3 characters
3 characters
2 characters

FORM 1

Requisition for Notice to Discharge
Subsection 43(1)Address
Date

To: The Personal Property Registrar

I, (here state full name and address), require you to serve a notice to discharge on the secured party(ies) named in the financing statement (or financing change statement, as the case may be) bearing registration number _____ and registered on (here insert date) with respect to the collateral described as follows:

(If the notice to discharge is required with respect to all collateral described on a financing statement or a financing change statement relating thereto, the requisition may so state.)

I served a written demand on the secured party(ies) by (here state method of service) on (here state date demand was served or mailed) at (here state the address of service used) and 15 days has expired from service of the said demand.

I claim my interest as (here state whether as owner, debtor or other person having an interest in the collateral).

The secured party's(ies) address(es) is (are):
(Here state the full address and postal code.)

Dated this _____ day of _____, 19 _____.

Signature

20 Feb 81 cP-6.1 Reg 1.

PERSONAL PROPERTY P-6.1 REG 1

FORM 2

Notice to Discharge
Subsection 43(2)

Personal Property Registry
Address _____
Date _____

To: Name of Secured Party
Address _____

Pursuant to section 50 of *The Personal Property Security Act*, and upon the requisition of 'here state name and address of person requiring notice to be sent', I hereby notify you that the financing statement or financing change statement registered by you (or on your behalf or by your assignor, as the case may be) on the _____ day of _____, 19____, claiming an interest in collateral described as follows:

(If the notice to discharge is required with respect to all collateral described on a financing statement or a financing change statement relating thereto, the notice may so state.)
will be discharged at the expiration of 40 days from service of this notice upon you unless within the said 40 days you register with me an order of a Judge of Her Majesty's Court of Queen's Bench for Saskatchewan maintaining your interest, accompanied by a financing change statement in the form prescribed in *The Personal Property Regulations*.

Dated this _____ day of _____, 19____.

Personal Property Registrar

20 Feb 81 cP-6.1 Reg 1.

FORM 3

Notice for Filing in Land Titles Office
Subsection 45(1)

To: The Registrar of Land Titles at _____, Saskatchewan.

I (We), 'here state full name and address of the secured party' hereby give notice that a security interest has been created by 'here state name and address of debtor' in 'here provide a brief description of collateral which is or may become fixtures'.

The following is a description of the land upon which the goods are located or are affixed or are to be affixed:

The amount owing with respect to the security interest in the goods is 'here give the amount owing in dollars and cents'.

The registration life of this notice is 'here choose from multiples of one year or an infinite number of years'.

The address within Saskatchewan at which notices may be served on the secured party is as follows:

This notice is given for the purpose of filing in the Land Titles Office at _____, Saskatchewan.

Dated this _____ day of _____, 19____.

Signed by the above
named _____
in the presence of _____

Witness

Secured Party or Agent

20 Feb 81 cP-6.1 Reg 1.

March 1984
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P-6.1 REG 1 PERSONAL PROPERTY

FORM 4

Notice for Filing in Land Titles Office
Subsection 45(2)

To: The Registrar of Land Titles at _____, Saskatchewan.

The notice of security interest of 'here state name and address of the secured party' upon the land described as:

Dated the _____ day of _____, 19____, and registered the _____ day of _____, 19____, as Instrument Number _____.

_____ is hereby (renewed, subordinated, amended, assigned, discharged or partially discharged).

Select the appropriate form:

Renewal
The notice is renewed for 'here select from multiples of one year or an infinite number of years'.

Subordination
The notice is subordinated to the interest of 'here state name and address of person to whom the interest is being subordinated' under Instrument Number 'here give Instrument Number and general description of the nature of interest being given priority'.

Amendment
The notice is amended by 'here give particulars of amendment'.

Discharge
The notice of security interest is wholly discharged.

Partial discharge
The notice is partially discharged as it relates to the land described as: 'here describe the land to which the goods are affixed'.

Assignment
The interest of the secured party referred to in the notice has been assigned to 'here state full name and address of the assignee' whose address for service in Saskatchewan is 'here state the address in Saskatchewan where notices may be served'.

Dated this _____ day of _____, 19____.

Signed by the above
named _____
in the presence of _____

Witness

Secured Party or Agent

20 Feb 81 cP-6.1 Reg 1.

March 1984
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PERSONAL PROPERTY P-6.1 REG 1

FORM 5
Affidavit of Execution
Subsection 45(3)PROVINCE OF SASKATCHEWAN
TO WIT:I, A. B. of *(here state address and occupation)* MAKE OATH AND SAY:

1 That I was personally present and did see _____ named in the within 'or annexed' instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.

2 That the same was executed at the City of _____ in the Province of _____, and that I am the subscribing witness thereto.

3 That I, _____, know the said _____ and he is in my belief 18 years of age or more.

SWORN BEFORE ME AT

Province of _____ in the
this _____ day of _____,
19____.A Commissioner, etc.
(or as the case may require).

Signature

20 Feb 81 cP-6.1 Reg 1.

FORM 6

Affidavit Verifying Notice
Subsection 45(3)PROVINCE OF SASKATCHEWAN
TO WIT:I, A. B. of *(here state address and occupation)* MAKE OATH AND SAY:

1 That I am the duly authorized agent of the secured party named in the notice hereto attached, and I have a full knowledge of the facts set out therein.

2 That the statement of facts set out in the said notice is true.

SWORN BEFORE ME AT

Province of _____ in the
this _____ day of _____,
19____.A Commissioner, etc.
(or as the case may require).

Signature

20 Feb 81 cP-6.1 Reg 1.

March 1984
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SASKATCHEWAN FORMS AND SPECIMEN SEARCH RESULT

Saskatchewan Attorney General Personal Property Registry								Financing Statement <small>If insufficient space, complete additional statements and show Page of Pages</small>								For Office Use Only (Registration Number, Date & Time)							
Type and Life of Registration				Type of Registration (Type an X in one box only)				Registration Life (Select for optional types SA & SG)															
								Select } or {															
Type and Life of Registration SA SG GK WE PW <small>PMSA Security Agreement S of G Act s 26 or F Act s 9 Garage Keeper's Lien Writ of Execution (Saskatchewan) or Creditors Relief Certificate Writ of Execution (Federal)</small>				Yrs (Select from 1 to 25 yrs) or Infinity (Type N) 6 months from date of registration 10 years from date of judgment 5 years from date of issue				Select Reg. Life } or { <input type="checkbox"/> <input type="checkbox"/>				Debtor's Vehicles											
Secured Party Code or Name																							
B				Address				City				Province				Postal Code							
Party (or Assignee) C																							
Debtor																							
D				Individual Debtor				First Name				Second Name				Birth Date Jan/Dec							
Complete either lines D & F or lines E & F in this section				Surname (Last Name)																			
				Business Debtor																			
				Address of Business or Individual Debtor								City				Province				Postal Code			
Additional Debtor																							
G				Individual Debtor				First Name				Second Name				Birth Date Jan/Dec							
Complete either lines G & I or lines H & I in this section				Surname (Last Name)																			
				Business Debtor																			
				Address of Business or Individual Debtor								City				Province				Postal Code			

FORMS

Special Information	For PPSA Agreements Only		For Garage Keepers' Liens Only		For Writs of Execution Only		Judicial Centre Where Writ Directed
	Type 'M' if Purchase Money Interest Claimed	Type 'P' if Proceeds Claimed	Type 'T' if a Trust or Intention of Vehicle	Date Garage Keeper gave up Possession of Vehicle	Amount of Lien \$	Amount \$	
Vehicle Description	<div> <div>For Motor Vehicle, Mobile Home, Trailer or Airplane (Under PPSA - Only If Consumer Goods Or Equipment).</div> <div> <div>Serial Number</div> <div>Year</div> <div>Make & Model</div> <div>Colour Code</div> <div>Type</div> <div>VIN KEY</div> </div> </div>						
See Reverse Side for Type and Colour Codes							
General Collateral Description	<div> <div>General Collateral Description other than items described in Lines K - N</div> <div> <div>Office Use Only</div> <div>VIN KEY</div> </div> </div>						
Proceeds Description	<div> <div>Required if proceeds claimed in line J above do not fall within description given in lines O, P, Q or are other than identifiable cash proceeds</div> <div> <div>Proceeds Description</div> <div>For PPSA Agreements Only</div> </div> </div>						
Continuation	<div> <div>Line Continued</div> <div>Additional Information (Note: This information does not increase searchable fields in lines E or M)</div> </div>						
Registrant	<div> <div>Registrant Code</div> <div>Name of Registrant</div> </div>						
Authorized Signature of Secured Party	<div> <div>Only Complete This Section if Registrant is to be Mailed to Registrant Rather than Secured Party Listed Above</div> <div> <div>Address</div> <div>City</div> <div>Province</div> <div>Postal Code</div> </div> </div>						
<div> <div>Name of Agent (if applicable)</div> <div>Name of Individual Signing</div> <div>Signature</div> </div>							

PSP 44

LEGISLATION AND FORMS (SASK.)

Saskatchewan Attorney General Personal Property Registry		Financing Change Statement A		For Office Use Only (Registration Number, Date & Time)	
Your Reference Number		Page of Pages		Debtor Vehicle	
Type "X" in one category only to select "Type of Change". Complete applicable parts as noted in the selected category. Only one type of change allowed per statement.					
Type Of Change Select One	Renewal TX 75 (Complete parts 1, 7 & 8)	Select Renewal Life for PPSA, Sale of Goods or Factors Act only. (This includes Pre-PPSA agreements deemed registered under PPSA.) yrs (1 - 25) or infinity (x)	Total Discharge TX 45 (Complete parts 1, 7 & 8)	Partial Discharge of Collateral or Proceeds TX 15-P (Complete parts 1, 4, 7 & 8)	Debtor Release (If less than total number of Debtors on Registration) TX 15-S (Complete parts 1, 7 & 8 and one delete line in part 3.)
	Assignment by Secured Party TX 15-A (Complete parts 1, 2, 7 & 8)	Transfer by Debtor TX 15-D (Complete parts 1, 3, 7 & 8)	Addition of Collateral or Proceeds Description TX 15-I (Complete parts 1, 5, 7 & 8)	Court Order (Complete parts 1, 6, 7 & 8) Office Use Only TX 15-J or TX 75	Other Change TX 15-O (Complete parts 1, 6, 7 & 8)
Record to be Changed First Debtor listed on record to be changed		Registration Number _____ Date _____ Time _____ Type of Registration _____ (See Codes on Reverse) Give first debtor name listed on Financing Statement to be changed. (Complete one line only) If the record to be changed is a Financing Change Statement, refer to instructions on reverse or in guide for debtor name to be given.			
Assignment By Secured Party		Page _____ Line _____ Assignor as recorded on "Record to be Changed" Secured Party Code B OR Assignee to be Recorded Assignee Address _____ City _____ Province _____ Postal Code _____			

FORMS

Debtor Release or Transfer by Debtor Page <u>Line Z</u> of Previous Debtor Recorded in Previous Debtor Previous Individual Debtor Surname First Name Second Name New Individual Debtor Surname First Name Second Name Date of Birth New Business Debtor Name Address of New Individual or Business Debtor City Province Postal Code Add New Debtor D E F									
Partial Discharge of Collateral or Proceeds Page <u>Line</u> Vehicle Serial Number Year Make and Model Type Office Use Only VIN - KEY Page <u>Line</u> General Collateral or Proceeds Description									
Addition of Collateral or Addition of Proceeds of Description Add Collateral K O Vehicle Serial Number Year Make and Model Type Office Use Only VIN - KEY General Collateral or Proceeds Description									
Court Order or Other Change Describe Type of Other Change (eg. Subordination, Partial Assignment, Partial Transfer) or Details of Court Order W Particulars of Change or Effect of Court Order X Y									
Mailing Address of Party Registering Change Code U V Or: Name of Secured Party or Registrant for mailing address for Verification of Change Address City Province Postal Code									
Authorized Signature of Secured Party Name of Agent (if applicable) Name of Individual Signing Signature									

LEGISLATION AND FORMS (SASK.)



Saskatchewan
Justice

Personal Property Registry

Financing Change Statement B (Amendment)

Amendment to the Saskatchewan
Personal Property Registry

Your Reference Number _____ Page _____ of _____ pages

Type an "X" in one category only to select "Type of Amendment" and complete Parts 1, 3 and 4 and applicable lines in Part 2.

Type Of Amendment	To Amend Information Previously Submitted By Secured Party or Registrant
Select One	
TX15R	To Amend Information Previously Submitted By Secured Party or Registrant
TX15C	To Correct Error Of Personal Property Registry in Recording Information.

Debtors' Vehicles

For Office Use Only: Registrar Number, Date & Time

Part 1		Part 2	
Type	Type of Registration should have been recorded as (See codes on reverse)	Type of Registration	
Secured Party (or Assignee) Code, or Name and Address Required	Secured Party Code or Name	Registration Number	Date
Debtor Name and Address Required	Individual Debtor Line Surname (Last Name) D or G Line Business Debtor E or H Line Address of Business or Individual Debtor For I	Time	Type of Registration
	City		
	Province		
	Postal Code		
	Birth Date		
	Jan Dec		
	Province		
	Postal Code		

Page 1 of 1

Note: All Amendments
Recorded in Part 2 below will
be applied to this page - if
the record to be amended

Amendment(s) To be Recorded (Indicate specific letter of line to be amended when required in Part 2 below)

FORMS

Special Information		For PPSA Agreements Only		For Garage Keepers' Liens Only		For Writs of Execution Only		Judicial Centre Where Writ Directed	
Type of Information		Type of Purchase Money Inter. Claimed	Type of Proceeds	Type of Lien	Date Garage Keeper gave up Possession of Vehicle	Amount of Lien	For PW - Date of Issue	For WE - Date of Judgment	Amount
J						\$			\$
Vehicle Description K, L, M, or N		For Motor Vehicle, Mobile Home, Trailer or Airplane (Under PPSA - Only If Consumer Goods Or Equipment).		Year Make & Model			Office Use Only VIN - KEY		
Line		Serial Number		Year Make & Model			Type Code		
K, L, M, or N									
General		Line		General Collateral Description other than items described in Lines K - N					
Collateral Description		O							
P									
Q									
Proceeds Description O, R or S		Line		Required if Proceeds do not fall within General Collateral Description, or are other than identifiable Cash Proceeds					
O, R or S									
Court Order Or Other Change		Describe Type of Change - e.g. Subordination, Partial Assignment, Partial Transfer or Details of Court Order							
W									
X or Y									
Continuation (Restricted usage for lines B, E & H Only)		Line Continued		Additional Information (Note - This information does not increase searchable fields in lines E & H)					
T									
Delete Information		Line to be Deleted		Information to be Deleted					
Z									
Mailing Address of Party Registering Amendment		Code		Or Name of Secured Party or Registrant for Mailing Address for Verification of Change Amendment					
U									
V		Address		City			Province		Postal Code
Authorized Signature of Secured Party		Name of Agent (if Applicable)		Name of Individual Signing			Signature		

Search Result

Saskatchewan
Justice

Personal Property Registry

Date 09 FEB 88
Time 12 22 17
Page 1

Client Code 88000000
Client 88
Currency Date 04 FEB 88

Type of Search
VEHICLE SERIAL NUMBER 1111
Searching Party

PPR Reference
X600000000

Refer to Enquiry Guide and
reverse side of this form for
additional information.

PERSONAL PROPERTY REGISTRY

220 PL 1874 SCARTH ST., BOX 7125
REGINA, SASK. S4S 0S5

Page 1 Line

SECURITY AGREEMENT	
REGISTRATION DATE 08 AUG 83	TIME 10:00
REGISTRATION LIFE 05 YR	NUMBER 01433767
PURCHASE MONEY INTEREST CLAIMED	
PROCEEDS CLAIMED	
1B CANADIAN IMPERIAL BANK OF COMMERCE	
1D BOX 1210 HELFORT, SASK. S0E 1A0	
1D WEGREN	ALLAN
1F BOX 26	JAMES RADWAY
1G WEGREN	
1H BOX 26	TERESA RADWAY
1I BOX 26	
1J BOX 26	
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APPENDIX F

TECHNICAL OVERVIEW OF THE SASKATCHEWAN
PERSONAL PROPERTY REGISTRY SYSTEM

This section describes the technical architecture of the Personal Property Registry System.

5.1 System Hardware Configuration:

The Personal Property Registry System operates on an IBM mainframe located at SaskCOMP. The hardware configuration for the system includes:

- ten Telex 3270 type terminals, two on-line printers, and one controller located in the Registry office;
- one 3270 type terminal and one on-line printer located at SGI.

5.2 System Software:

With the exception of the Billing/Accounts Receivable Sub-system, the Personal Property Registry System is an IMS system. IMS is a data base management system which provides for a hierarchical view of data maintained by the system. At the time the system was developed, IMS was a relatively new product.

There are two processing options available under IMS. The first is batch processing which operates under IMS-DB. The second is on-line processing which operates under IMS-DC. Both are utilized in the Personal Property Registry System.

ADF (Application Development Facility) was used to develop certain parts of the on-line facility present in the Personal Property Registry System. ADF is a developmental tool used to shorten the development time for IMS on-line applications. The ADF on-line facilities present in the system operate under IMS-DC.

The Billing/Accounts Receivable Sub-system operates under CICS which is another on-line processing facility.

Most of the software programs in the system are written in COBOL, a major programming language at the time the system was developed. COBOL is still frequently used in larger high volume systems.

Two other programming languages, MARKIV and EASYTRIEVE, are used in the system. Both are basically reporting type languages and are used in that capacity in the Personal Property Registry System. MARKIV was a relatively new product at the time of system development

whereas EASYTRIEVE is a newer reporting language. EASYTRIEVE was used to re-develop one of the older MARKIV programs which was becoming difficult to maintain.

Each of the six sub-systems comprising the Personal Property Registry System is described in more detail in the following sections.

1. Batch Edit/Control Sub-system:

The primary purpose of this sub-system is to ensure that data entering the system is both correct and complete. Input to this sub-system are the Key-Edit tapes of batches of raw data.

This sub-system consists of an edit program, a batch control program, and an on-line error correction program.

The edit program edits each input transaction to ensure that the information in each field is correct. This program is written in COBOL.

The second program, the control program, is also written in COBOL. The purpose of this program is to ensure that input data is complete (i.e. No missing registrations; an amendment line is entered for an amendment transaction code) and in incremental registration number sequence.

If an edit and/or control error occurs, the entire batch is rejected and placed on the Batch Error Data Base. Error free batches of transactions are written to a transaction file which goes to the Update Sub-system.

The Batch Edit/Control Sub-system is currently being changed so that only the transactions in error will be rejected and written to the Batch Error Data Base. This will mean that the entire batch will not have to be error free before good transactions are passed to the Update Sub-system.

Edit and control errors are corrected using an on-line program developed using ADF. The transactions in error are brought onto the screen where the person making the corrections enters the correct information.

2. Update Sub-system:

The purpose of this sub-system is to maintain the Registration Data Base which is the primary system file and contains all registration data. The Update Sub-system consists of an update program and an on-line error correction program.

The update program is a large complex program written in COBOL and runs under IMS-DB (batch). It takes the error free transactions passed from the Edit/Control Sub-system and adds, changes or deletes registrations on the Registration Data Base.

A major component of the updating process is the name coding which is done to provide for more efficient retrieval by secured party name. When the Registration Data Base is updated, the secured party name goes through the name coding process. The Name Coding Routine abbreviates the name to as unique a name as possible by removing all non-alphanumeric characters, by removing certain combinations of characters and by making certain abbreviations.

The unique name produced by the Name Coding Routine is passed to a second name coding routine, the NYSIIS Routine. The NYSIIS Routine does a character by character scan of the name, changes, removes or codes certain combinations of letters, and places the coded name along with the full expanded name on the Registration Data Base.

The update program also produces printed verification statements for every registration which successfully updates the data base and every registration which is successfully discharged from the data base. The verification statements are sent back to the Registrant.

Transactions rejected by the update program are written to the Update Error Data Base. These errors are corrected using an on-line error correction facility also developed using ADF.

3. Enquiry Sub-system:

The enquiry sub-system provides the Registry with a facility for:

- conducting searches against the Registration Data Base;
- printing the search results;

- automatically generating transactions for input into the Billing/Accounts Receivable Sub-system.

This sub-system consists of four COBOL programs, three of which are on-line programs running under IMS-DC. The fourth program, also written in COBOL, is a batch program running under IMS-DB.

The first on-line program, which is also the most complex, performs the registration search according to the search criteria entered. Registrations can be searched by registration number, debtor name or by vehicle serial number. Search results are displayed on a terminal screen by the second on-line program. If a printed copy of the search results is required, the third on-line program is used. The batch program produces the search results which are printed over night and generates transactions for input into the billing program.

When searches by debtor name are processed, the debtor name goes through the same name coding routines as in the update program. All NYSIIS codes on the system which match the NYSIIS code for the name being searched are found. The expanded name is then checked and if it matches the search criteria exactly, it will appear on the search result as an exact match. The other expanded names, with the same NYSIIS code but with different expanded names, are shown as similar matches. The searchers select which similar matches should be included in the search results.

4. Stub Production Sub-system:

This sub-system, consisting of two COBOL software programs, produces on microfiche, information regarding every search conducted. The information is retained for liability protection purposes.

One of the programs runs on a weekly basis and produces the information in sequence by date. The other program, run at month end, produces the information in debtor name sequence.

5. History Extraction Sub-system:

The purpose of this sub-system is to delete expired registrations from the Registration Data Base, placing the deleted registrations on a history file. The history information is sorted by debtor, serial number and registration number to produce three microfiche indices to a master history report on

microfilm.

This sub-system consists of five batch programs written in COBOL. The first program makes a complete sequential pass of the Personal Property Registry Data Base, deleting expired registrations and placing them on a history file.

The second program creates, on microfilm, a report of the history information.

The other three programs each sort the history information in a different sequence and each produce, on microfiche, an index for referencing the microfilm history.

6. TEC Billing/Accounts Receivable Sub-system:

This sub-system accumulates TEC charges for the month, allows on-line entry of payment information and adjustments, and produces monthly statements and various other reports for TEC accounts. The Billing/Accounts Receivable Sub-system was added to the main system in 1985 with the implementation of TEC.

An on-line facility, developed using ADF, is used to maintain a file of names, addresses and TEC account numbers for regular customers of the Registry. A COBOL program produces a report of new accounts added.

The COBOL billing program produces statements of the monthly charges, payments and adjustments for TEC account holders. It also creates a billing transaction which is input to the Accounts Receivable component of the sub-system.

Payment and adjustment information is entered using an on-line facility which is programmed in COBOL and operates under CICS.

Various reports from the Accounts Receivable component of this sub-system are produced by programs written in COBOL, MARKIV and EASYTRIEVE.

MARKIV programs produce reports of daily total charges, payments and adjustments, and of accounts showing outstanding balances for the aging period.

EASYTRIEVE programs produce reports of adjustment numbers used when adjustments are entered, and of accounts whose password is canceled or suspended.


An EASYTRIEVE program also produces letters for accounts which are 30 days overdue.

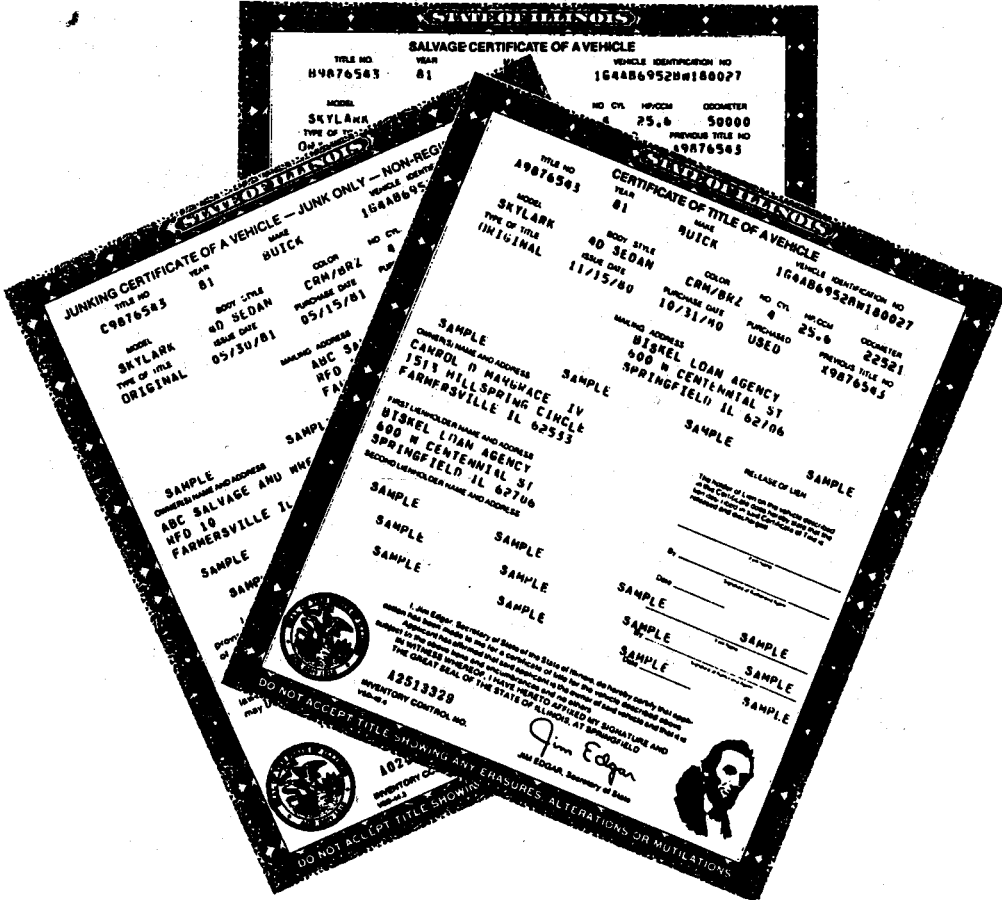
Payment information and account adjustments are entered onto the accounts receivable file by an on-line CICS program. The on-line enquiry programs, which give an option of either summary or detailed information, are also CICS programs.

APPENDIX G


ILLINOIS' TITLE SYSTEM

VEHICLE SERVICES





JIM EDGAR
Secretary of State



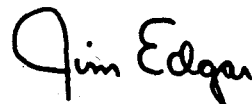
I am proud of the continuing success of the computer title master file system implemented in January 1982. The system consolidated over 20 million vehicle records into a single file. Vehicle, owner and lienholder information is now being retrieved faster, easier, and more economically than ever before. This system is one component of our program to provide Illinois citizens with one of the nation's most secure Certificates of Title.

The system has prevented the issuance of titles on vehicles which have been previously reported stolen. It also has prevented the Secretary of State's office from issuing duplicate titles that might have been used for fraud.

During the first three years of the system, the computer detected 600,000 title errors that previously might have gone undetected. These cases were either corrected or investigated before a valid Illinois Certificate of Title was issued. In many cases, these detected errors reflected fraudulent activities.

In addition to the implementation of the computer system, Illinois continues to produce one of the most secure titles in the nation. Using bank note paper with an intaglio border, latent images, and a security lamination strip, Illinois has drastically reduced its number of altered and counterfeit titles.

The new computer system and security title represent only two facets of a larger program designed to reduce vehicle theft in Illinois. The Secretary of State's office will continue to develop and expand programs which deter crime and protect Illinois citizens.



ILLINOIS SECRETARY OF STATE

SECRETARY EDGAR'S COMPUTER TITLE SYSTEM PROVES EFFECTIVE IN FIGHTING TITLE FRAUD

- ⑤ Features a computer master file for retrieval of vehicle and owner information, etc. Over 20 million vehicle records are consolidated in the new file.
- ⑤ Includes over 10,000 makes of vehicles.
- ⑤ Has 36 different error conditions that stop the issuance of a Certificate of Title (e.g., *incorrect vehicle identification number, make in error, or "hit" on stolen vehicle file*).
- ⑤ Has detected over 30,000 "HITS" on the stolen vehicle file since Jan. 1, 1982.
- ⑤ Detects numerous fraudulent title transactions that previously would have gone undetected. (Example: *An owner of a vehicle obtains a duplicate title, after reporting the original title was lost, then takes the original and duplicate titles to two different financial institutions and borrows twice.*)
- ⑤ Detects vehicles which previously were junked in Illinois and have been washed (registered and/or titled) by other states and returned to Illinois. Once a vehicle has been issued an Illinois Junking Certificate, it can never be eligible for Title and Registration in Illinois again. This prevents a car thief from taking a Vehicle Identification Number from a vehicle junked in Illinois and using it on a stolen vehicle in Illinois.
- ⑤ Detects Illinois titles labeled with "REBUILT" (salvage vehicle) and washed by other states. The system automatically restores the "REBUILT" when the Certificate is surrendered from another state and a new Illinois title is issued. The "REBUILT" on the title lets the consumer know that the vehicle at one time was salvaged.
- ⑤ Stops questionable title transactions before their issuance by placing a tag on the computer master file, which prevents issuance of the certificate. (Example: *Temporary restraining order that enjoins Secretary of State's office until civil or criminal proceedings are completed.*)
- ⑤ Tags on the master file those Illinois titles returned by other states. By updating the computer master file with this information, the Illinois Secretary of State's office can prevent the issuance of Duplicate Illinois Titles on vehicles which are titled in other states.
- ⑤ Utilizes latest security technology available in the production of its title documents.

HOW CERTIFICATES ARE MADE SECURE

Intaglio Printing

When viewing a secure Illinois Certificate of Title, Salvage Certificate or Junking Certificate, the first test of authenticity is the "feel of steel." The intaglio border of the document has a three-dimensional pattern which appears as a result of a steel engraving plate. This intaglio printing technique produces tiny lines, which are embossed onto the surface of the document, resulting in the border's "feel of steel." It is the most secure printing method known, and represents the method used to print U.S. currency. A counterfeit document is easily detected; the tiny lines will appear muddled and imperfect, and the intaglio border will lack the "feel of steel."

Security Lamination

Security lamination is applied over the vital vehicle information and prevents the altering of Illinois certificates. The state seal and the word "Illinois" appear in the lamination. Attempts to remove the lamination will result in the mutilation of the certificate, while any attempts to alter the vehicle information will be readily identified.

How to View the Security Lamination

- 1) Hold the certificate at arm's length.
- 2) Shine a pen light at the lamination, holding the light at the tip of your nose.
- 3) See the "Illinois" and State Seal. Any alterations will also be seen.

The Latent Image

The ink texture of the engraving process and the horizontal lines and spaces combine to create a hidden or latent image. The three-dimensional nature of intaglio printing creates latent images that aid verification of genuine Illinois Certificates of Title and deter counterfeiting. The Certificate of Title on the opposite page has two arrows to indicate the locations of the latent images: "IL" on the left and "SS" on the right.

How to View the Latent Image

- 1) Face an overhead light source.
- 2) Hold document at arm's length and raise or lower it until latent image appears.


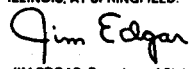

"REBUILT" Salvage Vehicle Identifier

The notation "REBUILT" is used to indicate those vehicles which were converted from vehicles which have been salvaged at one time. The printing of the letters "REBUILT" on Illinois Certificates of Title is pursuant to PA83-306, effective January 1, 1984. PA84-1304, effective January 1, 1987, requires that all rebuilt vehicles, eight model years of age or newer, be physically inspected, and that a fee of \$75 be assessed for such inspection.

CERTIFICATE OF TITLE

REBUILT


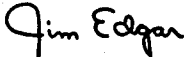

SECURITY
LAMINATION

STATE OF ILLINOIS						
CERTIFICATE OF TITLE OF A VEHICLE						
TITLE NO. D9876543 * REBUILT *	YEAR 81	MAKE BUICK	VEHICLE IDENTIFICATION NO. 164AB69528W180027			
MODEL SKYLARK	BODY STYLE 40 SEDAN	COLOR CRM/BRZ	NO. CYL 4	HP/CCM 25.6	ODOMETER 50789	
TYPE OF TITLE ORIGINAL	ISSUE DATE 03/26/84	PURCHASE DATE 05/15/84	PURCHASED USED	PREVIOUS TITLE NO. D9876543 REBUILT		
MAILING ADDRESS BISKEL LOAN AGENCY 600 W CENTENNIAL ST SPRINGFIELD IL 62706						
OWNER(S) NAME AND ADDRESS JOHN Q PUBLIC RR 1 FARMERSVILLE IL 62533		RELEASE OF LIEN The holder of Lien on the vehicle described in this Certificate does hereby state that the lien described in said Certificate of Title is released and discharged.				
FIRST LIENHOLDER NAME AND ADDRESS BISKEL LOAN AGENCY 600 W CENTENNIAL ST SPRINGFIELD IL 62706		By _____ Signature of Authorized Agent				
SECOND LIENHOLDER NAME AND ADDRESS		Date _____				
SAMPLE	SAMPLE	SAMPLE	SAMPLE	SAMPLE	SAMPLE	SAMPLE
SAMPLE	SAMPLE	SAMPLE	SAMPLE	SAMPLE	SAMPLE	SAMPLE
SAMPLE	SAMPLE	SAMPLE	SAMPLE	SAMPLE	SAMPLE	SAMPLE
<p>I, Jim Edgar, Secretary of State of the State of Illinois, do hereby certify that application has been made to me for a certificate of title for the vehicle described above. Applicant has affirmed that said applicant is the owner of said vehicle and that it is subject to the above liens and encumbrances and no others.</p> <p>IN WITNESS WHEREOF, I HAVE HERETO AFFIXED MY SIGNATURE AND THE GREAT SEAL OF THE STATE OF ILLINOIS, AT SPRINGFIELD.</p>						
		B10214764 INVENTORY CONTROL NO. VSD-40.5		 JIM EDGAR, Secretary of State		
DO NOT ACCEPT TITLE SHOWING ANY ERASURES, ALTERATIONS OR MUTILATIONS.						

INTABLIO
BORDERLATENT
IMAGE
"IL"LATENT
IMAGE
"SS"

By law, an odometer certification statement is required for each completed assignment and reassignment of title, designated on the back of every new Illinois Certificate of Title. (See back of Title and Salvage Certificate.)

SALVAGE CERTIFICATE

STATE OF ILLINOIS						
SALVAGE CERTIFICATE OF A VEHICLE						
TITLE NO.	YEAR	MAKE	VEHICLE IDENTIFICATION NO.			
C9876543	81	BUICK	1G4AB6952BW180027			
MODEL	BODY STYLE	COLOR	NO. CYL.	HP/COM	ODOMETER	
SKYLARK	4D SEDAN	CRM/BRZ	4	25.6	85000	
TYPE OF TITLE	ISSUE DATE	PURCHASE DATE	PURCHASED	PREVIOUS TITLE NO.		
ORIGINAL	05/30/84	05/15/84	USED	89876543		
MAILING ADDRESS						
ABC SALVAGE AND WRECKING CO RFD 10 FARMERSVILLE IL 62533						
SAMPLE	SAMPLE	SAMPLE	SAMPLE			
OWNER(S) NAME AND ADDRESS						
ABC SALVAGE AND WRECKING CO RFD 10 FARMERSVILLE IL 62533						
SAMPLE	SAMPLE	SAMPLE	SAMPLE			
SAMPLE	SAMPLE	SAMPLE	SAMPLE			
<p>I, Jim Edgar, Secretary of State of the State of Illinois, do hereby certify that application has been made to me for a salvage certificate for the vehicle described above.</p> <p>I do further certify that I have used reasonable diligence in ascertaining whether or not the facts contained in said application are true.</p> <p>Wherefore, I do hereby certify that the above named person has been duly recorded as the lawful owner of the vehicle described above.</p> <p>IN WITNESS WHEREOF, I HAVE HERETO AFFIXED MY SIGNATURE AND THE GREAT SEAL OF THE STATE OF ILLINOIS, AT SPRINGFIELD.</p>						
		 JIM EDGAR, Secretary of State				
A0254588		INVENTORY CONTROL NO.				
VSD-41.4						
DO NOT ACCEPT TITLE SHOWING ANY ERASURES, ALTERATIONS OR MUTILATIONS.						

 SECURITY
LAMINATION

 INTAGLIO
BORDER

 LATENT
IMAGE
"IL"

 LATENT
IMAGE
"SS"


JUNKING CERTIFICATE

JUNKING CERTIFICATE OF A VEHICLE — JUNK ONLY — NON-REGISTERABLE

TITLE NO. 89876543	YEAR 81	MAKE BUICK	VEHICLE IDENTIFICATION NO. 164AB69528W180027		
MODEL SKYLARK	BODY STYLE 4D SEDAN	COLOR CRM/BRZ	NO. CYL. 4	HP/CCM 25.6	ODOMETER 50000
TYPE OF TITLE ORIGINAL	ISSUE DATE 03/15/84	PURCHASE DATE 03/01/84	PURCHASED USED	PREVIOUS TITLE NO. A9876543	

MAILING ADDRESS
**STRATFORD INSURANCE AGENCY
1233 W CRYSTAL AVE
LITCHFIELD IL 62056**

SAMPLE SAMPLE SAMPLE SAMPLE

OWNER(S) NAME AND ADDRESS
**STKATFORD INSURANCE AGENCY
1233 W CRYSTAL AVE
LITCHFIELD IL 62056**

JUNK ONLY


NON-REGISTERABLE

I, **SAMPLE**, Secretary of State of the State of Illinois, do hereby certify that pursuant to the provisions of Chapter 85½, Section 3-117 of the Illinois Vehicle Code, an application for Certificate of Junking has been made to me as prescribed by said Act, for the Vehicle described above.

I do further certify that I have used reasonable diligence in ascertaining whether or not the facts contained in said application are true.

Wherefore, I do hereby certify that the above named person has been duly recorded as the lawful owner of the vehicle above described and by this certificate hereby authorize that the vehicle may be junked.

IN WITNESS WHEREOF, I HAVE HERETO AFFIXED MY SIGNATURE AND
THE GREAT SEAL OF THE STATE OF ILLINOIS, AT SPRINGFIELD.




A0533244

INVENTORY CONTROL NO.
VSD-44.5

Jim Edgar

JIM EDGAR, Secretary of State



DO NOT ACCEPT TITLE SHOWING ANY ERASURES, ALTERATIONS OR MUTILATIONS.

SECURITY
LAMINATIONINTAGLIO
BORDERLATENT
IMAGE
"IL"LATENT
IMAGE
"SS"

- This document is considered the death certificate of a vehicle. Once an Illinois Junking Certificate has been issued to a vehicle, that vehicle can never again be registered or titled in Illinois.

MIDWEST TASK FORCE ON VEHICLE THEFT

A vehicle is stolen every 28 seconds in the United States, according to National Automobile Theft Bureau statistics. One vehicle in every 43 is either stolen or has its contents (*packages and luggage*) and/or accessories (*tape decks and CB radios*) stolen, costing the American public over \$4 billion.

The Midwest Task Force on Vehicle Theft represents a 13-state effort to fight this problem. Spearheaded by the Illinois Secretary of State's office, the task force encourages communication and strengthens enforcement efforts among the states. The 13 states are: *Wisconsin, Minnesota, South Dakota, North Dakota, Nebraska, Iowa, Missouri, Kansas, Kentucky, Indiana, Michigan, Ohio, and Illinois*. Task Force members include motor vehicle administrators, law enforcement officials, and industry representatives, such as vehicle manufacturers, insurance agents, scrap processors and recyclers. Through this type of concerted effort, numerous fraudulent interstate activities have been stopped.

PROTECT YOURSELF FROM VEHICLE THIEVES!

The public can help in fighting vehicle theft by following these rules:

- Always buy from a reputable dealer or person you know.
(*Know where to find the seller.*)
- Make sure the seller has the valid title for the vehicle.
- *Check the Vehicle Identification Number (VIN) shown on the title against the VIN on the vehicle. Make sure the title matches the vehicle you are buying.*
- Do not pay in cash - - use a personal or certified check so you will have a record of the transaction. Always obtain a Bill of Sale signed by the previous owner in your presence, indicating the vehicle, the amount you paid, the date, and the names of the buyer and seller.
- Make application to the Secretary of State for new Title and Registration immediately.
- Keep your title in a safe place, not in your vehicle.

ILLINOIS' MOTOR VEHICLE CODE

95½ § 3-100
Vehicle Code § 3-100

CHAPTER 95½ — MOTOR VEHICLES

22

- Par.
 3-1003. Administration and enforcement—Conformity with Use Tax Act.
 3-1004. Disposition of funds.
 3-1005. Rules and regulations.
 3-1006. Department.

ARTICLE XI. REPLACEMENT VEHICLE TAX

- 3-2001. Imposition of tax.
 3-2002. Returns from purchaser insurance company or broker—Return and payment to secure title—Receipts.
 3-2003. Administration and enforcement—Conformity with Use Tax Act.
 3-2004. Disposition of funds.
 3-2005. Rules and regulations.
 3-2006. Department.

ARTICLE I. CERTIFICATES OF TITLE

3-100. Definitions

§ 3-100. Definitions. For the purposes of this Chapter, the following words shall have the meanings ascribed to them as follows:

Owner. A person who holds legal document of ownership of a vehicle limited to a certificate of origin, certificate of title, salvage certificate or junking certificate, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of such vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this Chapter, except as provided under paragraph (b) Section 3-118.

Amended by P.A. 83-831, § 1, eff. Jan. 1, 1984.

3-101. Certificate of title required

§ 3-101. Certificate of title required. (a) Except as provided in Section 3-102, every owner of a vehicle which is in this State and for which no certificate of title has been issued by the Secretary of State shall make application to the Secretary of State for a certificate of title of the vehicle.

(b) Every owner of a motorcycle or motor driven cycle purchased new on and after January 1, 1980 shall make application to the Secretary of State for a certificate of title. However, if such cycle is not properly manufactured or equipped for general highway use pursuant to the provisions of this Act, it shall not be eligible for license registration, but shall be issued a distinctive certificate of title except as provided in Sections 3-102 and 3-110 of this Act.

(c) The Secretary of State shall not register or renew the registration of a vehicle unless a certificate of title has been issued by the Secretary of State to the owner or an application therefor has been delivered by the owner to the Secretary of State.

Amended by P.A. 81-561, § 1, eff. Jan. 1, 1980.

3-102. Exclusions

§ 3-102. Exclusions. No certificate of title need be obtained for:

1. A vehicle owned by the State of Illinois; or a vehicle owned by the United States unless it is registered in this State;
2. A vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing or demonstration; or a vehicle used by a manufacturer solely for testing;
3. A vehicle owned by a non-resident of this State and not required by law to be registered in this State;
4. A vehicle regularly engaged in the interstate transportation of persons or property for which a currently effective certificate of title has been issued in another State;
5. A vehicle moved solely by animal power;
6. An implement of husbandry;
7. Special mobile equipment.

3-103. Optional certificate of title

§ 3-103. Optional certificate of title. The owner of an implement of husbandry or special mobile equipment may apply for and obtain a certificate of title on it. All of the provisions of this Chapter, except part (e) of Section 3-104, are applicable to a certificate of title so issued, except that a person who receives a transfer of an interest in the vehicle without knowledge of the certificate of title is not prejudiced by reason of the existence of the certificate, and the perfection of a security interest under this Act is not effective until the lienholder has complied with the provisions of applicable law which otherwise relate to the perfection of security interests in personal property.

An application for an optional certificate of title must be accompanied by either an exemption determination from the Department of Revenue showing that no tax imposed under the "Use Tax Act" ¹ or the "Retailers' Occupation Tax Act" ² is owed by anyone with respect to that vehicle or by a receipt from the Department of Revenue showing that any tax so imposed has been paid. No optional certificate of title shall be issued in the absence of such a receipt or exemption determination.

If the proof of payment or of nonliability is, after the issuance of the optional certificate of title, found to be invalid, the Secretary of State shall revoke the optional certificate of title and require that it be returned to him.

Amended by P.A. 78-1165, § 1, eff. Aug. 27, 1974.

¹ Chapter 120, § 439.1 et seq.

² Chapter 120, § 440 et seq.

3-104. Application for first certificate of title

§ 3-104. Application for first certificate of title. (a) The application for the first certificate of title of a vehicle in this State must be made by the owner to the Secretary of State on the form prescribed and must contain:

1. The name, residence and mail address of the owner;
2. A description of the vehicle including, so far as the following data exists: Its make, year-model, identifying number, type of body, the number of cylinders, whether new or used, and, as to vehicles of the second division whether for-hire, not-for-hire, or both for-hire and not-for-hire;
3. The date of purchase by applicant, the name and address of the person from whom the vehicle was acquired and the names and addresses of any lienholders in the order of their priority; and
4. Any further information the Secretary of State reasonably requires to identify the vehicle and to enable him

to determine whether the owner is entitled to a certificate of title and the existence or nonexistence of security interests in the vehicle.

(b) If the application refers to a vehicle purchased from a dealer, it must contain the name and address of any lienholder holding a security interest created or reserved at the time of the sale and the date of his security agreement and be signed by the dealer as well as the owner, and the dealer must promptly mail or deliver the application to the Secretary of State.

(c) If the application refers to a vehicle last previously registered in another State or country, the application must contain or be accompanied by:

1. Any certified document of ownership so recognized and issued by the other State or country and acceptable to the Secretary of State, and

2. Any other information and documents the Secretary of State reasonably requires to establish the ownership of the vehicle and the existence or nonexistence of security interests in it.

(d) If the application refers to a new vehicle it must be accompanied by the Manufacturer's Statement of Origin with such assignments as may be necessary to show title in the applicant.

(e) If an application refers to a vehicle rebuilt from a vehicle previously salvaged, that application shall comply with the provisions set forth in Sections 3-302 through 3-304 of this Code.

(f) An application for a certificate of title for any vehicle, whether purchased in Illinois or outside Illinois, and even if previously registered in another State, must be accompanied by either an exemption determination from the Department of Revenue showing that no tax imposed pursuant to the "Use Tax Act"¹ or the "vehicle use tax", as imposed by Section 3-1001 of "The Illinois Vehicle Code", is owed by anyone with respect to that vehicle, or a receipt from the Department of Revenue showing that any tax so imposed has been paid. An application for a certificate of title for any vehicle purchased outside Illinois, even if previously registered in another state, must be accompanied by either an exemption determination from the Department of Revenue showing that no tax imposed pursuant to the "Municipal Use Tax Act"² or the "County Use Tax Act"³ is owed by anyone with respect to that vehicle, or a receipt from the Department of Revenue showing that any tax so imposed has been paid. In the absence of such a receipt for payment or determination of exemption from the Department, no certificate of title shall be issued to the applicant.

If the proof of payment of the tax or of nonliability therefor is, after the issuance of the certificate of title and display certificate of title, found to be invalid, the Secretary of State shall revoke the certificate and require that the certificate of title and, when applicable, the display certificate of title be returned to him.

Amended by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

¹ Chapter 120, ¶ 439.1 et seq.

² Chapter 24, ¶ 8-11-6.

³ Chapter 34, ¶ 409.10.

3-104.1. Repossession certificate of title—Nonresident lienholders

§ 3-104.1. An appropriate repossession certificate of title may be issued to a lienholder residing in another state and using his out-of-state address.

Added by P.A. 83-449, § 1, eff. Jan. 1, 1984.

3-105. Examination of records

§ 3-105. Examination of records. The Secretary of State, upon receiving application for a first certificate of title, shall check the identifying number of the vehicle shown in the application against the records of vehicles required to be maintained by Section 3-107 and against the record of stolen and converted vehicles required to be maintained by Section 4-107.

3-106. Certificate of title—Display certificate—Issuance—Records

§ 3-106. Certificate of title—Display certificate—Issuance—Records. (a) The Secretary of State shall file each application received and, when satisfied as to its genuineness and regularity, and that no tax imposed by the "Use Tax Act"¹ or the vehicle use tax, as imposed by Section 3-1001 of "The Illinois Vehicle Code", or pursuant to the "Municipal Use Tax Act"² or pursuant to the "County Use Tax Act"³ is owed as evidenced by the receipt for payment or determination of exemption from the Department of Revenue provided for in Section 3-104 of this Act, and that the applicant is entitled to the issuance of a certificate of title, shall issue a certificate of title of the vehicle and also, where the vehicle is a trailer, a display certificate of title. In no event shall a display certificate of title be issued except to an owner to whom has been issued a certificate of title.

(b) The Secretary of State shall maintain a record of all certificates of title issued by him under a distinctive title number assigned to the vehicle; and, in the discretion of the Secretary of State, in any other method determined. Amended by P.A. 81-3, 2nd Sp.Sess., § 19, eff. Jan. 1, 1980.

¹ Chapter 120, ¶ 439.1 et seq.

² Chapter 24, ¶ 8-11-6.

³ Chapter 34, ¶ 409.10.

3-107. Contents and effect

§ 3-107. Contents and effect. (a) Each certificate of title issued by the Secretary of State shall contain:

1. The date issued;
 2. The name and address of the owner;
 3. The names and addresses of any lienholders, in the order of priority as shown on the application or, if the application is based on a certificate of title, as shown on the certificate;
 4. The title number assigned to the vehicle;
 5. A description of the vehicle including, so far as the following data exists: its make, year-model, identifying number, type of body, number of cylinders, whether new or used, and, if a new vehicle, the date of the first sale of the vehicle for use;
 6. An odometer certification as provided for in Section 3-112.1 of this act;
 7. Any other data the Secretary of State prescribes.
- (b) The certificate of title shall contain forms for assignment and warranty of title by the owner, and for assignment and warranty of title by a dealer, and may contain

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forms for applications for a certificate of title by a transferee, the naming of a lienholder and the assignment or release of the security interest of a lienholder.

(c) A certificate of title issued by the Secretary of State is prima facie evidence of the facts appearing on it.

(d) A certificate of title for a vehicle is not subject to garnishment, attachment, execution or other judicial process, but this subsection does not prevent a lawful levy upon the vehicle.

(e) Any certificate of title issued by the Secretary of State is subject to a lien in favor of the State of Illinois for any fees or taxes required to be paid under this Act and as have not been paid, as provided for in this Act.

Amended by P.A. 81-557, § 1, eff. Jan. 1, 1980; P.A. 81-1409, § 1, eff. Aug. 25, 1980.

The amendment by P.A. 81-1409, § 1, eff. Aug. 25, 1980, recognized the amendment by P.A. 81-557, § 1, eff. Jan. 1, 1980.

3-107.1. Presumption of tenancy

§ 3-107.1. Presumption of tenancy. When a certificate of title is made out to 2 or more persons, it shall be presumed that the title is held as joint tenants with right of survivorship.

Amended by P.A. 79-1454, § 17[77], eff. Aug. 31, 1976.

3-108. Delivery

§ 3-108. Delivery. The certificate of title shall be mailed to the first lienholder named in it or, if none, to the owner.

3-109. Registration without certificate of title—Bond

§ 3-109. Registration without certificate of title; bond.

If the Secretary of State is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the Secretary of State may register the vehicle but shall either:

(a) Withhold issuance of a certificate of title until the applicant presents documents reasonably sufficient to satisfy the Secretary of State as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or

(b) As a condition of issuing a certificate of title, require the applicant to file with the Secretary of State a bond in the form prescribed by the Secretary of State and executed by the applicant, and either accompanied by the deposit of cash with the Secretary of State or also executed by a person authorized to conduct a surety business in this State. The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the Secretary of State and conditioned to indemnify any prior owner and lienholder and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three (3) years or prior thereto if the vehicle is no longer registered in this State and the currently valid certificate of title is surrendered to the Secretary of State, unless the Secretary of State has been

notified of the pendency of an action to recover on the bond.

Security deposited as a bond hereunder shall be placed by the Secretary of State in the custody of the State Treasurer.

(c) During July, annually, the Secretary shall compile a list of all bonds on deposit, pursuant to this Section, for more than 3 years and concerning which he has received no notice as to the pendency of any judicial proceeding that could affect the disposition thereof. Thereupon, he shall promptly send a notice by certified mail to the last known address of each depositor advising him that his bond will be subject to escheat to the State of Illinois if not claimed within 30 days after the mailing date of such notice. At the expiration of such time, the Secretary of State shall file with the State Treasurer an order directing the transfer of such deposit to the Road Fund in the State Treasury. Upon receipt of such order, the State Treasurer shall make such transfer, after converting to cash any other type of security. Thereafter any person having a legal claim against such deposit may enforce it by appropriate proceedings in the Court of Claims subject to the limitations prescribed for such Court. At the expiration of such limitation period such deposit shall escheat to the State of Illinois.

Amended by P.A. 81-1458, § 1, eff. Sept. 8, 1980.

3-110. Refusing certificate of title

§ 3-110. Refusing certificate of title. The Secretary of State shall refuse issuance of a certificate of title if any required fee is not paid or if he has reasonable grounds to believe that:

- (a) The applicant is not the owner of the vehicle;
- (b) The application contains a false or fraudulent statement; or
- (c) The applicant fails to furnish required information or documents or any additional information the Secretary of State reasonably requires;

(d) The applicant has not paid to the Secretary of State any fees or taxes due under this Act and have not been paid upon reasonable notice and demand.

Amended by P.A. 77-641, § 1, eff. Aug. 4, 1971.

3-111. Lost, stolen or mutilated certificates

§ 3-111. Lost, stolen or mutilated certificates. (a) If a certificate of title is lost, stolen, mutilated or destroyed or becomes illegible, the first lienholder or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the Secretary of State, shall promptly make application for and may obtain a duplicate upon furnishing information satisfactory to the Secretary of State. The duplicate certificate of title shall contain the legend "This is a duplicate certificate and may be subject to the rights of a person under the original certificate." It shall be mailed to the first lienholder named in it or, if none, to the owner.

(b) The Secretary of State shall not issue a duplicate certificate of title to any person within 15 days after the issuance of an original certificate of title to such person.

(c) A person recovering an original certificate of title for which a duplicate has been issued shall promptly surrender the original certificate to the Secretary of State.

(d) If a Display certificate of title is lost, stolen, mutilated or destroyed or becomes illegible, the owner or legal

representative of the owner, named in the original Display certificate of title and in the certificate of title, as shown by the records of the Secretary of State, shall promptly make application for and may obtain a duplicate upon furnishing information satisfactory to the Secretary of State. The duplicate Display certificate of title shall contain the legend "Duplicate Display Certificate of Title." It shall be mailed to the owner or legal representative of the owner named in the original Display certificate of title and in the certificate of title. Such duplicate Display certificate of title shall be attached and displayed in the same manner and in the same place as the original Display certificate of title would have been attached and displayed had it not been lost, stolen, mutilated or destroyed or had it not become illegible.

3-112. Transfer

§ 3-112. Transfer. (a) If an owner transfers his interest in a vehicle, other than by the creation of a security interest, at the time of the delivery of the vehicle he shall execute to the transferee an assignment and warranty of title in the space provided on the certificate of title, or as the Secretary of State prescribes, and cause the certificate and assignment to be mailed or delivered to the transferee or to the Secretary of State.

If the vehicle is subject to a tax under the Mobile Home Local Services Tax Act¹ in a county with a population of less than 3,000,000, the owner shall also provide to the transferee a certification by the treasurer of the county in which the vehicle is situated that all taxes owed by the owner for the vehicle have been paid. If the owner is a licensed dealer who has purchased the vehicle and is holding it for resale, in lieu of acquiring a certification from the county treasurer he shall forward the certification received from the previous owner to the next buyer of the vehicle. The owner shall cause the certification to be mailed or delivered to the Secretary of State with the certificate of title and assignment.

(b) Except as provided in Section 3-113, the transferee shall, promptly and within fifteen (15) days after delivery to him of the vehicle and the assigned title, execute the application for a new certificate of title in the space provided therefor on the certificate or as the Secretary of State prescribes, and cause the certificate and application to be mailed or delivered to the Secretary of State.

(c) Upon request of the owner or transferee, a lienholder in possession of the certificate of title shall, unless the transfer was a breach of his security agreement, either deliver the certificate to the transferee for delivery to the Secretary of State or, upon receipt from the transferee of the owner's assignment, the transferee's application for a new certificate and the required fee, mail or deliver them to the Secretary of State. The delivery of the certificate does not affect the rights of the lienholder under his security agreement.

(d) If a security interest is reserved or created at the time of the transfer, the certificate of title shall be retained by or delivered to the person who becomes the lienholder, and the parties shall comply with the provisions of Section 3-203.

(e) Except as provided in Section 3-113 and as between the parties, a transfer by an owner is not effective until the provisions of this Section and Section 3-115 have been complied with; however, an owner who has delivered possession of the vehicle to the transferee and has complied with the provisions of this Section and Section 3-115

requiring action by him is not liable as owner for any damages thereafter resulting from operation of the vehicle.

(f) The Secretary of State may decline to process any application for a transfer of an interest in a vehicle if any fees or taxes due under this Act from the transferor or the transferee have not been paid upon reasonable notice and demand.

(g) If the Secretary of State receives an application for transfer of a vehicle subject to a tax under the Mobile Home Local Services Tax Act in a county with a population of less than 3,000,000, and such application is not accompanied by the required certification by the county treasurer, he shall process the transfer, and shall notify the appropriate county treasurer that such transfer has transpired.

Amended by P.A. 83-871, § 1, eff. Sept. 26, 1983.

¹ Chapter 120 ¶ 1201 et seq.

3-112.1. Odometer certification

§ 3-112.1. (a) All titles issued by the Secretary of State after the effective date of this amendatory Act of 1980 shall provide for an odometer certification substantially as follows:

"I certify to the best of my knowledge that the odometer reading is and reflects the actual mileage of the vehicle unless one of the following statements is checked.

() 1. The amount of mileage stated is in excess of 99,999 miles or

() 2. The odometer reading is not the actual mileage.

Signature(s) of Seller(s).....

Date of Sale....."

(b) When executing any transfer of title which contains the odometer certification as described in paragraph (a) above, each transferor of a motor vehicle must supply on the title form the following information:

(1) The odometer reading at the time of transfer;

(2) The date of transfer; and

(3) The transferor's name and current address.

(c) When the transferor signs the title transfer such transferor acknowledges that he or she is aware that Federal regulations and State law require him or her to state the odometer mileage upon transfer of ownership. An inaccurate or untruthful statement with intent to defraud subjects the transferor to liability for damages to the transferee pursuant to the Motor Vehicle Information and Cost Act of 1972, P.L. 92-513 as amended by 94-364.¹ A State cause of action is hereby created by which any person who, with intent to defraud, violates any requirement imposed under this Section shall be liable in an amount equal to the sum of:

(1) three times the amount of actual damages sustained or \$1,500, whichever is the greater; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney fees as determined by the court.

Any recovery based on this State cause of action shall be offset by any recovery made pursuant to the Motor Vehicle Information and Cost Act of 1972.

(d) If the transferor is aware that the odometer reading at the time of transfer is inaccurate such transferor shall so indicate by marking one of the following checkboxes:

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(1) The amount of mileage stated is in excess of 99,999 miles; or

(2) The odometer reading is not the actual mileage.

(e) The Secretary of State, subject to any administrative and fiscal constraints, may adopt rules and regulations providing for a transition period which promotes the most rapid conversion of vehicle titles, including the retrieval of all non-conforming titles outstanding, to a format that complies with provisions of this Section.

Added by P.A. 81-1409, § 1, eff. Aug. 25, 1980.

1 15 U.S.C.A. § 1901 et seq.

3-113. Transfer to or from dealer—Records

§ 3-113. Transfer to or from dealer—Records. (a) If a dealer buys a vehicle and holds it for resale and procures the certificate of title from the owner or the lienholder within 10 days after delivery to him of the vehicle, he need not send the certificate to the Secretary of State but, upon transferring the vehicle to another person other than by the creation of a security interest, shall promptly and within 15 days execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee and of any lienholder holding a security interest created or reserved at the time of the resale and the date of his security agreement, in the spaces provided therefor on the certificate or as the Secretary of State prescribes, and mail or deliver the certificate to the Secretary of State with the transferee's application for a new certificate.

(b) The Secretary of State may decline to process any application for a transfer of an interest in a vehicle if any fees or taxes due under this Code from the transferor or the transferee have not been paid upon reasonable notice and demand.

Amended by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

3-114. Transfer by operation of law

§ 3-114. Transfer by operation of law. (a) If the interest of an owner in a vehicle passes to another other than by voluntary transfer, the transferee shall, except as provided in paragraph (b), promptly mail or deliver within 15 days to the Secretary of State the last certificate of title, if available, proof of the transfer, and his application for a new certificate in the form the Secretary of State prescribes. It shall be unlawful for any person having possession of a certificate of title for a motor vehicle, semi-trailer, or house car by reason of his having a lien or encumbrance on such vehicle, to fail or refuse to deliver such certificate to the owner, upon the satisfaction or discharge of the lien or encumbrance, indicated upon such certificate of title.

(b) If the interest of an owner in a vehicle passes to another under the provisions of the Small Estates provisions of the Probate Act of 1975, as amended,¹ the transferee shall promptly mail or deliver to the Secretary of State, within 120 days, the last certificate of title, if available, the documentation required under the provisions of the "Probate Act of 1975", as amended, and an application for certificate of title. The transfer may be to the transferee or to the nominee of the transferee.

(c) If the interest of an owner in a vehicle passes to another under other provisions of the Probate Act of 1975, as amended, and the transfer is made by a representative or guardian, such transferee shall promptly mail or deliver to the Secretary of State, the last certificate of title, if available, and a certified copy of the letters of office or guardianship, and an application for certificate of title.

Such application shall be made before the estate is closed. The transfer may be to the transferee or to the nominee of the transferee.

(d) If the interest of an owner in joint tenancy passes to the other joint tenant with survivorship rights as provided by law, the transferee shall promptly mail or deliver to the Secretary of State, the last certificate of title, if available, proof of death of the one joint tenant and survivorship of the surviving joint tenant, and an application for certificate of title. Such application shall be made within 120 days after the death of the joint tenant. The transfer may be to the transferee or to the nominee of the transferee.

(e) The Secretary of State shall transfer a decedent's vehicle title to any legatee, representative or heir of the decedent who submits to the Secretary a death certificate and an affidavit by an attorney at law on the letterhead stationery of the attorney at law stating the facts of the transfer.

(f) In all cases wherein a lienholder has repossessed a vehicle, after the original 21 day notice to the debtor has been fulfilled, the lienholder shall within 15 days make an application to the Secretary of State for a certificate of title, a salvage certificate or a junking certificate, as set forth in this Code. In all cases, however, the Secretary of State shall not issue a certificate of title, a salvage certificate or a junking certificate to such lienholder unless the person from whom such vehicle has been repossessed, is shown to be the last registered owner of such motor vehicle and such lienholder establishes to the satisfaction of the Secretary of State that he is entitled to such certificate of title, salvage certificate or junking certificate.

(g) A person holding a certificate of title whose interest in the vehicle has been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate, within 15 days upon request of the Secretary of State. The delivery of the certificate pursuant to the request of the Secretary of State does not affect the rights of the person surrendering the certificate, and the action of the Secretary of State in issuing a new certificate of title as provided herein is not conclusive upon the rights of an owner or lienholder named in the old certificate.

(h) The Secretary of State may decline to process any application for a transfer of an interest in a vehicle hereunder if any fees or taxes due under this Act from the transferor or the transferee have not been paid upon reasonable notice and demand.

(i) The Secretary of State shall not be held civilly or criminally liable to any person because any purported transferor may not have had the power or authority to make a transfer of any interest in any vehicle or because a certificate of title issued in error is subsequently used to commit a fraudulent act.

Amended by P.A. 83-1362, Art. II, § 99, eff. Sept. 11, 1984; P.A. 83-1473, § 1, eff. Jan. 1, 1985.

1 Chapter 110½, § 1-1 et seq.

Article II of P.A. 83-1362, the First 83rd General Assembly Combining Revisory Act, resolved multiple actions in the 83rd General Assembly.

3-115. Fees—Registration cards—License plates

§ 3-115. Fees—Registration cards—License plates.

(a) An application for a certificate of title shall be accompanied by an application for, or a transfer of, registration of the vehicle.

(b) An application for the naming of a lienholder or his assignee on a certificate of title shall be accompanied by the required fee when mailed or delivered to the Secretary of State.

(c) A transferor of a vehicle, other than a dealer transferring a new vehicle, shall deliver to the transferee at the time of the delivery of possession of the vehicle the properly assigned certificate of title of this vehicle.

(d) All applications shall be accompanied with the required fee or tax.

Amended by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

3-116. When Secretary of State to issue a new certificate

§ 3-116. When Secretary of State to issue a new certificate. (a) The Secretary of State, upon receipt of a properly assigned certificate of title, with an application for a new certificate of title, the required fee and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner and mail it to the first lienholder named in it or, if none, to the owner.

(b) The Secretary of State, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, with proof of the transfer, the required fee and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner. If the outstanding certificate of title is not delivered to him, the Secretary of State shall make demand therefor from the holder thereof.

(c) Any person, firm or corporation, who shall knowingly possess, buy, sell, exchange or give away, or offer to buy, sell, exchange or give away the certificate of title to any motor vehicle which is a junk or salvage, or who shall fail to surrender the certificate of title to the Secretary of State as required under the provisions of this Section, shall be guilty of Class 3 felony.

(d) The Secretary of State shall file and retain for four (4) years a record of every surrendered certificate of title or proof of ownership accepted by the Secretary of State, the file to be maintained so as to permit the tracing of title of the vehicle designated therein.

Amended by P.A. 81-557, § 1, eff. Jan. 1, 1980.

3-117. § 3-117. Repealed by P.A. 83-1473, § 2, eff. Jan. 1, 1985.

3-117.1. When junking certificates or salvage certificates must be obtained

§ 3-117.1. When junking certificates or salvage certificates must be obtained. (a) Except as provided in Chapter 4 of this Code,¹ a person who possesses a junk vehicle shall within 15 days cause the certificate of title, salvage certificate, certificate of purchase, or a similarly acceptable out of state document of ownership to be surrendered to the Secretary of State along with an application for a junking certificate, whereupon the Secretary of State shall issue to such a person a junking certificate, which shall authorize the holder thereof to possess, transport, or, by an endorsement, transfer ownership in such junked vehicle, and a certificate of title shall not again be issued for such vehicle.

(b) An application for a salvage certificate shall be submitted to the Secretary of State in any of the following situations:

(1) When an insurance company makes a payment of damages on a total loss claim for a vehicle, the insurance company shall be deemed to be the owner of such vehicle and the vehicle shall be considered to be salvage. The insurance company shall promptly deliver or mail within 15 days the certificate of title along with proper application and fee to the Secretary of State, and a salvage certificate shall be issued in the name of the insurance company. An insurer making payment of damages on a total loss claim for the theft of a vehicle may exchange the salvage certificate for a certificate of title if the vehicle is recovered without damage. In such a situation, the insurer shall fill out and sign a form prescribed by the Secretary of State which contains an affirmation under penalty of perjury that the vehicle was recovered without damage and the Secretary of State may, by rule or regulation, require photographs to be submitted.

(2) When a vehicle the ownership of which has been transferred to any person through a certificate of purchase from acquisition of the vehicle at an auction or other dispositions as set forth in Sections 4-208 and 4-209 of this Code or a lien arising under Section 18a-501 of this Code shall be deemed salvage if the vehicle is 7 years of age or newer or junk if the vehicle is over 7 years of age. The person acquiring such vehicle in such manner shall promptly deliver or mail, within 15 days after the acquisition of the vehicle, the certificate of purchase along with the proper application and fee to the Secretary of State and a salvage certificate or junking certificate shall be issued in the name of that person. The salvage certificate or junking certificate issued by the Secretary of State under this Section shall be free of any lien that existed against the vehicle prior to the time the vehicle was acquired by the applicant under this Code.

(3) A vehicle which has been repossessed by a lienholder shall be considered to be salvage only when the repossessed vehicle, on the date of repossession by the lienholder, has sustained damage by collision, fire, flood, theft, rust, corrosion, or other means so that the cost of repairing such damage, including labor, would be greater than 25% of its fair market value without such damage. If the lienholder determines that such vehicle is damaged in excess of 25% of such fair market value, the lienholder shall, before sale, transfer or assignment of the vehicle, make application for a salvage certificate, and shall submit with such application the proper fee and evidence of possession. If the facts required to be shown in subsection (f) of Section 3-114 are satisfied, the Secretary of State shall issue a salvage certificate in the name of the lienholder making the application. In any case wherein the vehicle repossessed is not damaged in excess of 25% of its fair market value, the lienholder, after the original 21 day notice to the debtor has been fulfilled, shall within 15 days make an application to the Secretary of State for a certificate of title, submitting with such application evidence of possession. The application shall contain an affirmation under penalty of perjury that the vehicle on the date of such application for certificate of title is not damaged in excess of 25% of its fair market value. If the facts required to be shown in subsection (f) of Section 3-114 are satisfied, the Secretary of State shall issue a certificate of title as set forth in Section 3-116 of this Code. The Secretary of State may by rule or regulation require photographs to be submitted.

(4) A vehicle which is a part of a fleet of more than 5 commercial vehicles registered in this State or any other

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state or registered proportionately among several states shall be considered to be salvage when such vehicle has sustained damage by collision, fire, flood, theft, rust, corrosion or similar means so that the cost of repairing such damage, including labor, would be greater than 25% of the fair market value of the vehicle without such damage. If the owner of a fleet vehicle desires to sell, transfer, or assign his interest in such vehicle to a person within this State other than an insurance company licensed to do business within this State, and the owner determines that such vehicle, at the time of the proposed sale, transfer or assignment is damaged in excess of 25% of its fair market value, the owner shall, before such sale, transfer or assignment, make application for a salvage certificate. The application shall contain with it evidence of possession of the vehicle. If the fleet vehicle at the time of its sale, transfer, or assignment is not damaged in excess of 25% of its fair market value, the owner shall so state in a written affirmation on a form prescribed by the Secretary of State by rule or regulation. The Secretary of State may by rule or regulation require photographs to be submitted. Upon sale, transfer or assignment of the fleet vehicle the owner shall mail the affirmation to the Secretary of State.

(c) Any person who shall knowingly possess, buy, sell, exchange, give away, transfer or destroy, or offer to buy, sell, exchange, give away, transfer or destroy the certificate of title to any motor vehicle which is a junk or salvage vehicle shall be guilty of a Class 3 felony.

(d) Any person who knowingly fails to surrender to the Secretary of State a certificate of title, salvage certificate, certificate of purchase or a similarly acceptable out-of-state document of ownership as required under the provisions of this Section is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for a subsequent offense.

(e) Any vehicle which is salvage or junk may not be driven or operated on roads and highways within this State. A violation of this subsection is a Class A misdemeanor. A salvage vehicle for which a short term permit has been issued under Section 3-307 of this Code is exempt from the provisions of this Article for the duration of the permit.

Added by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

¹ Paragraph 4-100 et seq. of this chapter.

3-118. Salvage or junking certificate

§ 3-118. Salvage or junking certificate. (a) An application for a salvage certificate or junking certificate shall be made upon the forms prescribed by the Secretary of State and contain:

1. The name, address of the applicant;
2. Description of the vehicle being salvaged or junked; and
3. Any further information reasonably required by the Secretary of State.

(b) A salvage certificate may be assigned to any person licensed under this Act as a rebuilder, used parts dealer or scrap processor. A junking certificate may be assigned to anyone. The provisions for reassignment by dealers under paragraph (a) of Section 3-113 shall apply to salvage certificates and junking certificates. A salvage certificate or junking certificate may be reassigned to one other person licensed under this Act.

Amended by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

3-118.1. Title certificates for salvaged vehicles—Total loss from theft

§ 3-118.1. Whenever a certificate of title is issued for a vehicle with respect to which a salvage certificate has been previously issued, the new certificate of title shall bear the notation "REBUILT". However, insurance companies may exchange a salvage certificate for a certificate of title which does not bear the notation "REBUILT" when there is submitted with the application satisfactory proof that the salvage certificate was obtained because of a claim of total loss from theft and the vehicle was recovered without damage.

Amended by P.A. 83-306, § 1, eff. Jan. 1, 1984.

3-119. Display certificate—Contents and mailing

§ 3-119. Display certificate—Contents and mailing. Each Display certificate of title issued by the Secretary of State shall contain exactly the same information as is contained in the certificate of title except that there shall not appear on the Display certificate of title the names and addresses of any lienholders.

The Display certificate of title shall be mailed to the owner or legal representative of the owner named in the certificate of title.

Amended by P.A. 78-858, § 1, eff. Jan. 1, 1974.

3-120. Display certificate—Manner of displaying

§ 3-120. Display certificate—Manner of displaying. The Display certificate of title shall be prominently displayed in such a manner that it is clearly visible and easily read from the outside of the house trailer to which it pertains. If the trailer has one window or more, the Display certificate of title shall be attached to the inside of that window which is located on the front of the trailer (the end at which the trailer would normally be hitched to another vehicle for moving purposes) and nearest to the left side of the trailer; if there be no window at the front of the trailer, then the Display certificate of title shall be attached to the inside of that window on the left side of the trailer which is nearest to the front of the trailer; in the event that there also be no window on the left side of the trailer, the Display certificate of title shall be attached to the inside of the window on the rear of the trailer which is nearest to the left side of the trailer; if there also be no window on the rear of the trailer, then the Display certificate of title shall be attached to the inside of that window on the right side of the trailer which is located nearest to the rear of the trailer; in the event that there be no window in the trailer then the Display certificate of title shall be attached to the rear end of the trailer in such a manner that it shall be clearly visible and easily read.

3-121. Failure to display certificate of title—Penalty

§ 3-121. Failure to display certificate of title—Penalty. Any person who violates any provision of Section 3-120 of this Act is guilty of a petty offense, and, upon conviction thereof, shall be fined \$25 for each day during which said violation takes place. The failure to display certificate of title, under the provisions of Section 3-120 hereof, shall not be considered to be such a violation on the day on which application for a certificate of title is made or on any day subsequent thereto until the fourth day after the Display certificate of title shall have been mailed by the Secretary of State in accordance with the provisions of Section 3-119 hereof. For the purpose of determining when, if ever, an application was sent to the Secretary of

State for a certificate of title to a particular house trailer coach, it shall be a presumption that the application was not sent more than 4 days prior to the time when it was received, if received, by the Secretary of State.

Amended by P.A. 77-2720, § 1, eff. Jan. 1, 1973.

ARTICLE II. SECURITY INTERESTS

3-201. Excepted liens and security interests

§ 3-201. Excepted liens and security interests. This Article does not apply to or affect:

(a) A lien given by statute or rule of law to a supplier of services or materials for the vehicle;

(b) A lien given by the statute to the United States, this State or any political subdivision of this State, except liens on trailer coaches and mobile homes for public assistance, as provided in Section 3-15 of "The Illinois Public Aid Code", enacted by the 75th General Assembly.¹

(c) A security interest in a vehicle created by a manufacturer or dealer who holds the vehicle for sale, but a buyer in the ordinary course of trade from the manufacturer or dealer takes free of the security interest.

¹ So in enrolled bill. See ch. 23, ¶ 3-12.

3-202. Perfection of security interest

§ 3-202. Perfection of security interest. (a) Unless excepted by Section 3-201, a security interest in a vehicle of a type for which a certificate of title is required is not valid against subsequent transferees or lienholders of the vehicle unless perfected as provided in this Act.

(b) A security interest is perfected by the delivery to the Secretary of State of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the lienholder and the required fee. It is perfected as of the time of its creation if the delivery is completed within 21 days thereafter, otherwise as of the time of the delivery.

(c) If a vehicle is subject to a security interest when brought into this State, the validity of the security interest is determined by the law of the jurisdiction where the vehicle was when the security interest attached, subject to the following:

1. If the parties understood at the time the security interest attached that the vehicle would be kept in this State and it was brought into this State within 30 days thereafter for purposes other than transportation through this State, the validity of the security interest in this State is determined by the law of this State.

2. If the security interest was perfected under the law of the jurisdiction where the vehicle was when the security interest attached, the following rules apply:

(A) If the name of the lienholder is shown on an existing certificate of title issued by that jurisdiction, his security interest continues perfected in this State.

(B) If the name of the lienholder is not shown on an existing certificate of title issued by that jurisdiction, a security interest may be perfected by the lienholder delivering to the Secretary of State the prescribed notice and by payment of the required fee. Such security interest is perfected as of the time of delivery of the prescribed notice and payment of the required fee.

3. If the security interest was not perfected under the law of the jurisdiction where the vehicle was when the security interest attached, it may be perfected in this

State; in that case perfection dates from the time of perfection in this State.

4. A security interest may be perfected under paragraph 3 of this subsection either as provided in subsection (b) or by the lienholder delivering to the Secretary of State a notice of security interest in the form the Secretary of State prescribes and the required fee.

Amended by P.A. 81-557, § 1, eff. Jan. 1, 1980.

3-203. Security interest

§ 3-203. Security interest. If an owner creates a security interest in a vehicle:

(a) The owner shall immediately execute the application, in the space provided therefor on the certificate of title or on a separate form the Secretary of State prescribes, to name the lienholder on the certificate, showing the name and address of the lienholder and cause the certificate, application and the required fee to be delivered to the lienholder.

(b) The lienholder shall immediately cause the certificate, application and the required fee to be mailed or delivered to the Secretary of State.

(c) Upon request of the owner or subordinate lienholder, a lienholder in possession of the certificate of title shall either mail or deliver the certificate to the subordinate lienholder for delivery to the Secretary of State or, upon receipt from the subordinate lienholder of the owner's application and the required fee, mail or deliver them to the Secretary of State with the certificate. The delivery of the certificate does not affect the rights of the first lienholder under his security agreement.

(d) Upon receipt of the certificate of title, application and the required fee, the Secretary of State shall either endorse on the certificate or issue a new certificate containing the name and address of the new lienholder, and mail the certificate to the first lienholder named in it.

Amended by P.A. 81-557, § 1, eff. Jan. 1, 1980.

3-204. Assignment by lienholder

§ 3-204. Assignment by lienholder. (a) A lienholder may assign, absolutely or otherwise, his security interest in the vehicle to a person other than the owner without affecting the interest of the owner or the validity of the security interest, but any person without notice of the assignment is protected in dealing with the lienholder as the holder of the security interest and the lienholder remains liable for any obligations as lienholder until the assignee is named as lienholder on the certificate.

(b) The assignee may, but need not to perfect the assignment, have the certificate of title endorsed or issued with the assignee named as lienholder, upon delivering to the Secretary of State the certificate and an assignment by the lienholder named in the certificate in the form the Secretary of State prescribes.

3-205. Release of security interest

§ 3-205. Release of security interest. (a) Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of the lienholder, he shall, within ten (10) days after demand and, in any event, within thirty (30) days, execute a release of his security interest, and mail or deliver the certificate and release to the next lienholder named therein, or, if none, to the owner or any person who delivers to the lienholder an authorization from the owner to receive the certificate. If the

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owner desires a new certificate reflecting no lien, the certificate and release from the lienholder may be submitted to the Secretary of State, along with the prescribed application and required fee, for issuance of that new certificate.

(b) Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of a prior lienholder, the lienholder whose security interest is satisfied shall within ten (10) days after demand and, in any event, within thirty (30) days execute a release and deliver the release to the owner or any person who delivers to the lienholder an authorization from the owner to receive it. The lienholder in possession of the certificate of title may either deliver the certificate to the owner, or the person authorized by him, for delivery to the Secretary of State, or, upon receipt of the release, may mail or may deliver the certificate and release, along with prescribed application and require fee, to the Secretary of State, who shall issue a new certificate.

Amended by P.A. 81-557, § 1, eff. Jan. 1, 1980.

3-206. Duty of lienholder

§ 3-206. Duty of lienholder. A lienholder named in a certificate of title shall, upon written request of the owner or of another lienholder named on the certificate, disclose any pertinent information as to his security agreement and the indebtedness secured by it.

3-207. Exclusiveness of procedure

§ 3-207. Exclusiveness of procedure. The method provided in this act of perfecting and giving notice of security interests subject to this act is exclusive. Security interests subject to this act are hereby exempted from the provisions of law which otherwise require or relate to the recording or filing of instruments creating or evidencing security interests in vehicles including chattel mortgages and conditional sale agreements.

3-208. Suspension or revocation of certificates

§ 3-208. Suspension or revocation of certificates. (a) The Secretary of State may suspend or revoke a certificate of title, upon notice and reasonable opportunity to be heard in accordance with Section 2-118, when authorized by any other provision of law or if he finds:

1. The certificate of title was fraudulently procured or erroneously issued, or
2. The vehicle has been scrapped, dismantled or destroyed.

(b) Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.

(c) When the Secretary of State suspends or revokes a certificate of title, the owner or person in possession of it shall, immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the Secretary of State.

(d) The Secretary of State may seize and impound any certificate of title which has been suspended or revoked.

3-209. Powers of Secretary of State

§ 3-209. Powers of Secretary of State. (a) The Secretary of State shall prescribe and provide suitable forms of applications, certificates of title, notices of security interests, and all other notices and forms necessary to carry out the provisions of this chapter.

(b) The Secretary of State may:

1. Make necessary investigations to procure information required to carry out the provisions of this Act;

2. Assign a new identifying number to a vehicle if it has none, or its identifying number is destroyed or obliterated, or its motor is changed, and shall either issue a new certificate of title showing the new identifying number or make an appropriate endorsement on the original certificate.

3-210. Review under Administrative Review Law

§ 3-210. Court review. A person aggrieved by an act or omission to act of the Secretary of State under this Article is also entitled to a review thereof by the Circuit Court of Sangamon County in accordance with the Administrative Review Law, as amended.¹

Amended by P.A. 82-783, Art. XI, § 140, eff. July 13, 1982.

¹ Chapter 110, ¶ 3-101 et seq.

ARTICLE III. CERTIFICATE OF
TITLE—REBUILT VEHICLES

Article III was added by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

3-301. New certificate of title for rebuilt vehicle

§ 3-301. New certificate of title for rebuilt vehicle. The Secretary of State shall issue a new certificate of title to any rebuilt vehicle or any vehicle which previously had been titled as salvage in this State or any other jurisdiction upon the successful inspection of the vehicle in accordance with Section 3-308 of this Article.

Added by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

3-302. Application for title—Contents

§ 3-302. Application for title—contents. Every application for a certificate of title for a rebuilt vehicle shall be made upon a form prescribed by the Secretary of State, and shall include the following:

1. The name and address of the applicant;
2. The year, make, model, and vehicle identification number of the rebuilt vehicle;
3. The salvage certificate number, if applicable, evidencing ownership of the rebuilt vehicle;
4. A listing of all replaced essential parts of the rebuilt vehicle, and the identification number of the vehicle or vehicles from which the essential parts originated;
5. The date of application; and
6. Any other information which may be reasonably required by the Secretary of State.

Added by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

3-303. Application for title—Attachments

§ 3-303. Application for title—attachments. Every application for a certificate of title for a rebuilt vehicle shall be accompanied by the following:

1. The salvage certificate or out-of-state title certificate previously issued for the rebuilt vehicle;
2. Bills of sale and other documents evidencing the acquisition of all essential parts used to rebuild the vehicle; and
3. Photographs of the rebuilt vehicle if required by rule of the Secretary of State.

Added by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

3-304. Application for title—Affirmation

§ 3-304. Application for title—affirmation. The applicant applying for a certificate of title for a rebuilt vehicle shall sign a written affirmation which states the following:

1. He personally rebuilt the vehicle, or personally supervised its rebuilding;
2. He personally inspected the completed vehicle, and it complies with all safety requirements set forth in this Code and any regulations promulgated thereunder by the Secretary of State;
3. The identification numbers of the rebuilt vehicle and its parts have not, to the knowledge of the applicant, been removed, destroyed, falsified, altered or defaced;
4. The salvage certificate or out-of-state title certificate attached to the application has not, to the knowledge of the applicant, been forged, falsified, altered or counterfeited; and
5. All information contained on the application and its attachments is true and correct to the knowledge of the applicant.

Added by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

3-305. Inspection fee

§ 3-305. Inspection fee. The fee for the inspection of a rebuilt vehicle shall be \$75. All such fees received by the Secretary of State shall be applied toward the personnel and maintenance costs of the vehicle inspection program.

Added by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

3-306. Retention of documents

§ 3-306. Retention of documents. The original documents required to be submitted to the Secretary of State pursuant to Sections 3-301 through 3-305 shall be retained by the Secretary of State for a period determined by Secretary of State by rule or regulation.

Added by P.A. 83-1473, § 1, eff. Jan. 1, 1985. Amended by P.A. 83-1528, Art. II, § 24, eff. Jan. 17, 1985.

P.A. 83-1528, the Second 1984 Revisory Act, resolved multiple actions in the 83rd General Assembly and corrected misspelled words and technical errors in Acts of the 83rd General Assembly.

3-307. Short term permit

§ 3-307. Short term permit. The Secretary of State shall issue a short term permit for any vehicle for which an application for a certificate of title has been made under this Article and which must be driven on the roads and highways of this State to a place of inspection.

Added by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

3-308. Inspection of rebuilt vehicles

§ 3-308. Inspection of rebuilt vehicles. (a) The Secretary of State shall inspect any vehicle for which an application for a certificate of title for a rebuilt vehicle will be submitted, or any foreign vehicle which is or may have been salvage as defined under the provisions of this Code.

(b) The inspection of the vehicle shall include an examination of the vehicle and its parts to determine that the identification numbers of the vehicle or its parts have not been removed, falsified, altered, defaced, destroyed, or tampered with, that all information contained in the application for a certificate of title is true and correct, and that there are no indications that the vehicle or any of its parts have been stolen.

(c) The Secretary of State shall, by rule or regulation, carry out and implement the provisions contained in this Section.

(d) All fees received by the Secretary of State from the inspection of vehicles under this Section shall be applied towards the maintenance of the vehicle inspection program and the personnel costs required for the operation of such program.

Added by P.A. 83-1473, § 1, eff. Jan. 1, 1985.

**ARTICLE IV. ORIGINAL AND RENEWAL
OF REGISTRATION****3-400. Definition**

§ 3-400. Definition. Notwithstanding the definition set forth in Chapter 1 of this Act,¹ for the purposes of this Article, the following words shall have the meaning ascribed to them as follows:

"Apportionable Fee" means any periodic recurring fee required for licensing or registering vehicles, such as, but not limited to, registration fees, license or weight fees.

"Apportionable Vehicle" means any vehicle in a fleet which is used for the transportation of persons for hire or the transportation of property and which has a gross vehicle weight in excess of 26,000 pounds; or has three or more axles regardless of weight; or is used in combination when the weight of such combination exceeds 26,000 pounds gross vehicle weight. Vehicles, or combinations having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered at the option of such owner.

"Base Jurisdiction" means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where operational records of the fleet are maintained and where mileage is accrued by the fleet. In case a registrant operates more than one fleet, and maintains records for each fleet in different places, the "base jurisdiction" for a fleet shall be the jurisdiction where an established place of business is maintained, where records of the operation of that fleet are maintained and where mileage is accrued by that fleet.

"Operational Records" means documents supporting miles traveled in each jurisdiction and total miles traveled, such as fuel reports, trip leases, and logs.

Owner. A person who holds legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee with right of purchase, or in the event a mortgagor of such motor vehicle is entitled to possession, or in the event a lessee of such motor vehicle is entitled to possession or control, then such conditional vendee or lessee with right of purchase or mortgagor or lessee is considered to be the owner for the purpose of this Act.

"Preceding Year" means the period of 12 consecutive months immediately prior to July 1st of the year immediately preceding the registration or license year for which proportional registration is sought.

"Rental Owner" means an owner principally engaged, with respect to one or more rental fleets, in renting to others or offering for rental the vehicles of such fleets, without drivers.

Amended by P.A. 84-300, § 1, eff. Sept. 13, 1985.

¹ Paragraph 1-100 et seq. of this chapter.

APPENDIX I

EXTRACT FROM THE U.K. CROWTHER REPORT

PART FIVE
THE NEW LEGAL FRAMEWORK

1.3.7 **Basic Principles** (Chapters 5.1 and 5.2). Faced with the alternative of recommending minor changes in credit law or a sweeping review, we have come down firmly in favour of the latter (5.1.6).

1.3.8 Our proposed new legal framework rests on two fundamental points:

- i. Recognition that the extension of credit in a sale or hire-purchase transaction is in reality a loan, and that the reservation of title under a hire-purchase or conditional sale agreement or finance lease is in reality a chattel mortgage securing a loan.
- ii. Replacement of what are at present distinct sets of rules for different security devices by a legal structure applicable uniformly to all forms of security interest (5.2.8).

1.3.9 Following the precedent of Article 9 of the American Uniform Commercial Code, several new technical terms, with defined meanings, are proposed (5.2.11). It is not proposed that there shall be standard forms of instrument. Parties will be free to choose the form of agreement they propose; but all forms of agreement serving a similar purpose will be regulated alike (5.2.15).

1.3.10 We propose two new statutes:

- i. *A Lending and Security Act*, containing provisions applicable to credit transactions generally; and
- ii. *A Consumer Sale and Loan Act*, containing any special provisions considered necessary to regulate, in any of their aspects (sale, loan or security), those transactions that fall within the definition of a consumer credit transaction. These provisions (which will be additional to those contained in the Lending and Security Act) will apply uniformly to all consumer credit transactions (5.2.19).

1.3.11 The law relating to credit should, in substance, be the same for Scotland as for England and Wales, but should be contained in two separate Scottish enactments (5.2.20).

1.3.12 **The Proposed Lending and Security Act** (Chapter 5.3). The Act is intended to be comprehensive and of general application. It will thus cover the loan aspect of all credit transactions (other than loans on the security of land). The forms of transaction embraced by the Act will include unsecured loans; the loan aspect of all instalment sales, revolving credits, check trading and credit cards; hire-purchase and conditional sale agreements; finance leases; mortgages and charges of goods, documents and intangibles; and pledges of goods and documents (5.3.1). Together with the Consumer Sale and Loan Act, it will involve the outright repeal of several existing Acts—notably the Hire-Purchase Acts, the Moneylenders Acts, the Pawnbrokers Acts and the Bills of Sale Acts—and the amendment of many others (5.3.4–7).

1.3.13 **The Lending Aspect** (Chapter 5.4). The only matters that require regulation here are those arising out of the circumstance that, in the new legal framework, the term “loan” would include deferment of the price in a sale or hire-purchase transaction. In any loan contract, the lender should have the right to recover the loan in the manner provided by the contract, together with the stipulated interest and charges, but no more (5.4.3). In the absence of a stipulation to the contrary, the debtor should have the right to complete repayment ahead of time (5.4.4).

1.3.14 **Rights of the Parties** (Chapter 5.6). The formal requirement for a valid security agreement should be only that it is evidenced by a memorandum in writing or that the secured party has taken possession of the security (5.6.1). In general, the secured party should be free to take a security interest not only in the debtor's existing property, but in his after-acquired property (5.6.4)—but not where consumer goods are concerned (5.6.5).

1.3.15 The relationship between the parties should be essentially that of mortgagee and mortgagor (5.6.7). The debtor should be treated as the beneficial owner of the goods (5.6.8). He should have the right to sell them, subject to the secured party's security interest (5.6.9), and he should have the right to redeem his debt, subject to the secured party's qualified right to postpone redemption (5.6.10-11). The debtor should have the right to any surplus arising on the sale of the security (5.6.13).

1.3.16 The secured party should be entitled to reserve a contractual right to take possession of the security (5.6.16), to realise it after default (5.6.17), provided that the method of doing so is commercially reasonable (5.6.18) and that notice is given to the debtor (5.6.19). The debtor should be liable for any deficiency on realisation (5.6.20). The secured party should have the right to foreclose, after giving the debtor thirty days' notice, but without court order (5.6.26).

1.3.17 Registration of Security Interests (Chapter 5.7). There is need for a simple and flexible filing system of security interests in personal property, designed both to give notice to third parties of the existence of such interests and also to protect the secured party (5.7.12). The filing system should, as regards goods, be limited to recording security interests, not the title to the goods themselves, and it should be arranged by the name of the debtor (5.7.20). Consumer goods (other than motor vehicles) should be excluded from the system (5.7.21-24). The filing system should not be available where the sum secured does not exceed £300 (5.7.26).

1.3.18 Motor and other vehicles (e.g. caravans) create special problems but registration of title is rejected (5.7.38), as is their exclusion from the registration of security interests (5.7.39). Similar considerations apply to vessels and aircraft (5.7.43). The principle of Part III of the Hire-Purchase Act 1964 (which provides that the *bona fide* private purchaser of a motor vehicle that is subject to a hire-purchase agreement nevertheless acquires a good title) should be continued, though with some modifications (5.7.41).

1.3.19 The system to be adopted for the registration of security interests should be that of *notice filing*, whereby a party contemplating making advances to another against the security of defined assets, or classes of assets, of the debtor can give notice of his intention to do so, and acquires priority for his interest from the date of filing (5.7.50-51). In order that the filing system should be simple to operate, fast and inexpensive, the information filed should be standardised and filed by computer; filing of the security instrument itself should not be permitted (5.7.53). No security interest should be regarded as *perfected* (i.e. made binding as against third parties) except by taking physical possession of the security or by giving notice by filing (5.7.60), though with certain exceptions (5.7.62). A security interest in any form of security should carry through to proceeds and products as a continuous security (5.7.63).

1.3.20 Conflicts between the Secured Party and Third Parties. The basic principle regulating priority between several parties claiming perfected security interests in the same assets should be the chronological order of filing (5.7.68), though with exceptions in favour of:

a *bona fide* purchaser of consumer goods (5.7.71), a buyer in the ordinary course of business (5.7.72), the holder of a purchase-money security interest (5.7.73), a lien creditor whose lien arises in protecting or improving the goods (5.7.75), or a purchaser of negotiable instruments or documents of title (5.7.76). Special provisions should be made for security interests in goods which become fixtures (5.7.78) and in accessions (5.7.80).

1.3.21 The recommendation of the Payne Committee for the abolition of distress for rent is supported. If distress remains, the law should be altered to protect the interests of secured parties (5.7.81-82). Similar changes are needed in the law of bankruptcy (5.7.83).

Chattel Securities Act 1987

No. 15 of 1987

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Victoria

No. 15 of 1987

Chattel Securities Act 1987

[Assented to 12 May 1987]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

1. The purpose of this Act is to re-enact with amendments the *Chattel Securities Act 1981*.

Commencement.

2. This Act comes into operation on a day to be proclaimed.

Definitions.

3. (1) In this Act—

“Authority” means the Road Traffic Authority established under the *Transport Act 1983*.

“Commercial vehicle” has the same meaning as in the *Credit Act 1984*.

“Dealer” with respect to any goods means a person who carries on a business in which the person deals in goods of that kind.

"Debtor" in relation to a security interest means the person who created the security interest and includes the lessee in relation to a lease of goods and the hirer in relation to a hire-purchase agreement.

"Farm machinery" has the same meaning as in the *Credit Act* 1984.

"Goods" includes all chattels personal and fixtures other than—

- (a) things in action and money; and
- (b) ships registered in an official register kept under a law in force in Victoria relating to title to ships; and

(c) aircraft; and

(d) livestock, unshorn wool and growing crops; and

(e) to the extent of rights expressly conferred on a registered security under Part VII or VIII of the *Instruments Act* 1958—shorn wool and harvested crops; and

(f) documents of title.

"Hire-purchase agreement" has the same meaning as in the *Hire-Purchase Act* 1959.

"Hirer" has the same meaning as in the *Hire-Purchase Act* 1959.

"Inventory security interest" means a security interest—

- (a) given by a dealer in or over goods of a kind in which the dealer deals in the course of the dealer's business; or

(b) reserved in or over goods in the possession or control of a dealer, being goods of a kind in which the dealer deals in the course of the dealer's business.

"Lease" means a contract for the hiring of goods or for the grant of a licence to use goods and a contract for the hiring or bailment of goods for display purposes but does not include a hire-purchase agreement.

"Lessee" in relation to a lease of goods, means the person to whom the goods are hired under the lease or to whom a licence to use the goods is granted under the lease.

"Lessor" in relation to a lease of goods, means the person who hires the goods to another person under the lease or grants to another person under the lease a licence to use the goods.

"Owner" has the same meaning as in the *Hire-Purchase Act* 1959.

"Prescribed" means prescribed by the regulations.

"Purchase" with respect to goods, means acquire an interest in the goods by way of purchase, exchange, lease or hire-purchase.

"Purchase price" with respect to goods purchased by a purchaser, means the consideration paid or payable by the purchaser or, if the purchaser is a lessee under a lease or a hirer under

a hire-purchase agreement, the consideration paid or payable by the lessor or owner.

"Purchaser" means a person who purchases goods but excludes—

- (a) a secured party; and
- (b) a person who purchases goods with the intention of becoming a secured party; and
- (c) in relation to unregistrable goods, a dealer.

"Register" means the register kept under Part 3.

"Registrable goods" means goods to which Part 3 applies.

"Registered" means registered under Part 3.

"Secured party" means the holder of a security interest and includes the lessor in relation to a lease of goods and the owner in relation to a hire-purchase agreement.

"Security interest" means an interest in or a power over goods (whether arising by or pursuant to an instrument or transaction) which secures payment of a debt or other pecuniary obligation or the performance of any other obligation and includes any interest in or power over goods of a lessor, owner or other supplier of goods, but does not include a possessory lien or pledge.

"Supply" in relation to goods, means dispose of an interest in the goods by way of sale, exchange, lease or hire-purchase.

"Tribunal" means a Small Claims Tribunal constituted under the *Small Claims Tribunal Act* 1973.

"Unregistrable goods" means goods to which Part 3 does not apply.

"Unregistered security interest" means a security interest which is not registered under Part 3.

(2) This Act applies to a person to whom the rights and obligations of—

- (a) a secured party; or
- (b) a debtor—

have passed by operation of law in the same manner as this Act applies to the person from whom the rights and obligations have passed by operation of law.

(3) For the purposes of this Act, a hirer or lessee of goods or a buyer of goods under a conditional sale is deemed to have an interest in the goods notwithstanding that title or general property in the goods has not passed to the hirer, lessee or buyer.

(4) For the purposes of this Act—

- (a) a security interest attaches at the time at which value is given by the secured party and the debtor has rights in the

goods or at such later time as the secured party and the debtor intend; and

- (b) an agreement to which a debtor is party which contains a provision to the effect that the debtor takes the goods on lease or hire-purchase or creates a security interest over the goods shall be deemed to give value to the debtor.

(5) For the purposes of this Act, a person has notice of a security interest in goods—

- (a) if the person has actual notice of the security interest; or
- (b) if the person has been put upon inquiry as to the existence of the security interest and has deliberately abstained from inquiry or further inquiry when the person might reasonably have expected the inquiry or further inquiry to reveal the security interest.

(6) For the purposes of this Act, a person has notice of a security interest in goods affixed to land if the person would have had, or would have been deemed to have had, notice of that interest if sub-section (5) had not been enacted.

(7) If an amount, other than the sum of \$15 000 but not exceeding the sum of \$50 000, is prescribed by the regulations as the purchase price for the purposes of section 7, a reference in this Act to \$15 000 is a reference to the prescribed amount.

(8) If the Governor in Council is satisfied that provisions of a law of another State or of a Territory correspond to provisions of this Act, the Governor in Council may, by Order published in the *Government Gazette*, declare those provisions to be a corresponding law for the purposes of this Act.

PART 2—SECURITY INTERESTS

Application of Part.

4. (1) The provisions of this Part (other than section 5) apply (notwithstanding anything to the contrary in any other Act or law) to and in respect of a security interest (whether created within or outside Victoria) if the goods the subject of the security interest—

- (a) are at the date of attachment of the security interest situated in Victoria; or
- (b) are for the time being situated in Victoria.

(2) Section 5 applies (notwithstanding anything to the contrary in any other Act or law) to and in respect of a security interest (whether created within or outside Victoria) if the goods the subject of the security interest are at the date of attachment of the security interest situated in Victoria.

(3) Subject to sub-section (4), a reference in this Part to a security interest does not include a reference to a security interest which attaches before the date of commencement of this section.

(4) Sections 7 and 10 have effect in relation to a security interest relating to registrable goods as if in those sections a reference to a security interest were a reference to a security interest which attaches before, upon or after the commencement of this section.

Agreement that security interest is legal interest.

5. The parties to a security interest may agree that the security interest shall be a legal interest in the goods subject to the security interest and, if the parties so agree, the security interest is a legal interest in the goods.

Fixtures.

6. (1) If, after a security interest attaches, goods subject to the security interest are affixed to land and become fixtures, the fixtures, for the purposes of the exercise of the secured party's right to take possession of, remove or sell the goods, shall be deemed not to have become fixtures.

(2) A secured party who removes fixtures to which sub-section (1) applies is liable to make good damage done to the land in removing the fixtures.

(3) If, after a lease of goods is made, goods subject to the lease are affixed to land and become fixtures, the fixtures, for the purposes of the exercise of the lessor's right to take possession of the goods, shall be deemed not to have become fixtures.

(4) A lessor who removes fixtures to which sub-section (3) applies is liable to make good damage done to the land in removing fixtures.

(5) If, after a hire-purchase agreement is made, goods subject to the agreement are affixed to land and become fixtures, the fixtures, for the purposes of the exercise of the owner's right to take possession of the goods, shall be deemed not to have become fixtures.

(6) An owner who removes fixtures to which sub-section (5) applies is liable to make good damage done to the land in removing the fixtures.

(7) Despite this section, a secured party is not entitled to take possession of goods that have become affixed to land and become fixtures if, after the goods have become so affixed, a person other than the secured party has acquired an interest in the land for value in good faith and without notice of the security interest of the secured party.

(8) If goods subject to a security interest were affixed to land after an offer to enter into the agreement giving rise to the interest was made, but before the offer was accepted, the goods, for the purposes of this

section, shall be deemed to have been affixed to the land after the agreement was made.

Extinguishing of security interest.

7. (1) Subject to section 8, if a secured party has—
- (a) an unregistered security interest (whether or not over registrable goods); or
 - (b) a registered inventory security interest—
- in goods but is not in possession of the goods and a purchaser purchases or purports to purchase an interest in the goods (otherwise than at a sale in pursuance of a process of execution issued by or on behalf of a judgment creditor) for value in good faith and without notice when the purchase price is paid (or, if the price is not paid at one time, when the first part of the purchase price is paid) of the security interest from a supplier being—
- (c) the debtor; or
 - (d) another person who is in possession of the goods in circumstances where the debtor has lost the right to possession of the goods or is estopped from asserting an interest in the goods against the purchaser—
- the security interest of the secured party is extinguished.

(2) Subject to section 8, if a secured party has a security interest in a motor car within the meaning of the *Motor Car Traders Act 1986* but is not in possession of the motor car and a purchaser purchases or purports to purchase an interest in the motor car (otherwise than at a sale in pursuance of a process of execution issued by or on behalf of a judgment creditor) for value in good faith and without notice when the purchase price is paid (or, if the price is not paid at one time, when the first part of the purchase price is paid) of the security interest from a licensed motor car trader within the meaning of the *Motor Car Traders Act 1986*, the security interest of the secured party is extinguished.

(3) The onus of proving that a person has purchased an interest in goods free from a security interest is on the person asserting that the interest was so purchased.

(4) A reference in sub-section (1) or (2) to payment of the purchase price or to payment of part of the purchase price includes a reference to the giving of any valuable consideration in satisfaction of the purchase price or of part of the purchase price.

(5) The provisions of sub-section (1) do not apply to or in respect of—

- (a) a purchase or purported purchase of an interest in unregistrable goods, other than a commercial vehicle or farm machinery, if the purchase price exceeds \$15 000; or
- (b) a purchase or purported purchase of a motor vehicle within

the meaning of that Act, being a motor vehicle or trailer which is not registered under the *Motor Car Act 1958* or the *Road Safety Act 1986* but is registered under the law of another State or of a Territory, if a security interest, not being an inventory security interest, in the motor vehicle or trailer is registered under the provisions of a law declared under section 3 (8) to be a corresponding law of that State or Territory for the purposes of this Act.

(6) Section 31 of the *Goods Act 1958* has no effect in relation to the delivery or transfer of goods or documents of title to goods if—

- (a) the goods are registrable goods; or
- (b) the purchase price of the goods does not exceed \$15 000; or
- (c) the goods are a commercial vehicle or farm machinery; or
- (d) the goods are a motor vehicle within the meaning of that *Road Safety Act 1986* or a trailer within the meaning of that Act, being a motor vehicle or trailer which is not registered under the *Motor Car Act 1958* or the *Road Safety Act 1986* but is registered under the law of another State or of a Territory and there is in force in that State or Territory a law declared under section 3 (8) to be a corresponding law for the purposes of this Act.

(7) If a security interest is extinguished under sub-section (1) or (2), the secured party shall be subrogated to the rights (if any) of the supplier and any predecessor in title of the supplier in and in respect of the goods, including the right to receive any part of the purchase price for the goods which has not been paid.

(8) A person liable to pay the purchase price of any goods obtains a good discharge for any payment made by the person before the person receives notice of the rights of any secured party under sub-section (7).

(9) If, by reason of any purchase of goods, a security interest is extinguished under sub-section (1) or (2) or under section 9 and a contract which is or includes the purchase is rescinded, the security interest shall revive and have effect as if the purchase had not occurred.

(10) A reference in sub-section (9) to rescission of a contract includes a reference to termination of an agreement under section 43 of the *Motor Car Traders Act 1986*.

Purchase for value in good faith.

8. (1) For the purposes of section 7, a purchase or purported purchase of goods by a purchaser is not a purchase or purported purchase for value in good faith and without notice of a security interest if—

- (a) the purchaser is a member of the same household as is the supplier or purported supplier of the goods; or
- (b) the purchaser and the supplier or purported supplier of the goods are bodies corporate that are related to each other; or

(c) one of the purchaser and the supplier or purported supplier of the goods is a body corporate and the other a natural person who, within the meaning of the *Companies (Victoria) Code*, is a director or officer of the body corporate—
unless the person asserting that it is such a purchase or purported purchase proves beyond reasonable doubt that it is such a purchase or purported purchase.

(2) For the purposes of sub-section (1), the question whether bodies corporate are related to each other shall be determined in the same manner as the question whether corporations within the meaning of the *Companies (Victoria) Code* are related to each other would be determined under that Code.

Extinguishing of subsequent security interests.

9. (1) If a purchaser purchases goods from a secured party, all security interests which rank subsequently to the security interest of the secured party are extinguished without prejudice to the rights of the secured parties in respect of the interests to, or to call for, an accounting of such part of the consideration for the purchase as exceeds the entitlement of the first-mentioned secured party.

(2) Nothing in sub-section (1) prejudices the right of a debtor or other secured party to damages if a secured party wrongly exercises a power to sell goods subject to a security interest held by the person.

Priority of security interests.

10. (1) If there are two or more security interests in respect of the same goods and one or more of those security interests is registered under Part 3, those interests, subject to this section, rank in priority with respect to all debts or other pecuniary obligations (including contingent obligations) and all other obligations respectively secured under them whenever arising in the order in which they are so registered.

(2) The order of priority of security interests in sub-section (1) is subject to any express contrary provision in the *Companies (Victoria) Code* and to any agreement between the holders of the security interests.

(3) If, before the registration of a security interest, the secured party in respect of any other security interest in the same goods takes possession of the goods, the second-mentioned security interest, subject to sub-section (2), ranks in priority to the registered security interest with respect to those goods.

Extinguishing etc. of security interest under corresponding law.

11. (1) If a security interest over goods situated in another State or in a Territory is extinguished or loses priority under the provisions of a law of that State or Territory declared under section 3 (8) to be a corresponding law of that State or Territory for the purposes of this

Act, that interest is also extinguished or loses priority for the purposes of the law of Victoria.

(2) The provisions of sub-section (1) are in addition to the provisions of any other law or rule of law relating to the extinguishing or loss of priority of security interests.

Regulations.

12. The Governor in Council may make regulations for or with respect to prescribing any matter or thing which is authorised or required to be prescribed for carrying out or giving effect to this Part.

PART 3—REGISTRABLE GOODS

Application of Part.

13. (1) The goods to which this Part applies are—

- (a) motor vehicles within the meaning of the *Road Safety Act 1986*, being motor vehicles that, unless the regulations otherwise provide, are, or have been, registered under that Act or the *Motor Car Act 1958*; and
- (b) trailers within the meaning of the *Road Safety Act 1986*, being trailers that, unless the regulations otherwise provide, are, or have been, registered under that Act or the *Motor Car Act 1958*; and
- (c) motor vehicles and trailers within the meaning of the *Interstate Road Transport Act 1985* of the Commonwealth as amended and in force for the time being, being vehicles and trailers that are registered in Victoria under that Act;
- (d) if an order is made under sub-section (2), on and after the date specified in that order, motor boats within the meaning of the *Motor Boating Act 1961*, being motor boats that are, or have been, registered under that Act; and
- (e) prescribed goods.

(2) The Governor in Council may by Order published in the *Government Gazette* declare that on and after a date specified in the Order, this Part applies to motor boats within the meaning of the *Motor Boating Act 1961*.

Delegation.

14. The Authority may, either generally or as otherwise provided in the instrument of delegation, by writing delegate to any officer or employee of the public service or of the Authority all or any of its functions or powers under this Part, except this power of delegation.

Register.

15. The Authority must keep a register in the prescribed form or in the prescribed manner in which shall be entered security interests in relation to registrable goods.

Registration of security interest.

16. (1) A person may make application to the Authority for registration of a security interest in registrable goods.

(2) An application under sub-section (1) shall be in or to the effect of the prescribed form or made in the prescribed manner.

(3) The Authority in relation to each application under this section, must enter in the register the security interest and other particulars of the application and the date on which, and time at which, the entry is made.

(4) The applicant, at the prescribed time or within the prescribed period, must pay the prescribed fee (if any) payable in respect of an application made by the applicant under sub-section (1).

Offence.

17. (1) A person must not make an application under section 16 for the registration of a security interest if that person is not the holder of the interest.

Penalty: 5 penalty units.

(2) It is a defence to a prosecution of a person for an offence under sub-section (1) if the person proves that when the application was made the person believed on reasonable grounds that the person was the holder of the security interest.

Cancellation of registration.

18. If a person is the holder of a registered security interest, that person may make application to the Authority in or to the effect of the prescribed form for the cancellation of that registration.

Discharge of registered security interest.

19. If a registered security interest is discharged or extinguished, the person who was the holder immediately before the discharge or extinguishment, not later than fourteen days after the person knows or ought to reasonably know that he or she has ceased to be the holder of that security interest, must make application to the Authority in or to the effect of the prescribed form for the cancellation of the registration.

Authority to cancel registration.

20. If an application is made under section 18 or 19, the Authority must cancel the particulars in the register to which the application relates and must note in the register the date on which, and the time at which, the particulars were cancelled.

Change in particulars.

21. (1) If there is a change in the particulars of a registered security interest (other than by reason that the security interest is discharged or extinguished), the secured party may make application in or to the effect of the prescribed form for the variation of those particulars.

(2) If an application is made under sub-section (1), the Authority must vary the particulars in the register and note in the register the date on which, and time at which, the particulars are varied.

Variation of particulars.

22. If a prescribed change occurs in the particulars entered in the register, the Authority may vary the particulars in the entry in the register and note in the register the date on which, and the time at which, the particulars are varied.

Authority may cancel registration.

23. (1) If a person is registered under section 16 as the holder of a security interest in respect of registrable goods and it appears to the Authority that—

- (a) the person was not, when the application for registration was made, the holder of such a security interest; or
- (b) the security interest has been discharged or extinguished and the person has failed to comply with section 19—

the Authority, by notice in writing in the prescribed form given to the person, may require the person to show cause within fourteen days after the giving of the notice why the registration should not be cancelled.

(2) If a person fails to show cause as required by a notice under sub-section (1), the Authority, in its discretion, may cancel the registration of the person and must note in the register the date on which, and time at which, the registration was cancelled.

(3) For the purposes of sub-section (1), a notice shall be deemed to have been given to a person when it is posted by prepaid post to the person at the person's address shown in the register.

Certificate of entries.

24. (1) A person may make application to the Authority in or to the effect of the prescribed form or in the prescribed manner for a certificate containing particulars of entries in the register in respect of

specified goods to which this Part applies or, where there are no entries in the register in respect of those goods, a statement to that effect.

(2) The applicant, at the prescribed time or within the prescribed period, must pay the prescribed fee (if any) payable in respect of an application made by the applicant under sub-section (1).

(3) The Authority, on receipt of an application under sub-section (1), must issue a certificate bearing the date and time of issue and containing particulars of the entries in the register in respect of the goods specified in the application or, where there are no such entries, a statement to that effect.

(4) In this section, "entries" does not include particulars in the register that have been cancelled under section 20.

Compensation for extinguishment of security interest.

25. (1) A person who suffers loss or damage by reason that a security interest in registrable goods of which the person is the holder is extinguished by the operation of section 7 (1), being a security interest—

(a) for the registration of which application had been made under section 16; and

(b) which at the time the loss or damage was suffered—

- (i) had not been entered in the register; or
- (ii) was entered in the register but not correctly entered; or
- (iii) having been entered in the register after the application was made, was no longer entered by reason of the cancellation of the entry under section 23—

is entitled to make application to a Tribunal for an order for the payment of compensation to the applicant.

(2) If an application is made under sub-section (1), the Tribunal must determine whether or not compensation should be paid to the applicant and, if it determines that compensation should be paid, must make an order for the payment to the applicant of such amount as the Tribunal determines.

(3) The Tribunal must not make an order under this section in relation to an application arising by reason of loss or damage suffered after the cancellation under section 23 of an entry in the register if the applicant did not show cause in accordance with that section unless the Tribunal is satisfied that the applicant did not show cause in accordance with that section why the registration should not be cancelled—

- (a) because of circumstances beyond the applicant's control; or
- (b) for reasons that ought to be reasonably to be excused.

(4) Compensation paid in respect of a claim under this section must not exceed—

(a) the amount of the debt or other pecuniary obligation or the value of any other obligation secured by the security interest; or

(b) the value of the registrable goods in respect of which the application is made—

at the time the loss or damage is suffered, whichever is the lesser.

(5) Compensation payable under an order of a Tribunal under this section must be paid by the Authority.

Compensation where entry not shown on certificate.

26. (1) A person who suffers loss or damage arising from, or in connection with, the purchase of registrable goods where—

(a) before the purchase was made, a certificate was issued under section 24 in respect of those goods; and

(b) the certificate did not contain the particulars of an entry in the register relating to those goods at the time of issue of the certificate—

is entitled to make application to a Tribunal for an order for the payment of compensation to the applicant.

(2) If an application is made under sub-section (1), the Tribunal must determine whether or not compensation should be paid to the applicant and, if it determines that compensation should be paid, shall make an order for the payment to the applicant of such amount as the Tribunal determines.

(3) The Tribunal must not grant an application under sub-section (1) if the person at the time of suffering the loss or damage—

(a) had actual notice of the security interest entered in the register; or

(b) had been put upon inquiry as to the existence of such a security interest and had deliberately abstained from inquiry or further inquiry when the person might reasonably have expected the inquiry or further inquiry to reveal the security interest.

(4) Sub-section (3) does not apply if the applicant under sub-section (1) is the secured party in respect of the registrable goods.

(5) Compensation payable under an order of a Tribunal under this section must be paid by the Authority.

Offence.

27. (1) A dealer must not supply any goods in the course of a business without first procuring the discharge of any inventory security interest created by the dealer in the goods.

Penalty: 25 penalty units.

(2) A dealer must not supply any goods in the course of a business without first procuring the discharge of—

- (a) any security interest of which the dealer has notice; and
- (b) any registered security interest whether or not the dealer has notice of the interest; and
- (c) if the motor car is not registered under the *Motor Car Act 1958* or the *Road Safety Act 1986* but is registered under the law of another State or a Territory, any security interest in the motor car registered under the provisions of a law of that State or Territory corresponding to the provisions of this Act (whether or not those provisions are declared under section 3 (8) to be a corresponding law of that State or Territory for the purposes of this Act).

Penalty: 25 penalty units.

(3) Sub-sections (1) and (2) do not apply to the extent or in circumstances prescribed by the regulations.

(4) Sub-sections (1) and (2) do not apply to the supply of a motor vehicle within the meaning of the *Road Safety Act 1986* by a motor car trader within the meaning of the *Motor Car Traders Act 1986*.

Regulations.

28. (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing which is authorised or required to be prescribed for carrying out or giving effect to this Part.

(2) Except as otherwise expressly provided by this Part, regulations under this Part may be of general or of specially limited application and may differ according to differences in time, place or circumstances.

PART 4—CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

Repeal of *Chattel Securities Act 1981*.

29. (1) The *Chattel Securities Act 1981* and the *Chattel Securities (Amendment) Act 1983* are repealed.

(2) Section 24A of the *Chattel Securities Act 1981* continues to have effect as if it had not been repealed.

Transitional provisions.

30. (1) The register kept under section 15 of the *Chattel Securities Act 1981* shall be deemed to form part of the register kept under Part 3 of this Act.

(2) The *Chattel Securities Act 1981* continues to apply to—

- (a) an application for registration made under section 16 of that Act before the commencement of this section; and
 - (b) an application for compensation made under section 24 or 25 of that Act before that commencement—
- as if this Act had not been enacted.

Amendment of other Acts.

31. (1) The *Credit Act 1984* is amended as follows:

- (a) In section 5 (5) and (6) for "*Chattel Securities Act 1981*" (wherever occurring) substitute "*Chattel Securities Act 1987*";
 - (b) In section 35 (2) (b) for "section 8 of the *Chattel Securities Act 1981*" substitute "section 7 of the *Chattel Securities Act 1987*";
 - (c) In section 36 (2) (b) for "section 8 of the *Chattel Securities Act 1981*" substitute "section 7 of the *Chattel Securities Act 1987*";
 - (d) In clause 1 (e) (iii) of Schedule 2 for "section 8 of the *Chattel Securities Act 1981*" substitute "section 7 of the *Chattel Securities Act 1987*";
 - (e) In clause 1 (b) (ii) of Schedule 4 for "section 8 of the *Chattel Securities Act 1981*" substitute "section 7 of the *Chattel Securities Act 1987*";
 - (f) In clause 1 (k) (iii) of Schedule 7 for "section 8 of the *Chattel Securities Act 1981*" substitute "section 7 of the *Chattel Securities Act 1987*".
- (2) The *Instruments Act 1958* is amended as follows:
- (a) In section 59 for "*Chattel Securities Act 1981*" substitute "*Chattel Securities Act 1987*";
 - (b) In section 69 for "*Chattel Securities Act 1981*" substitute "*Chattel Securities Act 1987*".
- (3) In section 20 (2) of the *Transport Act 1983* for "*Chattel Securities Act 1981*" substitute "*Chattel Securities Act 1987*".

(4) The *Motor Car Traders Act 1986* is amended as follows:

- (a) In section 48—
 - (i) after "48." insert "(1)"; and
 - (ii) after paragraph (a) insert—
 - "(aa) if the motor car is not registered under the *Motor Car Act 1958* or the *Road Safety Act 1986* but is registered under the law of another State or a Territory, any security interest in the motor car registered under the provisions of a law of that State or Territory corresponding to the provisions of the *Chattel Securities Act 1987*

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(whether or not those provisions are declared under that Act to be a corresponding law for the purposes of that Act); and";

(iii) for "*Chattel Securities Act 1981*" substitute "*Chattel Securities Act 1987*"; and

(iv) at the end of the section insert—

"(2) Sub-section (1) does not apply to a motor car trader who sells, exchanges or otherwise disposes of a motor car subject to an inventory security interest if the sale, exchange or disposition is authorised by, and is in accordance with, the terms of the inventory security interest.";

(b) In section 76, for sub-section (2) substitute—

"(2) The Committee may allow a claim made by a special trader who is a financier for loss incurred from the failure of a licensed motor car trader to procure the cancellation of a security interest in a motor car (other than an inventory security interest) registered under the *Chattel Securities Act 1987* or any corresponding previous enactment before the motor car trader acquired or took possession of the motor car."

NOTES

1. Minister's second reading speech—
Legislative Assembly: 19 March 1987
Legislative Council: 28 April 1987
2. The long title for the Bill for this Act was "A Bill relating to chattel securities, to repeal the *Chattel Securities Act 1981* and for other purposes."

APPENDIX K

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and includes—

- (c) a bill of lading;
 - (d) a warehousekeeper's certificate;
 - (e) a wharfinger's certificate;
 - (f) a warrant or order for the delivery of goods; and
 - (g) a document that is, or evidences title to, a marketable security;
- "present liability", in relation to a charge, means a liability that has arisen, being a liability the extent or amount of which is fixed or capable of being ascertained, whether or not the liability is immediately due to be met;
- "prospective liability", in relation to a charge, means any liability that may arise in the future, or any other liability, but does not include a present liability;
- "Register" means the Register of Company Charges referred to in section 203.

"registrable charge" means a charge to and in relation to which, by virtue of section 200, the provisions of this Division mentioned in sub-section 200(1) apply.

199(2) [Property of a company] In this Division and in Schedule 5, unless the contrary intention appears, a reference to property of a company includes a reference to property held by the company as trustee.

199(3) [Certain charges not treated as registrable] A charge referred to in sub-section 201(3) or (4) or section 202 shall, until the charge is registered, be treated for the purposes of this Division and Schedule 5 as if it were not a registrable charge but, when the charge is so registered, it has the priority accorded to a registered charge as from the time of registration.

199(4) [Effect of registration] The registration of a charge referred to in sub-section 201(3) or (4) or section 202 does not prejudice any priority that would have been accorded to the charge under any other law if the charge had not been registered.

199(5) [Lodgment of notices or documents] For the purposes of this Division and of Schedule 5, a notice or other document shall be taken to be lodged with the Commission when it is received at the office of the State Commission¹ by an officer authorized to receive it.

1. Vic., Qld., W.A.: "the office of the Commissioner for Corporate Affairs".
Tas.: "the Corporate Affairs Office for Tasmania".
A.C.T.: "an office of the Commission".

199(6) [Registered foreign companies] A reference in this Division and in Schedule 5 to a company includes a reference to a registered foreign company.

199(7) [Charges on property of company — general] A reference in this Division and in Schedule 5 to a charge on property of a company shall, in the case of a company other than a foreign company, be construed as a reference to a charge on property of the company, whether within or outside Australia.

199(8) [Charges on property of company — certain foreign companies] A reference in this Division and in Schedule 5 to a charge on property of a company

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SECTION 199 INTERPRETATION AND APPLICATION OF DIVISION

199(1) [Definitions] In this Division and in Schedule 5, unless the contrary intention appears—

"document of title" means a document—

- (a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land; or
- (b) authorizing or purporting to authorize, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land,

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shall, in the case of a foreign company formed within Australia, be construed as a reference to a charge on property in the State¹ of the foreign company.

1. A.C.T.: "Territory".
Tas.: For "the State" read "Tasmania".

199(9) [Charges on property of company — other foreign companies] A reference in this Division and in Schedule 5 to a charge on property of a company shall, in the case of a foreign company formed outside Australia, be construed as a reference to a charge on property in Australia of the foreign company.

199(10) [“Australia”] For the purposes of this section, “Australia” includes the external Territories.

SECTION 200 CHARGES REQUIRED TO BE REGISTERED

200(1) [Charges to be registered] Subject to this section, the provisions of this Division relating to the giving of notice in relation to, the registration of, and the priorities of, charges apply to and in relation to the following charges (whether legal or equitable) on property of a company and do not apply to or in relation to any other charges:

- (a) a floating charge on the whole or a part of the property, business or undertaking of the company;
- (b) a charge on uncalled share capital or uncalled share premiums;
- (c) a charge on a call, whether in respect of share capital or share premiums, made but not paid;
- (d) a charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, but not including a ship registered in an official register kept under a law in force in the State¹ relating to title to ships;
- (e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design;
- (f) a charge on a book debt;
- (g) a charge on a marketable security, not being—
 - (i) a charge created in whole or in part by the deposit of a document of title to the marketable security; or
 - (ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by him;
- (h) a lien or charge on a crop, a lien or charge on wool or a stock mortgage;
- (i) a charge on a negotiable instrument other than a marketable security.

History
S. 200(1)(b) amended by No. 26 of 1982, s. 102.
1. A.C.T.: "Territory".
Tas.: For "the State" read "Tasmania".

200(2) [Charges etc. not requiring registration] The provisions of this Division mentioned in sub-section (1) do not apply to or in relation to—

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- (a) a charge, or a lien over property, arising by operation of law;
- (b) a pledge of a personal chattel or of a marketable security;
- (c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt;
- (d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business; or
- (e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Australia.

200(3) [Charges on personal chattels] The reference in paragraph (1)(d) to a charge on a personal chattel is a reference to a charge on any article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is affixed or on which it is growing, but does not include a reference to a charge on—

- (a) a document evidencing title to land;
- (b) a chattel interest in land;
- (c) a marketable security;
- (d) a document evidencing a thing in action; or
- (e) stock or produce on a farm or land that by virtue of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.

200(4) [Charges on book debts] The reference in paragraph (1)(f) to a charge on a book debt is a reference to a charge on a debt due or to become due to the company at some future time on account of or in connection with a profession, trade or business carried on by the company, whether entered in a book or not, and includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge, but does not include a reference to a charge on a marketable security, on a negotiable instrument or on a debt owing in respect of a mortgage, charge or lease of land.

200(4A) [Liens or charges on a crop or wool; stock mortgages] The reference in paragraph (1)(h) to a lien or charge on a crop, a lien or charge on wool or a stock mortgage includes a reference to a security (however described) that is registrable under—

- (a) a provision that is a relevant provision for the purposes of this sub-section;
- (b) a provision of a law in force in a participating State or in a participating Territory¹ that is a relevant provision for the purposes of a provision of a law in force in that State or Territory¹ that corresponds with this sub-section; or
- (c) a provision of a law in force in another State or in a Territory² (other than a participating State or participating Territory) that corresponds with a provision that is a relevant provision for the purposes of this sub-section.

History
S. 200(4A) inserted by No. 13 of 1984, s. 5.
1. A.C.T.: For the words "law in force in a participating State or in a participating Territory" read "law of a participating State or participating Territory".

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2. A.C.T.: For the words "law in force in that State or Territory" read "law of that State or Territory".
 3. A.C.T.: For the words "law in force in another State or in a Territory" read "law of a State or of another Territory".

200(4B) [Relevant provisions] Each of the provisions of Parts II and III of the *Lien on Crops and Wool and Stock Mortgages Act of 1898* is a relevant provision for the purposes of sub-section (4A).

History

S. 200(4B) inserted by No. 13 of 1984, s. 5.

1. Vic.: For the words "Parts II and III of the Lien on Crops and Wool and Stock Mortgages Act of 1898" read "Parts VII and VIII of the Instruments Act 1958".

Qld.: For the words "Parts II and III of the Lien on Crops and Wool and Stock Mortgages Act of 1898" read "Part II (being provisions that apply in relation to registration of instruments that are stock mortgages, liens upon crops and liens on wool) and Part IV (other than section 24) of The Bills of Sale and Other Instruments Act of 1955, and The Lien on Crops of Sugar Cane Act of 1931".

S.A.: For the words "Parts II and III of the Lien on Crops and Wool and Stock Mortgages Act of 1898" read "the Lien on Fruit Act, 1923 and the Stock Mortgages and Wool Lien Act, 1924".

W.A.: For the words "Parts II and III of the Lien on Crops and Wool and Stock Mortgages Act of 1898" read "sections 7 and 8 and Parts IX, X and XI of the Bills of Sale Act 1899".

Tas.: For the words "Parts II and III of the Lien on Crops and Wool and Stock Mortgages Act of 1898" read "section 36 of the Bills of Sale Act 1900 and the Stock, Wool, and Crop Mortgages Act 1930".

A.C.T.: For the words "Parts II and III of the Lien on Crops and Wool and Stock Mortgages Act of 1898" read "Parts IV and V of the Instruments Ordinance 1933".

200(5) [Deemed deposit of document of title] For the purposes of this section, a company shall be deemed to have deposited a document of title to property with another person (in this sub-section referred to as the "chargee") in a case where the document of title is not in the possession of the company if—

- (a) the person who holds the document of title acknowledges in writing that he holds the document of title on behalf of the chargee; or
- (b) a government, an authority or a corporation that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

200(6) [Charge over various kinds of property] For the purposes of this section, a charge shall be taken to be a charge on property of a kind to which a particular paragraph of sub-section (1) applies notwithstanding that the instrument of charge also charges other property of the company including other property that is of a kind to which none of the paragraphs of that sub-section applies.

200(7) [Charges on land] The provisions of this Division mentioned in sub-section (1) do not apply to or in relation to a charge on land.

200(8) [Charges on fixtures] The provisions of this Division mentioned in sub-section (1) do not apply to or in relation to a charge on fixtures given by a charge on the land to which they are affixed.

200(9) [Charges given by trustees, legal personal representatives] The provisions of this Division mentioned in sub-section (1) do not apply to or in relation to a charge created by a company in its capacity as legal personal representative of a deceased person or as trustee of the estate of a deceased person.

200(10) [Effect of non-lodgment on validity] A charge on property of a company is not invalid by reason only of the failure to lodge with the Commission or give to the company or another person a notice or other document that is required by this Division to be so lodged or given.

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SECTION 201 LODGMENT OF NOTICE OF CHARGE AND COPY OF INSTRUMENT

201(1) [Lodgment within 45 days] Where a company creates a charge, the company shall ensure that there is lodged with the Commission, within 45 days after the creation of the charge—

- (a) a notice in the prescribed form setting out the following particulars:
 - (i) the name of the company and the date of the creation of the charge;
 - (ii) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge;
 - (iii) if the charge is a floating charge — whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges;
 - (iv) a short description of the liability (whether present or prospective) secured by the charge;
 - (v) a short description of the property charged;
 - (vi) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;
 - (vii) if the charge is constituted by the issue of a debenture or debentures — the name of the trustee (if any) for debenture holders;
 - (viii) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders — the name of the chargee;
 - (ix) such other information as is prescribed;
- (b) if, pursuant to a resolution or resolutions passed by the company, the company issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the charge is evidenced only by the resolution or resolutions and the debentures — a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy, and a copy of the first debenture issued in the series and a statement in writing verifying the execution of that first debenture; and

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(c) if, in a case to which paragraph (b) does not apply, the charge was created or evidenced by an instrument or instruments—

- (i) the instrument or each of the instruments; or
- (ii) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments.

201(2) [Series of debentures] In a case to which paragraph (1)(b) applies—

- (a) the charge shall, for the purposes of sub-section (1), be deemed to be created when the first debenture in the series of debentures is issued; and
- (b) if, after the issue of the first debenture in the series, the company passes a further resolution authorizing the issue of debentures in the series, the company shall ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is lodged with the Commission within 45 days after the passing of that resolution.

201(3) [Applicant for registration under Div. 4] A foreign company that applies for registration as a company under Division 4 of Part III shall lodge with the application for registration the documents specified in sub-section (5) in relation to any charge on property of the foreign company that would be registrable under this Division if the foreign company were a company as defined in sub-section 5(1).

201(4) [Applicant for registration under Div. 5] A foreign company that applies for registration under Division 5 of Part XIII shall lodge with the application for registration the documents specified in sub-section (5) in relation to any charge on property of the foreign company that would be registrable under this Division if the foreign company were a registered foreign company.

201(5) [Documents required to be lodged] The documents required to be lodged under sub-section (3) or (4) in relation to a charge on property of a foreign company are the following documents:

- (a) a notice in the prescribed form—
 - (i) setting out the name of the foreign company;
 - (ii) if the charge was created by the foreign company — specifying the date of the creation of the charge;
 - (iii) if the charge was a charge existing on property acquired by the foreign company — setting out the date on which the property was so acquired; and
 - (iv) otherwise complying with the requirements of paragraph (1)(a);
- (b) if the charge was created or evidenced as mentioned in paragraph (1)(b)—
 - (i) in the case of a charge created by the foreign company — a copy of the resolution or of each of the resolutions referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that paragraph and a statement in writing verifying the execution of that first debenture; or
 - (ii) in the case of a charge that existed on property acquired by the foreign company — the copies referred to in sub-paragraph (i) verified by statements in writing to be true copies;

(c) if the charge was created or evidenced by an instrument or instruments (otherwise than as mentioned in paragraph (1)(b))—

- (i) in the case of a charge created by the foreign company—
 - (A) the instrument or each of the instruments; or
 - (B) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments; or
- (ii) in the case of a charge that existed on property acquired by the foreign company — a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy; and
- (d) if the charge was created or evidenced as mentioned in paragraph (1)(b) and, after the issue of the first debenture in the series, the company passed a further resolution or resolutions authorizing the issue of debentures in the series — a copy of that resolution or of each of those resolutions verified by a statement in writing to be a true copy.

201(6) [Lodgment of notice] A notice in relation to a charge, being a charge in relation to which paragraph (1)(b) or (c) or (5)(b) or (c) applies, shall not be taken to have been lodged with the Commission under sub-section (1), (3) or (4) unless the notice is accompanied by the documents specified in that paragraph.

201(7) [Series of debentures — priority] Where a notice with respect to an instrument creating a charge has been lodged under sub-section (1), (3) or (4), being a charge in respect of an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, section 204 and Schedule 5 have effect as if any charges constituted by those debentures were registered at the time when the charge to which the notice relates was registered.

201(8) [Particulars of payment or discount] Where a payment or discount has been made or allowed, either directly or indirectly, by a company to a person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for debentures, the notice required to be lodged under sub-section (1), (3) or (4) shall include particulars as to the amount or rate per centum of the payment or discount.

201(9) [Issue as security for company debt] Where a company issues debentures as security for a debt of the company, the company shall not thereby be regarded as having allowed a discount in respect of the debentures.

SECTION 202 ACQUISITION OF PROPERTY SUBJECT TO CHARGE

202(1) [Notice by company acquiring property] Where a company acquires property that is subject to a charge, being a charge that would have been registrable when it was created if it had been created by a company, the company shall, within 45 days after the acquisition of the property—

- (a) ensure that there is lodged with the Commission—
 - (i) a notice in the prescribed form in relation to the charge, setting out the name of the company and the date on which the property was so

acquired and otherwise complying with the requirements of paragraph 201(1)(a);

- (ii) if the charge was created or evidenced as mentioned in paragraph 201(1)(b) — a copy of the resolution or of each of the resolutions referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that paragraph verified by a statement in writing to be a true copy; and
- (iii) if the charge was created or evidenced by an instrument or instruments (otherwise than as mentioned in paragraph 201(1)(b)) —
 - (A) the instrument or each of the instruments; or
 - (B) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy; and
- (b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.

202(2) [Notice to be accompanied by specified documents] A notice in relation to a charge, being a charge in relation to which sub-paragraph (1)(a)(ii) or (iii) applies, shall not be taken to have been lodged with the Commission under sub-section (1) unless it is accompanied by the documents specified in that sub-paragraph.

SECTION 203 REGISTRATION OF DOCUMENTS RELATING TO CHARGES

203(1) [Register of Company Charges] The Commission shall keep a register to be known as the Register of Company Charges.

203(2) [Particulars] Where a notice in respect of a charge on property of a company that is required by section 201 or 202 to be lodged with the Commission is lodged with the Commission (whether during or after the period within which the notice was required to be lodged) and the notice contains all the particulars required by the relevant section to be included in the notice, the Commission shall forthwith cause to be entered in the Register the time and date when the notice was so lodged with the Commission and the following particulars in relation to the charge:

- (a) if the charge is a charge created by the company, the date of its creation or, if the charge was a charge existing on property acquired by the company, the date on which the property was so acquired;
- (b) a short description of the liability (whether present or prospective) secured by the charge;
- (c) a short description of the property charged;
- (d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee.

203(3) [Deemed registration] Subject to sub-section (9), where particulars in respect of a charge are entered in the Register in accordance with sub-section (2), the charge shall be deemed to be registered, and to have been registered from and including the time and date entered in the Register under that sub-section.

203(4) [Provisional entries — document not duly stamped] Where a notice in

respect of a charge on property of a company is lodged with the Commission under section 201 or 202 (whether during or after the period within which the notice was required to be lodged) and a document that accompanies that notice has not been duly stamped as required by any applicable law relating to stamp duty, the Commission shall cause to be entered in the Register the time and date when the notice was lodged and the particulars referred to in paragraphs (2)(a), (b), (c) and (d), but shall cause the word "provisional" to be entered in the Register next to the entry specifying that time and date.

203(5) [Treatment of such provisional entries] Where—

- (a) in accordance with sub-section (4), the word "provisional" is entered in the Register next to an entry specifying the time and date on which a notice in respect of a charge was lodged; and
 - (b) within a period of 30 days after the notice was lodged, or within such further period as the Commission, if it considers it to be appropriate in a particular case, allows, evidence satisfactory to the Commission that the document has been duly stamped has been produced to the Commission,
- the Commission shall delete the word "provisional" from the entry in the Register relating to that charge, but if such evidence is not produced within the period, or the further period, referred to in paragraph (b), the Commission shall delete from the Register all the particulars that were entered in relation to the charge.

203(6) [Provisional entries — purported notices] Where a document that purports to be a notice in respect of a charge on property of a company for the purposes of section 201 or 202 is lodged with the Commission (whether during or after the period within which the notice was required to be lodged) and the document contains the name of the company concerned and the particulars referred to in sub-paragraph 201(1)(a)(vii) or (viii), as the case requires, but does not contain some or all of the other particulars that are required to be included in the notice or is otherwise defective—

- (a) the Commission shall cause to be entered in the Register the time and date when the document was so lodged with the Commission and such of the particulars referred to in paragraphs (2)(a), (b), (c) and (d) as are ascertainable from the document, but shall cause the word "provisional" to be entered in the Register next to the entry specifying that time and date; and
- (b) the Commission shall, by notice in writing to the person who lodged the document, direct the person to ensure that there is lodged with the Commission, on or before the date specified in the notice, a notice in relation to the charge that complies with the requirements of section 201 or 202, as the case may be, but the giving by the Commission of a direction to the person under this paragraph does not affect any liability that the company may have incurred or may incur by reason of a contravention of section 201 or 202.

203(7) [Treatment of such provisional entries] Where the Commission gives a direction to a person under paragraph (6)(b) in relation to a charge—

- (a) if the direction is complied with on or before the date specified in the notice containing the direction, the Commission shall—

- (i) delete from the Register the word "provisional" that was inserted pursuant to paragraph (6)(a); and
- (ii) cause to be entered in the Register in relation to the charge any particulars referred to in sub-section (2) that have not previously been entered;
- (b) if the direction is not complied with on or before that date — the Commission shall delete from the Register all the particulars that were entered in relation to the charge; and
- (c) if the direction is complied with after that date — the Commission shall cause to be entered in the Register in relation to the charge the time at which and date on which the direction was complied with and the particulars referred to in paragraphs (2)(a), (b), (c) and (d).

203(8) [Entry of other particulars] The Commission may enter in the Register in relation to a charge, in addition to the particulars expressly required by this section to be entered, such other particulars as the Commission thinks fit.

203(9) [Effect of provisional entry on registration] If the word "provisional" is entered in the Register next to an entry specifying a time and date in relation to a charge, the charge shall be deemed not to have been registered but —

- (a) where the word "provisional" is deleted from the Register pursuant to sub-section (5) or paragraph (7)(a) — the charge shall be deemed to be registered and to have been registered from and including the time and date specified in the Register pursuant to sub-section (4) or paragraph (6)(a) as the case may be; or
- (b) where the particulars in relation to the charge are deleted from the Register pursuant to paragraph (7)(b) and those particulars and a time and date are subsequently entered in the Register in relation to the charge pursuant to paragraph (7)(c) — the charge shall be deemed to be registered from and including that last-mentioned time and date.

203(10) [Two or more charges — foreign company] Where, pursuant to sub-section 201(3) or (4), a foreign company lodges with the Commission notices relating to 2 or more charges on the same property of the foreign company, the time and date that shall be entered in the Register in relation to each of those charges are the time and date when the first notice was lodged with the Commission.

203(11) [Respective priorities] Where, in accordance with sub-section (10), the time and date that are entered in the Register are the same in relation to 2 or more charges on property of a foreign company, those charges shall, as between themselves, have the respective priorities that they would have had if they had not been registered under this Division.

203(12) [Two or more charges — company acquiring property] Where, pursuant to section 202, a company lodges with the Commission notices relating to 2 or more charges on the same property acquired by the company (being charges that are not already registered under this Division), the time and date that shall be entered in the Register in relation to each of those charges are the time and date when the first notice was lodged with the Commission.

203(13) [Respective priorities] Where, in accordance with sub-section (12), the time and date that are entered in the Register are the same in relation to 2 or more

charges on property acquired by a company, those charges shall, as between themselves, have the respective priorities that they would have had if they had not been registered under this Division.

History
S. 203(13) amended by No. 108 of 1983, Sch. 1.

203(14) [Notice of assignment or variation] Where a notice is lodged with the Commission under section 206 (whether during or after the period within which it was required to be lodged), the Commission shall forthwith cause to be entered in the Register the time and date when the notice was so lodged with the Commission and the particulars set out in the notice.

SECTION 204 PRIORITIES OF CHARGES

204(1) [Schedule 5 priorities apply] Subject to this section, the provisions of Schedule 5 have effect with respect to the priorities, in relation to each other, of registrable charges on the property of a company.

204(2) [Qualifications to application of Schedule 5] The application, in relation to particular registrable charges, of the order of priorities of charges set out in Schedule 5 is subject to —

- (a) any consent (express or implied) that varies the priorities in relation to each other of those charges, being a consent given by the holder of one of those charges, being a charge that would otherwise be entitled to priority over the other charge; and
- (b) any agreement between those chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees.

204(3) [Deemed consent by holder of registered floating charge] The holder of a registered charge, being a floating charge, on property of a company shall be deemed, for the purposes of sub-section (2), to have consented to that charge being postponed to a subsequent registered charge, being a fixed charge that is created before the floating charge becomes fixed, on any of that property unless —

- (a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge; and
- (b) a notice in respect of the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the Commission under section 201, 202 or 206 before the creation of the subsequent registered charge.

204(4) [Charge over various kinds of property] Where a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of sub-section 200(1) applies or apply and also relates to other property, the provisions of Schedule 5 apply so as to affect the priority of the charge only in so far as it relates to the first-mentioned property and do not affect the priority of the charge in so far as it relates to the other property.

A.C.T. Insert "204(5) The provisions of Schedule 5 do not apply so as to affect the operation of —

- (a) the Copyright Act 1968;
- (b) the Designs Act 1949;
- (c) the Life Insurance Act 1945;
- (d) the Patents Act 1952; or
- (e) the Trade Marks Act 1955."

SECTION 205 CERTAIN CHARGES VOID AGAINST LIQUIDATOR OR OFFICIAL MANAGER

205(1) [Charges void against liquidator or official manager] Where—

- (a) an order is made, or a resolution is passed, for the winding up of a company; or
- (b) an official manager is appointed in respect of a company, a registrable charge on any property of the company is void as a security on that property as against the liquidator or official manager, as the case may be, unless—
 - (c) a notice in respect of the charge was lodged with the Commission under section 201 or 202, as the case requires—
 - (i) within the relevant period; or
 - (ii) not later than 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be;
 - (d) in relation to a charge other than a charge to which sub-section 201(3) or (4) applies — the period within which a notice in respect of the charge (other than a notice under section 206) is required to be lodged with the Commission, being the period specified in the relevant section or that period as extended by the Court under sub-section (3), has not expired at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the expiration of that period;
 - (e) in relation to a charge to which sub-section 201(3) or (4) applies — the period of 45 days after the charge becomes aware that the foreign company has been registered as a company under Division 4 of Part III or as a foreign company under Division 5 of Part XIII has not expired at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the expiration of that period; or
 - (f) in relation to a charge to which section 202 applies — the period of 45 days after the charge becomes aware that the property charged has been acquired by a company has not expired at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the expiration of that period.

History
S. 205(1)(c) and (d) amended by No. 153 of 1981, s. 44.

205(2) [Relevant period] The reference in paragraph (1)(c) to the relevant period shall be construed as a reference to—

- (a) in relation to a charge to which sub-section 201(1) applies — the period of 45 days specified in that sub-section, or that period as extended by the Court under sub-section (3) of this section;
- (b) in relation to a charge to which sub-section 201(3) or (4) applies — the period of 45 days after the charge becomes aware that the foreign company has been registered as a company under Division 4 of Part III or as a foreign company under Division 5 of Part XIII; or

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- (c) in relation to a charge to which section 202 applies — the period of 45 days after the chargee becomes aware that the property has been acquired by a company.

History
S. 205(2)(b) and (c) amended and (2)(d) omitted by No. 153 of 1981, s. 44.

205(2A) [Notice of variation] Where, after there has been a variation in the terms of a registrable charge on property of a company having the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge—

- (a) an order is made, or a resolution is passed, for the winding up of the company; or
- (b) an official manager is appointed in respect of the company, the registrable charge is void as a security on that property to the extent that it secures the amount of the increase in that debt or liability unless—
 - (c) a notice in respect of the variation was lodged with the Commission under section 206—
 - (i) within the period of 45 days specified in sub-section 206(2) or that period as extended by the Court under sub-section (3) of this section; or
 - (ii) not later than 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be; or
 - (d) the period of 45 days specified in sub-section 206(2), or that period as extended by the Court under sub-section (3) of this section, has not expired at the commencement of the winding up or at the time of the appointment of the official manager and the notice is lodged before the expiration of that period.

History
S. 205(2A) inserted by No. 153 of 1981, s. 44.

205(3) [Court may extend period] The Court, if it is satisfied that the failure to lodge a notice in respect of a charge, or in respect of a variation in the terms of a charge, as required by any provision of this Division—

- (a) was accidental or due to inadvertence or some other sufficient cause; or
- (b) is not of a nature to prejudice the position of creditors or shareholders, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, by order, extend the period for such further period as is specified in the order.

History
S. 205(3) amended by No. 153 of 1981, s. 44.

205(4) [Avoidance of certain later charges] Where—

- (a) a registrable charge (in this sub-section referred to as the "later charge") is created before the expiration of 45 days after the creation of an unregistered registrable charge (in this sub-section referred to as the "earlier charge");

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(b) the later charge relates to all or any of the property to which the earlier charge related; and

(c) the later charge is given as a security for the same liability as is secured by the earlier charge or any part of that liability.

the later charge, to the extent to which it is a security for the same liability or part thereof, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or official manager of the company, notwithstanding that a notice in respect of the later charge was lodged with the Commission under section 201 within a period mentioned in paragraph (1)(c) or (d) of this section, unless it is proved to the satisfaction of the Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

History
S. 205(4)(a) amended by No. 153 of 1981, Sch. 3.

205(5) [Rights of third parties without notice] Nothing in sub-section (1) or (2A) operates to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if that person purchased the property in good faith and without notice of—

(a) the filing of an application for an order for the winding up of the company;

(b) the passing of a resolution for the voluntary winding up of the company; or

(c) the passing of a resolution that the company be placed under official management.

History
S. 205(5) amended by No. 153 of 1981, s. 44.

205(6) [Onus of proof] The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in paragraphs (5)(a), (b) and (c) is on the person asserting that the property was so purchased.

History
S. 205(6) inserted by No. 153 of 1981, s. 44.

SECTION 205A CHARGES IN FAVOUR OF CERTAIN PERSONS VOID IN CERTAIN CASES

205A(1) [Charges on property of a company] Where—

(a) a company creates a charge on property of the company in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge; and

(b) within 6 months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Court having, under sub-section (3), given leave for the charge to be enforced,

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are, and shall be deemed always to have been, void.

History
S. 205A(1) inserted by No. 192 of 1985, s. 62.

205A(2) [Deemed enforcement of charge] Without limiting the generality of sub-section (1), a person who—

(a) appoints a receiver of property of a company under powers conferred by an instrument creating or evidencing a charge created by the company; or

(b) whether directly or by an agent, enters into possession or assumes control of property of a company for the purposes of enforcing a charge created by the company,

shall be taken, for the purposes of sub-section (1), to take a step in the enforcement of the charge.

History
S. 205A(2) inserted by No. 192 of 1985, s. 62.

205A(3) [Leave for charge to be enforced] On application by the chargee under a charge, the Court may, if it is satisfied that—

(a) immediately after the creation of the charge, the company that created the charge was solvent; and

(b) in all the circumstances of the case, it is just and equitable for the Court to do so, give leave for the charge to be enforced.

History
S. 205A(3) inserted by No. 192 of 1985, s. 62.

205A(4) [Exemptions] Nothing in sub-section (1) affects a debt, liability or obligation of a company that would, if that sub-section had not been enacted, have been secured by a charge created by the company.

History
S. 205A(4) inserted by No. 192 of 1985, s. 62.

205A(5) [Title of person to property purchased for value] Nothing in sub-section (1) operates to affect the title of a person to property (other than the charge concerned or an interest in the charge concerned) purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if that person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the charge.

History
S. 205A(5) inserted by No. 192 of 1985, s. 62.

205A(6) [Onus of proof] The onus of proving that a person purchased property in good faith and without notice that a charge was created as mentioned in sub-section (5) is on the person asserting that the property was so purchased.

History
S. 205A(6) inserted by No. 192 of 1985, s. 62.

205A(7) [Interpretation] In this section—

“chargee”, in relation to a charge, means—

(a) in any case — the holder, or all or any of the holders, of the charge; or

(b) in the case of a charge that is an agreement to give or execute a charge in

206(5) [Notice under sec. 201] Nothing in section 201 requires the lodgment of a notice under that section in relation to a charge by reason only of the fact that the terms of the charge are varied only in a manner mentioned in this section.

SECTION 207 SATISFACTION OF, AND RELEASE OF PROPERTY FROM, CHARGES

207(1) [Memorandum of satisfaction of debt] Where, with respect to a charge registered under this Division—

(a) the debt or other liability the payment or discharge of which was secured by the charge has been paid or discharged in whole or in part; or

(b) the property charged or part of that property is released from the charge,

the person who was the holder of the charge at the time when the debt or the liability was so paid or discharged or the property or part of the property was released shall, within 14 days after receipt of a request in writing made by the company on whose property the charge exists, give to the company a memorandum in the prescribed form acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the property or that part of it is no longer subject to the charge, as the case may be.

207(2) [Lodgment] The company may lodge the memorandum with the Commission and, upon the memorandum being so lodged, the Commission shall enter in the Register particulars of the matters stated in the memorandum.

207(3) [Interpretation] The reference in sub-section (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released shall, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, be construed as a reference to the person who was, at that time, the trustee for debenture holders.

SECTION 208 LODGMENT OF NOTICES, OFFENCES, &c.

208(1) [By whom lodged] Where a notice in respect of a charge on property of a company is required to be lodged with the Commission under section 201 or 202 or sub-section 206(2), the notice may be lodged by the company or by any interested person.

208(2) [Offence] Where default is made in complying with section 201 or 202 or sub-section 206(2) in relation to a registrable charge on property of a company, the company and any officer of the company who is in default are each guilty of an offence.

208(3) [Offence] Where a person who becomes the holder of a registrable charge fails to comply with sub-section 206(1), the person and, if the person is a corporation, any officer of the corporation who is in default, are each guilty of an offence.

208(4) [Lodgment by person other than company] Where a document required by this Division other than sub-section 206(1) to be lodged with the Commission is so lodged by a person other than the company concerned, that person—

(a) shall, within 7 days after the lodgment of the document, give to the company a copy of the document; and

(b) is entitled to recover from the company the amount of any fees properly paid by him on lodgment of the document.

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favour of a person or persons, whether upon demand or otherwise — that person, or all or any of those persons;

“officer”, in relation to a company, includes, in the case of a registered foreign company, an agent of the registered foreign company as defined in Division 5 of Part XIII;

“receiver” includes a receiver and manager;

“relevant person”, in relation to a charge created by a company, means—

(a) a person who is at the time when the charge is created, or who has been at any time during the period of 6 months ending at that time, an officer of the company; or

(b) a person associated, in relation to the creation of the charge, with a person of a kind referred to in paragraph (a).

History
S. 206A(7) inserted by No. 192 of 1985, s. 62.

SECTION 206 ASSIGNMENT AND VARIATION OF CHARGES

206(1) [Notice to be given] Where, after a registrable charge on property of a company has been created, a person other than the original chargee becomes the holder of the charge, the person who becomes the holder of the charge shall, within 45 days after he becomes the holder of the charge—

(a) lodge with the Commission a notice stating that he has become the holder of the charge; and

(b) give the company a copy of the notice.

206(2) [Notice of certain variations to be lodged by company] Where, after a registrable charge on property of a company has been created, there is a variation in the terms of the charge having the effect of—

(a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge; or

(b) prohibiting or restricting the creation of subsequent charges on the property,

the company shall, within 45 days after the variation occurs, ensure that there is lodged with the Commission a notice setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument.

206(3) [Debts involving unspecified amounts or further advances] Where a charge created by a company secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the company in accordance with the terms of the charge shall not be taken, for the purposes of sub-section (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge.

206(4) [References to chargee] A reference in this section to the chargee in relation to a charge shall, if the charge is constituted by a debenture or debentures and there is a trustee for debenture holders, be construed as a reference to the trustee for debenture holders.

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SECTION 209 COMPANY TO KEEP DOCUMENTS RELATING TO CHARGES AND REGISTER OF CHARGES

209(1) [Company to keep copies] A company shall keep, at the place where the register referred to in sub-section (2) is kept, a copy of every document relating to a charge on property of the company that is lodged with the Commission under this Division or was lodged with a prescribed State authority¹ under Division 7 of Part IV of the *Companies Act, 1961*² and a copy of every document that is given to the company under this Division.

1. Vic.: Qd., W.A.: "the Commissioner for Corporate Affairs or the Registrar of Companies".
S.A.: "the Registrar of Companies or the State Commissioner".
Tas.: "the Registrar of Companies or the Commissioner for Corporate Affairs".
A.C.T.: "the Registrar of Companies".

2. Vic.: "Companies Act 1961".
Qd.: "The Companies Act of 1961".
S.A.: "Companies Act 1962-1981".
W.A.: "Companies Act 1961".
Tas.: "Companies Act 1961".
A.C.T.: "Companies Ordinance 1962".

209(2) [Register] A company shall keep a register and shall, upon the creation of a charge (whether registrable or not) on property of the company, or upon the acquisition of property subject to a charge (whether registrable or not), forthwith enter in the register particulars of the charge, giving in each case—

- (a) if the charge is a charge created by the company, the date of its creation or, if the charge was a charge existing on property acquired by the company, the date on which the property was so acquired;
- (b) a short description of the liability (whether present or prospective) secured by the charge;
- (c) a short description of the property charged;
- (d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee; and
- (e) the name of the person whom the company believes to be the holder of the charge.

^{History}
S. 209(2A) substituted by No. 153 of 1981, s. 45.

209(3) [Inspection] A register kept by a company pursuant to sub-section (2) shall be open for inspection—

- (a) by any creditor or member of the company — without charge; and
- (b) by any other person — on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

^{History}
S. 209(3) substituted by No. 26 of 1982, s. 103.

209(4) [Copies] A person may request a company to furnish him with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person—

- (a) if the company requires payment of an amount not exceeding the prescribed

amount — within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply — within 21 days after the request is made or within such longer period as the Commission approves.

^{History}
S. 209(4) substituted by No. 26 of 1982, s. 103.

209(5) [Offence] If default is made in complying with any provision of this section, the company and any officer of the company who is in default are each guilty of an offence.

SECTION 210 CERTIFICATES

210(1) [Commission's certificate — particulars of charge] Where particulars of a charge are entered in the Register in accordance with this Division, the Commission shall, on request by any person, issue to that person a certificate under the common seal of the Commission setting out those particulars and stating the time and date when a notice in respect of the charge containing those particulars was lodged with the Commission and, if the word "provisional" appears in the Register next to the reference to that time and date, stating that fact.

210(2) [Prima facie evidence] A certificate issued under sub-section (1) is *prima facie* evidence of the matters stated in the certificate.

210(3) [Commission's certificate — entry of particulars in Register] Where particulars of a charge are entered in the Register in accordance with this Division,

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and the word "provisional" does not appear in the Register next to the reference to the time and date when a notice in respect of the charge was lodged with the Commission, the Commission shall, on request by any person, issue to that person a certificate under the common seal of the Commission stating that particulars of the charge are entered in the Register in accordance with this Division.

210(4) [Conclusive evidence as to registration] A certificate issued under subsection (3) is conclusive evidence that the requirements of this Division as to registration (other than the requirements relating to the period after the creation of the charge within which notice in respect of the charge is required to be lodged with the Commission) have been complied with.

SECTION 211 REGISTRATION UNDER OTHER LEGISLATION RELATING TO CHARGES

211(1) [Registration may be unnecessary] Where, whether before or after the prescribed time, a notice in relation to a charge was or is required to be lodged with the Commission under this Division or the corresponding provisions of the law in force in a participating State or in a participating Territory—

- (a) the charge is not required to be registered under the provisions of the *Bills of Sale Act of 1898* or the *Liens on Crops and Wool and Stock Mortgages Act of 1898*;
- (b) no provision of those Acts relating to priorities applies to or in relation to the charge; and
- (c) a failure to register the charge under those Acts does not affect the validity, or limit the effect, of the charge.

History

S. 211(1) substituted by No. 13 of 1984, s. 6.

1. A.C.T.: For the words "law in force in a participating State or in a participating Territory" read "law of a participating State or participating Territory".
2. Vic.: For the words "*Bills of Sale Act of 1898* or the *Liens on Crops and Wool and Stock Mortgages Act of 1898*" read "*Instruments Act 1958*".
Qld.: For the words "*Bills of Sale Act of 1898* or the *Liens on Crops and Wool and Stock Mortgages Act of 1898*" read "*The Bills of Sale and Other Instruments Act of 1955* or *The Liens on Crops of Sugar Cane Act of 1931*".
S.A.: For the words "*Bills of Sale Act of 1898* or the *Liens on Crops and Wool and Stock Mortgages Act of 1898*" read "*The Bills of Sale Act, 1886, the Liens on Fruit Act, 1923, or the Stock Mortgages and Wool Liens Act, 1924*".
W.A.: For the words "*Bills of Sale Act of 1898* or the *Liens on Crops and Wool and Stock Mortgages Act of 1898*" read "*Bills of Sale Act 1899*".
Tas.: For the words "*Bills of Sale Act of 1898* or the *Liens on Crops and Wool and Stock Mortgages Act of 1898*" read "*Bills of Sale Act 1900 or the Stock, Wool, and Crop Mortgages Act 1930*".
A.C.T.: For the words "*Bills of Sale Act of 1898* or the *Liens on Crops and Wool and Stock Mortgages Act of 1898*" read "*Instruments Ordinance 1933*".
3. Vic., W.A.: For the words "those Acts" read "that Act".
Qld.: For the words "those Acts relating to priorities" read "those Acts relating to priorities, or the effect of registration as notice of an instrument or of its contents".
A.C.T.: For the words "those Acts" read "that Ordinance".
4. Vic., W.A.: For the words "those Acts" read "that Act".
Qld.: For the words "those Acts" read "*The Bills of Sale and Other Instruments Act of 1955* or *The Liens on Crops of Sugar Cane Act of 1931*, as the case may be".
A.C.T.: For the words "those Acts" read "that Ordinance".

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211(2) [Validity] Where—

- (a) a transfer, assignment or giving of security, whether before or after the prescribed time, by a company, a recognized company or a recognized foreign company is registrable under the *Bills of Sale Act of 1898*;
- (b) notice in relation to the transfer, assignment or giving of security was or is required to be lodged with the Commission under this Division or the corresponding provisions of the law in force in a participating State or in a participating Territory;
- (c) the transfer, assignment or giving of security has been or is registered under this Division or the corresponding provisions of the law in force in that State or Territory;

the transfer, assignment or giving of security is, subject to paragraph (1)(b), as valid and effectual as if it had been duly registered under the *Bills of Sale Act of 1898*.

History

S. 211(2) substituted by No. 13 of 1984, s. 6.

1. W.A.: For the word "security" read "power in relation to a chattel".
2. Vic.: For the words "*Bills of Sale Act of 1898*" read "Part IX of the *Instruments Act 1958*".
Qld.: For the words "*Bills of Sale Act of 1898*" read "a bill of sale under Part II of *The Bills of Sale and Other Instruments Act of 1955*".
S.A.: For the words "*Bills of Sale Act of 1898*" read "*The Bills of Sale Act, 1886*".
W.A.: For the words "*Bills of Sale Act of 1898*" read "*The Bills of Sale Act 1899* by way of security".
Tas.: For the words "*Bills of Sale Act of 1898*" read "as a bill of sale under the *Bills of Sale Act 1900*".
A.C.T.: For the words "*Bills of Sale Act of 1898*" read "Part III of the *Instruments Ordinance 1933*".
3. A.C.T.: For the words "law in force in a participating State or in a participating Territory" read "law of a participating State or participating Territory".
4. A.C.T.: For the words "law in force in that State or Territory" read "law of that State or Territory".
5. Vic.: For the words "*Bills of Sale Act of 1898*" read "Part IX of that Act".
Qld.: For the words "*Bills of Sale Act of 1898*" read "as a bill of sale under Part II of that Act".
S.A.: For the words "*Bills of Sale Act of 1898*" read "*The Bills of Sale Act, 1886*".
W.A.: For the words "it had been duly registered under the *Bills of Sale Act of 1898*" read "the provisions of that Act had been complied with and registration had been duly effected under that Act".
Tas.: For the words "under the *Bills of Sale Act of 1898*" read "as a bill of sale under that Act".
A.C.T.: For the words "*Bills of Sale Act of 1898*" read "Part III of that Ordinance".

211(3) [Crop liens] Where—

- (a) a crop lien given, whether before or after the prescribed time, by a company, a recognized company or a recognized foreign company is registrable under Part II of the *Liens on Crops and Wool and Stock Mortgages Act of 1898*;
- (b) notice in relation to the crop lien was or is required to be lodged with the Commission under this Division or the corresponding provisions of the law in force in a participating State or in a participating Territory; and
- (c) the crop lien has been or is registered under this Division or the corresponding provisions of the law in force in that State or Territory;

then, subject to paragraph (1)(b), the crop lien is as valid and effectual, and sections 5, 6, 7 and 10 of that Act have effect in relation to the crop lien, as if the crop lien had been duly registered under Part II of that Act.

History

S. 211(3) substituted by No. 13 of 1984, s. 6.

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1. Vic.: For the words "Part II of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "Part VII of the Instruments Act 1958".
 W.A.: For the words "under Part II of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "as a lien upon crops under Part II of the *The Bills of Sale and Other Instruments Act of 1955* or as a lien on crops of sugar-cane under *The Liens on Crops of Sugar Cane Act of 1931*".
 S.A.: For the words "Part II of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "the Liens on Fruit Act, 1923".
 W.A.: For the words "under Part II of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "pursuant to sections 7 and 8 of the *Bills of Sale Act 1899*".
 Tas.: For the words "under Part II of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "as a crop mortgage under the *Stock, Wool, and Crop Mortgages Act 1930*".
 A.C.T.: For the words "Part II of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "Part IV of the *Instruments Ordinance 1953*".
 A.C.T.: For the words "law in force in a participating State or in a participating Territory" read "law of a participating State or participating Territory".
 3. A.C.T.: For the words "law in force in that State or Territory" read "law of that State or Territory".
 4. Vic.: For the words "sections 5, 6, 7 and 10 of that Act have effect in relation to the crop lien, as if the crop lien had been duly registered under Part II of that Act" read "sections 62, 63, 64, 65 and 67 of that Act have effect in relation to the crop lien, as if the crop lien had been duly registered under Part VII of that Act".
 Qld.: For the words "sections 5, 6, 7 and 10 of that Act have effect in relation to the crop lien, as if the crop lien had been duly registered under Part II of that Act" read "sub-sections 32(2) and (3) of *The Bills of Sale and Other Instruments Act of 1955* or, in the case of a lien upon crops of sugar-cane, sections 8, 9, 15 and 19 of *The Liens on Crops of Sugar Cane Act of 1931* have effect in relation to the crop lien, as if the crop lien had been duly registered as a lien upon crops of sugar-cane, under Part II of *The Bills of Sale and Other Instruments Act of 1955* or, in the case of a lien on crops of sugar-cane, as such a lien under *The Liens on Crops of Sugar Cane Act of 1931*".
 S.A.: For the words "sections 5, 6, 7 and 10 of that Act have effect in relation to the crop lien, as if the crop lien had been duly registered under Part II of that Act" read "sections 4, 5, 6, 6a, 7 and 9 of the Liens on Fruit Act, 1923 have effect in relation to the crop lien as if it had been duly registered under that Act".
 W.A.: For the words "sections 5, 6, 7 and 10 of that Act have effect in relation to the crop lien, as if the crop lien had been duly registered under Part II of that Act" read "sections 7, 39 and 41 of that Act have effect in relation to the crop lien, as if the crop lien had been duly registered under that Act".
 Tas.: For the words "sections 5, 6, 7 and 10 of that Act have effect in relation to the crop lien, as if the crop lien had been duly registered under Part II of that Act" read "sub-sections 42(1), (4), and (5), sub-section 3(4), and sections 7 and 9 of that Act have effect in relation to the crop lien, as if the crop lien had been duly registered as a crop mortgage under that Act".
 A.C.T.: For the words "sections 5, 6, 7 and 10 of that Act have effect in relation to the crop lien, as if the crop lien had been duly registered under Part II of that Act" read "sections 18, 19 and 20, sub-section 21(1) and section 24 of that Ordinance have effect in relation to the crop lien, as if the crop lien had been duly registered under Part IV of that Ordinance".

211(4) [Wool liens] Where—

- (a) a wool lien given, whether before or after the prescribed time, by a recognized company or a recognized foreign company is registrable under Part III of the *Liens on Crops and Wool and Stock Mortgages Act of 1898*;
- (b) notice in relation to the wool lien was or is required to be lodged with the Commission under this Division or the corresponding provisions of the law in force in a participating State or in a participating Territory;
- (c) the wool lien has been or is registered under this Division or the corresponding provisions of the law in force in that State or Territory;

then, subject to paragraph (1)(b), the wool lien is as valid and effectual, and sections 12, 15, 19 and 20 of that Act have effect in relation to the wool lien, as if the wool lien had been duly registered under Part III of that Act.

History

S. 211(4) substituted by No. 13 of 1984, s. 6.

1. Vic.: For the words "Part III of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "Part VIII of the Instruments Act 1958".
 Qld.: For the words "under Part III of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "as a lien on wool under Part II of *The Bills of Sale and Other Instruments Act of 1955*".

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- S.A.: For the words "Part III of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "the Stock Mortgages and Wool Liens Act, 1924".
 W.A.: For the words "under Part III of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "pursuant to section 8 of the *Bills of Sale Act 1899*".
 Tas.: For the words "under Part III of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "as a wool mortgage under the *Stock, Wool, and Crop Mortgages Act 1930*".
 A.C.T.: For the words "Part III of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "Part V of the *Instruments Ordinance 1953*".
 2. A.C.T.: For the words "law in force in a participating State or in a participating Territory" read "law of a participating State or participating Territory".
 3. A.C.T.: For the words "law in force in that State or Territory" read "law of that State or Territory".
 4. Vic.: For the words "sections 12, 15, 19 and 20 of that Act have effect in relation to the wool lien, as if the wool lien had been duly registered under Part III of that Act" read "sections 71, 77 and 81 of that Act have effect in relation to the wool lien, as if the wool lien had been duly registered under Part VIII of that Act".
 Qld.: For the words "sections 12, 15, 19 and 20 of that Act have effect in relation to the wool lien, as if the wool lien had been duly registered under Part III of that Act" read "sections 25 and 26 of that Act have effect in relation to the wool lien, as if the wool lien had been duly registered as a lien on wool under Part II of that Act".
 S.A.: For the words "sections 12, 15, 19 and 20 of that Act have effect in relation to the wool lien, as if the wool lien had been duly registered under Part III of that Act" read "sections 15 and 16 of the Stock Mortgages and Wool Liens Act, 1924 have effect in relation to the wool lien, as if the wool lien had been duly registered under the Stock Mortgages and Wool Liens Act, 1924".
 W.A.: For the words "sections 12, 15, 19 and 20 of that Act have effect in relation to the wool lien, as if the wool lien had been duly registered under Part III of that Act" read "sections 42 and 43 of that Act have effect in relation to the wool lien, as if the wool lien had been duly registered under that Act".
 Tas.: For the words "sections 12, 15, 19 and 20 of that Act have effect in relation to the wool lien, as if the wool lien had been duly registered under Part III of that Act" read "sub-section 4(2), sub-section 5(4), and sections 7 and 9 of that Act, and section 11(e) of that Act applying section 37 of the *Bills of Sale Act 1900* have effect in relation to the wool lien, as if the wool lien had been duly registered as a wool mortgage under that Act".
 A.C.T.: For the words "sections 12, 15, 19 and 20 of that Act have effect in relation to the wool lien, as if the wool lien had been duly registered under Part III of that Act" read "section 26, sub-section 29(1) and section 33 and 34 of that Ordinance have effect in relation to the wool lien, as if the wool lien had been duly registered under Part V of that Ordinance".

211(5) [Stock mortgages] Where—

- (a) a stock mortgage given, whether before or after the prescribed time, by a company, a recognized company or a recognized foreign company is registrable under Part III of the *Liens on Crops and Wool and Stock Mortgages Act of 1898*;
 - (b) notice in relation to the stock mortgage was or is required to be lodged with the Commission under this Division or the corresponding provisions of the law in force in a participating State or in a participating Territory; and
 - (c) the stock mortgage has been or is registered under this Division or the corresponding provisions of the law in force in that State or Territory;
- then, subject to paragraph (1)(b), the stock mortgage is as valid and effectual, and sections 15, 19 and 20 of that Act have effect in relation to the stock mortgage, as if the stock mortgage had been duly registered under Part III of that Act.

History

S. 211(5) substituted by No. 13 of 1984, s. 6.

1. Vic.: For the words "Part III of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "Part VIII of the Instruments Act 1958".
 Qld.: For the words "under Part III of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "as a stock mortgage under Part II of *The Bills of Sale and Other Instruments Act of 1955*".
 S.A.: For the words "Part III of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "the Stock Mortgages and Wool Liens Act, 1924".
 W.A.: For the words "under Part III of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "pursuant to sections 7, 8 and 37 of the *Bills of Sale Act 1899*".
 Tas.: For the words "under Part III of the Liens on Crops and Wool and Stock Mortgages Act of 1898" read "as a stock mortgage under the *Stock, Wool, and Crop Mortgages Act 1930*".

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A.C.T.: For the words "Part III of the *Liens on Crops and Wool and Stock Mortgages Act of 1898*" read "Part V of the *Companies Ordinance 1933*".

2. A.C.T.: For the words "law in force in a participating State or in a participating Territory" read "law of a participating State or participating Territory".

3. A.C.T.: For the words "law in force in that State or Territory" read "law of that State or Territory".

4. Vic.: For the words "sections 15, 19 and 20 of that Act have effect in relation to the stock mortgage, as if the stock mortgage had been duly registered under Part III of that Act" read "sections 75, 77 and 81 of that Act have effect in relation to the stock mortgage, as if the stock mortgage had been duly registered under Part VIII of that Act".

Qld.: For the words "sections 15, 19 and 20 of that Act have effect in relation to the stock mortgage, as if the mortgage had been duly registered under Part III of that Act" read "sections 27 and 30 of that Act have effect in relation to the stock mortgage, as if the stock mortgage had been duly registered as a stock mortgage under Part II of that Act".

S.A.: For the words "sections 15, 19 and 20 of that Act have effect in relation to the stock mortgage, as if the mortgage had been duly registered under Part III of that Act" read "section 6 of the *Stock Mortgages and Wool Liens Act, 1924* and section 25 of that Act applying sections 20 and 27 of the *Bills of Sale Act, 1886* have effect in relation to the stock mortgage as if it had been duly registered under the *Stock Mortgages and Wool Liens Act, 1924*".

W.A.: For the words "sections 15, 19 and 20 of that Act have effect in relation to the stock mortgage, as if the stock mortgage had been duly registered under Part III of that Act" read "section 38 of that Act has effect in relation to the stock mortgage, as if the stock mortgage had been duly registered under that Act".

Tas.: For the words "sections 15, 19 and 20 of that Act have effect in relation to the stock mortgage, as if the stock mortgage had been duly registered under Part III of that Act" read "sub-section 3(3) and sections 7 and 9 of that Act have effect in relation to the stock mortgage, as if the stock mortgage had been duly registered as a stock mortgage under that Act".

A.C.T.: For the words "sections 15, 19 and 20 of that Act have effect in relation to the stock mortgage, as if the stock mortgage had been duly registered under Part III of that Act" read "sub-section 29(1) and sections 13 and 34 of that Ordinance have effect in relation to the stock mortgage, as if the stock mortgage had been duly registered under Part V of that Ordinance".

211(6) [Exemption for certain joint charges] Nothing is* this section applies in relation to a charge given, whether before or after the prescribed time, by a company, a recognized company or a recognized foreign company jointly with another person who is, or other persons at least one of whom is, neither a company, a recognized company nor a recognized foreign company.

History

S. 211(6) inserted by No. 13 of 1964, s. 6.

*CCH Note: Presumably "is" should read "in".

211(7) ["Prescribed time"] In this section, "prescribed time" means the commencement of section 6 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act (No. 1) 1964* of the Commonwealth.¹

History

S. 211(7) inserted by No. 13 of 1964, s. 6.

1. A.C.T.: Delete the words "of the Commonwealth".

211(8) ["Registered" defined] In this section, "registered"—

(a) in relation to a transfer, assignment or giving of security that is registrable as a bill of sale under the *Bills of Sale Act of 1898*, includes registered by way of renewal, or further renewal, of registration; and

(b) in relation to a crop lien or a wool lien that is registrable under the *Liens on Crops and Wool and Stock Mortgages Act of 1898*, includes registered by way of re-registration or further re-registration.¹

1. Vic.: A.C.T.: Delete sub. (b).

Qld.: Delete sub. (b) and substitute:

"(b) In this section, "registered"—

(a) in relation to a transfer, assignment or giving of security that is registrable as a bill of sale under the *Bills of Sale and Other Instruments Act of 1955*, includes registered by way of renewal, or further renewal, of registration,

(b) in relation to a crop lien that is registrable as a lien upon crops under the *Bills of Sale and Other Instruments Act of 1955*, includes registered by way of renewal, or further renewal, of registration, and

Australian Companies Legislation

Sec. 211(8)

(c) in relation to a crop lien that is registrable as a lien on crops of sugar-cane under the *Liens on Crops of Sugar Cane Act of 1931*, includes renewed or further renewed.

S.A.: Delete sub. (b) and substitute:

"(b) In this section, "registered" when used in relation to—

(i) The *Bills of Sale Act, 1886* in respect of an instrument that is a bill of sale; or

(ii) The *Stock Mortgages and Wool Liens Act, 1924* in respect of wool liens and stock mortgages,

includes registered by way of renewal, or further renewal, of registration."

W.A.: Delete sub. (b) and substitute:

"(b) In this section, a reference to the registration of a transfer, assignment or giving of power in relation to a chattel includes a reference to registration by way of renewal or further renewal."

Tas.: Delete sub. (b) and substitute:

"(b) In this section, "registered"—

(a) in relation to a transfer, assignment, or giving of security that is registrable as a bill of sale under the *Bills of Sale Act 1900*, includes registered by way of renewal, or further renewal, of registration;

(b) in relation to a stock mortgage that is registrable as a stock mortgage under the *Stock, Wool, and Crop Mortgages Act 1930*, includes registered by way of re-registration or further re-registration."

SECTION 212 POWER OF COURT TO RECTIFY REGISTER, &c.

212 Where the Court is satisfied—

(a) that a particular with respect to a registrable charge on property of a company has been omitted from, or mis-stated in, the Register or a memorandum referred to in section 207; and

(b) that the omission or mis-statement—

(i) was accidental or due to inadvertence or to some other sufficient cause; or

(ii) is not of a nature to prejudice the position of creditors or shareholders, or that on other grounds it is just and equitable to grant relief,

the Court may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the omission or mis-statement be rectified.

History

S. 212 substituted by No. 153 of 1981, s. 46.

SECTION 213 CHARGES ON PROPERTY OF RECOGNIZED COMPANIES OR RECOGNIZED FOREIGN COMPANIES

213 The provisions of the law in force in a participating State or in a participating Territory that correspond with the provisions of this Division (other than this section) and with Schedule 5 apply in and in relation to [name of State].—

(a) in relation to property of a recognized company incorporated in that participating State or participating Territory; and

(b) in relation to property in Australia and the external Territories of a recognized foreign company registered in that participating State or participating Territory.

1. A.C.T.: For "name of State" read "the Australian Capital Territory".

2. A.C.T.: For "law in force in a participating State or in a participating Territory" read "law of a participating State or participating Territory".

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CCH Australia Limited

SECTION 214 PROVISIONS APPLYING WHEN INCORPORATION TRANSFERRED

214(1) [Recognized company] Where a recognized company is registered as a company under Division 4 of Part III and, immediately before the company is so registered, a charge or charges on property of the company was or were registered under the provisions of the law of the State or Territory from which the company transferred its incorporation that correspond with this Division and was not or were not registered under this Division—

- (a) the Commission shall forthwith enter in the Register the time and date, and the particulars, entered in the Register of company charges kept under those provisions in relation to that charge or those charges; and
- (b) the time and date, and the particulars, so entered shall be deemed to have been entered in the Register in accordance with sub-section 203(2).

214(2) [Foreign company] Where a foreign company that was registered as a foreign company under the law in force in a participating State or in a participating Territory¹ is registered as a company under Division 4 of Part III and, immediately before the company is so registered, a charge or charges on property of the company was or were registered under the provisions of the law in force in that State or Territory² that correspond with this Division and was not or were not registered under this Division—

- (a) the Commission shall forthwith enter in the Register the time and date, and the particulars, entered in the Register of Company Charges kept under those provisions in relation to that charge or those charges; and
- (b) the time and date, and the particulars, so entered shall be deemed to have been entered in the Register in accordance with sub-section 203(2).

1. A.C.T.: For "law in force in a participating State or in a participating Territory" read "law of that State or Territory".
2. A.C.T.: For "law in force in that State or Territory" read "law of that State or Territory".

SECTION 215 POWER TO EXEMPT FROM COMPLIANCE WITH CERTAIN REQUIREMENTS OF DIVISION

215(1) [Commission may exempt] The Commission may, by instrument in writing, exempt a person, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with such of the requirements of section 201, 202 or 206 relating to—

- (a) the particulars to be contained in a notice under the relevant section;
- (b) the documents (other than the notice) to be lodged under the relevant section; or

[The next page is 73,401]

(c) the verification of any document required to be lodged under the relevant section, as are specified in the instrument.

215(2) [Conditional exemption] A person who is exempted by the Commission, subject to a condition, from compliance with a requirement of section 201, 202 or 206 shall not contravene or fail to comply with the condition.

215(3) [Order as to compliance] Where a person has contravened or failed to comply with a condition to which an exemption under this section is subject, the Court may, on the application of the Commission, order the person to comply with the condition.

SECTION 215A CHARGES CREATED BEFORE COMMENCEMENT OF THIS CODE

215A(1) [Charges created before 1 July 1982] Notwithstanding section 18 of the *Companies (Application of Laws) Act 1981*—

- (a) Division 7 of Part IV of the *Companies Act, 1961*¹; and
- (b) any other provisions of that Act that are necessary for the effectual operation of that Division, continue in force, as if that section had not been enacted, in relation to—
 - (c) any charge created by a corporation before the commencement of the *Companies (Application of Laws) Act 1981*²; and

(d) any charge to which property acquired by a corporation before the commencement of that Act was subject when the property was so acquired, and the provisions of this Division do not apply in relation to any such charge.

1. *Companies Act 1961* inserted by No. 26 of 1982, s. 105.
2. *Companies Act 1981* inserted by No. 26 of 1982, s. 105.

215A(2) [Partial repeal] Sub-section (1) operates in substitution for section 30 of the *Companies (Application of Laws) Act 1981*.³

1. *Companies Act 1981* inserted by No. 26 of 1982, s. 105.
2. *Companies Act 1981* inserted by No. 26 of 1982, s. 105.
3. *Companies Act 1981* inserted by No. 26 of 1982, s. 105.

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3. *Companies Act 1981* inserted by No. 26 of 1982, s. 105.

- (2) A registered charge on property of a company is postponed to—
- (a) a subsequent registered charge on the property, where the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created; and
- (b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created.
2. An unregistered charge on the property of a company has priority over—
- (a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under clause 1; and
- (b) another unregistered charge on the property created after the first-mentioned unregistered charge.
3. (1) Except as provided by the succeeding sub-clauses of this clause, any priority accorded by this Schedule to a charge over another charge does not extend to any liability that, at the priority time in relation to the first-mentioned charge, is not a present liability.
- (2) Where a registered charge on property of a company secures—
- (a) a present liability and a prospective liability of an unspecified amount; or
- (b) a prospective liability of an unspecified amount,
- any priority accorded by this Schedule to the charge over another charge of which the chargee in relation to the first-mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge.
- (3) Where a registered charge on property of a company secures—
- (a) a present liability and a prospective liability up to a specified maximum amount; or
- (b) a prospective liability up to a specified maximum amount,
- and the notice lodged with the Commission under section 201 or 202 in relation to the charge sets out the nature of the prospective liability and the amount so specified, then any priority accorded by this Schedule to the charge over another charge extends to any prospective liability secured by the first-mentioned charge to the extent of the maximum amount so specified, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability.
- (4) Where—
- (a) a registered charge on property of a company secures—
- (i) a present liability and a prospective liability up to a specified maximum amount; or
- (ii) a prospective liability up to a specified maximum amount,
- but the notice lodged with the Commission under section 201 or 202 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified; or
- (b) a registered charge on property of a company secures a prospective liability of an unspecified amount,

Australian Companies Legislation

Sch. 5

SCHEDULE 5

ORDER OF PRIORITY OF REGISTRABLE CHARGES

Section 204

1. (1) A registered charge on property of a company has priority over—
- (a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created;
- (b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created; and
- (c) an unregistered charge on the property created after the creation of the registered charge.

[The next page is 7A.451]

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the following provisions of this sub-clause have effect:

- (c) any priority accorded by this Schedule to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that had become a present liability at the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge; and
 - (d) any priority accorded by this Schedule to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge if, at that time, the terms of the first-mentioned charge required the chargee in relation to that charge to make the advance after that time, and so extends to that prospective liability whether the advance was made before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the advance was made.
- 3A. Where, by virtue of the definition of "priority time" in clause 6, a registered charge has 2 or more priority times each of which relates to a particular liability secured by the charge, each of those liabilities shall, for the purposes of this Schedule, be deemed to be secured by a separate registered charge the priority time of which is the priority time of the first-mentioned registered charge that relates to the liability concerned.
- History*
Reg. 3A inserted by No. 106 of 1983, s. 126.
4. A reference in this Schedule to a person having notice of a charge includes a reference to the person having constructive notice of the charge.
5. In this Schedule—
- (a) a reference to a prior registered charge in relation to another registered charge is a reference to a charge the priority time of which is earlier than the priority time of the other charge; and
 - (b) a reference to a subsequent registered charge in relation to another registered charge is a reference to a charge the priority time of which is later than the priority time of the other registered charge.
6. In this Schedule—

"priority time", in relation to a registered charge, means—

- (a) except as provided by paragraph (b) or (c) — the time and date appearing in the Register in relation to the charge, being a time and date entered in the Register pursuant to section 203;
- (b) where a notice has been lodged under section 202 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was already registered under Division 9 of Part IV — the earlier of earliest time and date appearing in the Register in relation to the charge, being a time and date entered in the Register pursuant to section 203; and
- (c) to the extent that the charge has effect as varied by a variation notice of which was required to be lodged with the Commission under sub-section 206(2) — the time and date entered in the Register in relation to the charge pursuant to sub-section 203(14);

"registered charge", means a charge that is registered under Division 9 of Part IV;

"unregistered charge", means a charge that is not registered under Division 9 of Part IV but does not include a charge that is not registrable.

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APPENDIX L

BRITISH COLUMBIA

PERSONAL PROPERTY SECURITY ACT TIMETABLE

- Draft Act released April, 1988
- Comments received September, 1988
- Introduction and passage of Act Spring, 1989
- Conversion of administrative systems required to implement Act Spring, 1989 to Spring, 1990
- Proclamation and implementation of Act Spring, 1990

MINISTRY OF FINANCE AND CORPORATE RELATIONS

APRIL, 1988

MESSAGE FROM THE MINISTER:

I am pleased to release a draft *Personal Property Security Act* for public review and comment.

The primary purpose of this proposed new legislation is to provide a comprehensive and modern regulatory structure for secured loan and credit transactions in British Columbia. It is designed as an effective alternative to the current system which, while it has served us well, is at times too complex and cumbersome.

Release of the draft *Personal Property Security Act* complements our government's continuing initiatives to support the development of the credit union, trust, insurance and international financial business sectors and to facilitate business activity in British Columbia.

Comments on the draft Act are welcomed by September 30, 1988.

After these comments have been reviewed, legislation will be finalized for introduction in the spring, 1989 session of the Legislature.

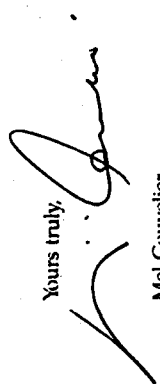
The year after, the administrative structure required to implement the legislation will be put in place and the *Personal Property Security Act* will be proclaimed in the spring of 1990.

A more detailed timetable is on the reverse.

Comments and questions should be directed to:

Registrar General
Corporate, Central and Mobile Home Registry
Ministry of Finance and Corporate Relations
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Yours truly,



Mel Couveller
Minister

BC227
DRAFT
PERSONAL
PROPERTY
SECURITY
ACT

Draft Personal Property Security Act



Province of British Columbia
Ministry of Finance and Corporate Relations

MINISTER OF FINANCE AND
CORPORATE RELATIONS.

DRAFT PERSONAL PROPERTY SECURITY ACT

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

PART 1

INTERPRETATION AND APPLICATION

Interpretation

1. In this Act

"accessions" means goods that are installed in or affixed to other goods;
 "account" means a monetary obligation not evidenced by chattel paper, an instrument or a security, whether or not it has been earned by performance;
 "building" includes a structure, erection, mine or work built, constructed or opened on or in land;
 "building materials" includes goods that are incorporated or built into a building so that their removal

- (a) 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
 - (b) 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 conveying devices or machinery installed in a building or on land for use in carrying on an activity inside the building or on the land.
- "chattel paper" means one or more writings that evidence both a monetary obligation and a security interest in or a lease of specific goods or specific goods and accessions but does not include a security agreement providing for a security interest in specific goods and after-acquired goods other than accessions;
- "collateral" means personal property that is subject to a security interest;
- "commercial consignment" means a transaction under which goods are delivered for sale, lease or other disposition to a consignee who, in the ordinary course of the consignee's business, deals in goods of that description, by a consignor who,
- (a) in the ordinary course of the consignor's business, deals in goods of that description, and
 - (b) 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;
- "consumer goods" means goods that are used or acquired for use primarily for personal, family or household purposes;
- "court" means the Supreme Court;
- "creditor" includes an assignee for the benefit of creditors and an executor, administrator or committee of a creditor;
- "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;
- "debtor" includes a person who owes payment or performance of an obligation secured, whether or not that person owns or has rights in the collateral, and includes one or more of the following:
- (a) a person who receives goods from another person under a commercial consignment;
 - (b) a lessee under a lease for a term of more than one year;
 - (c) a transferor of an account or chattel paper;
 - (d) except in the definition of "purchase money security interest" and in sections 7, 8 (1), 10, 11, 22, 29, 34, 35 (8), 39, 43, 59, 60, 61 and 62 (1)
- (b) a transferee of or successor to a debtor's interest in the collateral, and, if the debtor and the owner of, or person with an interest in, the collateral in which the security interest is taken are not the same person, the debtor is deemed to be either an owner of, or person with an interest in, the collateral in any provision of this Act dealing with the collateral, or an obligor in any provision of this Act dealing with the obligation, or both, where the context requires.
- "default" means the failure to pay or otherwise perform the obligation secured when due or the occurrence of an event or set of circumstances that, under

the terms of the security agreement, cause the security interest to become enforceable;

"document of title" means a writing issued by or addressed to a bailee that covers goods in the bailee's possession that are identified or are fungible portions of an identified mass, and in which it is stated that the goods identified in it will be delivered to a named person or the transferee of the person or to bearer or the order of a named person;

"equipment" means goods that are held by a debtor other than as inventory or consumer goods;

"financing change statement" means a writing in prescribed form;

"financing statement" means a writing in prescribed form required or permitted to be registered under this Act and, where the context requires, includes a financing change statement and a security agreement registered prior to the date this Act comes into force;

"fixture" does not include building materials;

"future advance" means the payment of money, the provision of credit or the giving of value secured by a security interest, whether or not given pursuant to a commitment, and includes advances and expenditures made for the protection, maintenance, preservation or repair of the collateral;

"goods" means tangible personal property other than chattel paper, a document of title, an instrument, a security or money, and includes fixtures, crops and the unborn young of animals, but does not include trees until they are severed or oil, gas or minerals until they are extracted;

"instrument" means

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

(b) any other writing that evidences a right to payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or

(c) a letter of credit or an advice of credit if the letter of credit or advice of credit states on it that it must be surrendered on claiming payment, but does not include chattel paper, a document of title or a security;

"intangible" means personal property other than goods, chattel paper, a document of title, an instrument, money or a security;

"inventory" means goods that are

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

(b) to be furnished or have been furnished under a contract of service,

(c) raw materials or work in progress, or

(d) materials used or consumed in a business;

"knowledge" means information acquired under circumstances in which a reasonable person would take cognizance of it, and

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

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

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

(ii) a senior employee of the corporation or association with responsibility for matters to which the information relates, under circumstances in which a reasonable person would take cognizance of it, or when the information in writing has been delivered to the registered office of the corporation or attorney for the corporation;

"lease for a term of more than one year" includes

(a) a lease for an indefinite term even though the lease is determinable by one or both of the parties not later than one year from the date of its execution,

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

(c) a lease for a term of less than one year where the lessee retains uninterrupted or substantially uninterrupted possession of the goods leased for a period in excess of one year after the day the lessee first acquired possession of them, but the lease does not become a lease for a term of more than one year until the lessee's possession extends for more than one year

but does not include

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

(e) 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

(f) a lease of prescribed goods, regardless of the length of the lease term, "money" means a medium of exchange authorized by the Parliament of Canada or authorized or adopted by a foreign government as part of its currency;

"obligation secured" means, when determining the amount payable under a lease that secures payment or performance of an obligation,

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

(b) any other amount payable pursuant to the terms of the agreement, and

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

less any amount paid prior to the determination;

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

"person" includes an association;

"proceeds" means identifiable or traceable personal property in any form and fixtures or crops derived directly or indirectly from any dealing with the collateral or proceeds of the collateral, and includes

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

(b) a payment made in total or partial discharge or redemption of an intangible, an instrument, a security or chattel paper and money, cheques, drafts and deposit accounts in deposit-taking institutions are cash proceeds and all other proceeds are non-cash proceeds.

"purchase" includes taking by sale, lease, discount, negotiation, mortgage, pledge, lien, issue, reissue, gift or any other consensual transaction creating an interest in property;

"purchase money security interest" means

- (a) a security interest taken in collateral to the extent that it secures payment of all or part of its purchase price,
- (b) a security interest taken in collateral by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire the rights,
- (c) the interest of a lessor of goods under a lease for a term of more than one year, and
- (d) the interest of a person who delivers goods to another person under a commercial consignment

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

"receiver" includes receiver-manager;

"registrar" means the registrar of the Personal Property Registry designated under section 42;

"registry" means the Personal Property Registry under section 42;

"secured party" means

- (a) a person who has a security interest,
- (b) the trustee, if a security interest is embodied in a trust indenture, and, in sections 17, 55, 56, 57, 58, 59 (1), (3), (12) and (15), 60, 62 (1) (a), 63 and 69, includes a receiver;

"security" means a share, stock, warrant, bond, debenture or similar document

- (a) that is in a form recognized in the area in which it is issued or dealt with as evidencing a share, participation or other interest in property or an enterprise, or

- (b) that evidences an obligation of the issuer and that in the ordinary course of business is transferred by delivery with the necessary endorsement, assignment or registration in the records of the issuer or agent for the issuer, or by compliance with restrictions on transfer, and includes an uncertificated security within the meaning of the *Company Act* or any other law relating to business corporations;

"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;

"security interest" means an interest in goods, a document of title, a security, chattel paper, an instrument, money or an intangible that secures payment or performance of an obligation, and, except as otherwise provided, includes

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

notwithstanding that the interest described in paragraphs (a), (b) and (c) do 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 the

equivalent to the order of the seller or to the order of an agent of the seller, unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods;

"specific goods" means goods identified and agreed on at the time the agreement in respect of those goods is made;

"trust indenture" means a deed, indenture or document, however designated, 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 another person is appointed as trustee for the holders of the debt obligations issued, guaranteed or provided for under the deed, indenture or document;

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

Scope of Act: security interests

2. (1) Subject to section 4, this Act applies to every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to any collateral.

(2) Without limiting the generality of subsection (1) and subject to section 4, this Act applies to a chattel mortgage, conditional sale, floating charge, pledge, trust indenture, trust receipt, assignment, consignment, lease, trust and transfer of chattel paper where they secure payment or performance of an obligation.

Scope of Act: non-security interests

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

Exclusions from scope of Act

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

- (a) a security agreement governed by a statute 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 the *Banks and Banking Law Revision Act, 1980* (Canada);
- (b) a lien, charge or other interest given by statute or rule of law;
- (c) the transfer of an interest or claim in or under a 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) a transfer of an unearned right to payment under a contract to a person who is to perform the transferor's obligations under the contract;
- (e) the creation or transfer of an interest in land including a lease;
- (f) a transfer of a right to payment that arises in connection with an interest in land, including a transfer of rental payments payable under a lease of land, but not including a right to payment evidenced by a security;

- (g) a sale of accounts or chattel paper as part of a sale of a business out of which they arose unless the vendor remains in apparent control of the business after the sale;
- (h) a transfer of accounts made solely to facilitate the collection of the accounts for the assignor;
- (i) an assignment for the general benefit of creditors made pursuant to an Act of the Parliament of Canada relating to insolvency;
- (j) a transfer of present or future wages, salary, pay, commission or any other compensation for labour or personal services;
- (k) a transfer of a right to damages in tort.

Law applicable: general rules for goods and collateral in possession of secured party

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

- (a) a security interest in goods, or
 - (b) a possessory security interest in a security, an instrument, a negotiable document of title, money or chattel paper
- is governed by the law of the jurisdiction where the collateral is situated when the security interest attaches.

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

- (a) not later than 60 days after the goods are brought into the Province,
- (b) not later than 15 days after the day the secured party has knowledge that the goods have been brought into the Province, or
- (c) prior to the date that perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached,

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

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

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

Law applicable: parties intend goods to be removed from jurisdiction

6. (1) Subject to section 7,

- (a) if the parties to a security agreement that creates a security interest in goods in one jurisdiction understand at the time the security interest attaches that the goods will be kept in another jurisdiction, and

- (b) if the goods are removed to the other jurisdiction, for purposes other than transportation through the other jurisdiction, not later than 30 days after the security interest attaches,

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

(2) Where the goods are removed to another jurisdiction, but are later brought into the Province, the security interest in the goods is deemed to be a security interest to which section 5 (2) applies if it was perfected under the law of the jurisdiction in which the goods were removed.

Law applicable: mobile goods, intangibles, etc.

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

- (a) at the place of business, if any, of the debtor,
- (b) at the chief executive office of the debtor, if the debtor has more than one place of business, and
- (c) at the place of residence of the debtor, if the debtor has no place of business.

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

- (a) a security interest in
 - (i) an intangible, or
 - (ii) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by the debtor to others, and
 - (b) a non-possessory security interest in a security, an instrument, a negotiable document of title, money or chattel paper
- is governed by the law, including the conflict of laws rules, of the jurisdiction where the debtor is located when the security interest attaches.

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

- (a) not later than 60 days after the day the debtor relocates or transfers an interest in the collateral to a person located in the other jurisdiction,
- (b) not later than 15 days after the day the secured party has knowledge that the debtor has relocated or has transferred an interest in the collateral to a person located in the other jurisdiction, or
- (c) prior to the date that perfection ceases under the law of the first jurisdiction,

whichever is the earliest.

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

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

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

- (5) A security interest referred to in subsection (4) may be perfected under this Act.
- (6) Notwithstanding section 6 and subsection (2) of this section, the validity, perfection and effect of perfection and non-perfection of a security interest that
- (a) is created by a debtor who, before extraction, has an interest in minerals or hydrocarbons, and
 - (b) attaches in respect of the minerals or hydrocarbons on 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.

Law applicable: substance and procedure

- 8. (1)** Notwithstanding sections 5, 6 and 7,
- (a) procedural issues involved in the enforcement of the rights of a secured party against collateral other than intangibles are governed by the law of the jurisdiction in which the collateral is located at the time of the exercise of the rights,
 - (b) procedural issues involved in the enforcement of the rights of a secured party against intangibles are governed by the law of the forum, and
 - (c) substantive issues involved in the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.
- (2) For the purposes of sections 5, 6 and 7, a security interest is perfected under the law of a jurisdiction when the secured party has complied with the law of the jurisdiction with respect to the creation and continuance of a security interest and the security interest has a status in relation to the interests of other secured parties, buyers, judgment creditors or a trustee in bankruptcy of the debtor, similar to that of an equivalent security interest created and perfected under this Act.

PART 2

VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

Effectiveness of a security agreement

- 9.** Subject to this and any other Act, a security agreement is effective according to its terms.

Writing requirements for security agreements

- 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.

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

(3) A description is inadequate for the purposes of subsection (1) (b) if it describes the collateral as consumer goods or equipment without further reference to the kind of collateral.

(4) A description of collateral as inventory is adequate for the purposes of subsection (1) (b) only while it is held by the debtor as inventory.

(5) A security interest in proceeds is not unenforceable against a third party by reason only that the security agreement does not contain a description of the proceeds.

Debtor to have copy of written security agreement

11. Where a security agreement is in writing, the secured party shall deliver a copy of the writing to the debtor within 10 days after it is executed, and, if the secured party fails to do so after a request by the debtor, a judge may, on application by the debtor, order the delivery of the copy to the debtor.

Attachment of security interests

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 as 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) For the purposes of subsection (1) (b) a debtor has rights in goods leased to him or consigned to him when he obtains possession of them pursuant to 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) oil, gas or minerals until they are extracted, or
- (d) trees until they are severed.

Security interests in after-acquired property

13. (1) Subject to subsection (2), where a security agreement provides for a security interest in after-acquired property, the security interest attaches in accordance with section 12 without specific appropriation by the debtor.

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

- (a) to crops that become growing crops more than one year after the security agreement is executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if the parties agree, attach to crops to be grown on the land concerned during the term of the lease, purchase or mortgage, or
- (b) to consumer goods other than an accession, unless the security interest is a purchase money security interest or a security interest in collateral obtained by the debtor as replacement for collateral described in the security agreement.

Future advances

14. A security agreement may provide for future advances.

Application of sale of goods law

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

Acceleration clauses

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

Rights and obligations of secured parties in possession of collateral

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

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

- (a) reasonable expenses, including the costs of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral, are chargeable to the debtor and secured by the collateral,
- (b) the risk of loss or damage to the collateral, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in insurance coverage,
- (c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and shall apply

any money so received, unless remitted to the debtor, immediately on its receipt in reduction of the obligation, and

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

(3) Subject to subsection (1), a secured party may use the collateral

- (a) in the manner and to the extent provided in the security agreement,
- (b) for the purposes of preserving the collateral or its value, or
- (c) pursuant to an order of a court.

Acquisition of information from secured parties

18. (1) The debtor, a creditor, a sheriff, 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 or security agreement containing a description of the personal property, or 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.

(3) The secured party, on the reasonable demand of the person entitled to receive a copy of the security agreement under subsection (1), shall permit him or his authorized representative to inspect the security agreement or a copy of it during normal business hours at the location mentioned in subsection (1)(e).

(4) Where a demand is made in accordance with subsection (1) (c) and the secured party claims a security interest in all of the personal property of the debtor, in all the property of the debtor other than a specified kind or item of property or in all of a specified kind of property of the debtor, the secured party may indicate this in lieu of approving or correcting the itemized list of the property.

(5) The secured party shall reply to 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 his reply is incomplete or incorrect, the person making the demand, in addition to any other

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

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

PART 3

PERFECTION AND PRIORITIES

When security interest is perfected

19. A security interest is perfected when

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

Subordination of unperfected security interests

20. 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, garnishment or attachment, or who has obtained a charging order or equitable execution affecting or relating to the collateral,
 - (ii) a sheriff who has seized or obtained a right to the collateral under the *Creditor Assistance Act*, or persons entitled to participate in the distribution of money resulting from the disposition of the collateral by the sheriff, and
 - (iii) a representative of creditors, but only for the purposes of enforcing the rights of a person mentioned in subparagraph (i) if the security interest is unperfected at the time that any of the interests of persons mentioned in subparagraph (i), (ii) or (iii) arise.
- (b) in collateral is not effective against a trustee in bankruptcy if the security interest is unperfected at the date of the bankruptcy, and
- (c) in chattel paper, a document of title, a security, an instrument, an intangible or goods is subordinate to the interest of a transferee who
 - (i) acquires an 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.

Measure of damages suffered by lessor

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 subordinated to a trustee in bankruptcy under section 20 (b), the lessor or consignor is deemed as

remedy provided by this Act, may apply to a court for an order requiring the secured party to comply with the demand.

(6) Where a person receiving a demand under subsection (1) or (3) no longer has an interest in the obligation or property of the debtor that is the subject of the demand, he shall, not later than 10 days after receiving the demand, disclose the name and address of his successor in interest and the latest successor in interest, if known to him, and if, without reasonable excuse, this is not done, the person making the demand, in addition to any other remedy provided in this Act, may apply to a court for an order requiring the person to whom the demand has been made to comply with this section.

(7) On application under subsection (5) or (6), the court may make an order requiring

- (a) the secured party in subsection (5) to comply with the demand mentioned in that subsection, or
- (b) the person receiving the demand in subsection (6) to disclose the information mentioned in that section,

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 mentioned in subsection (7) or on an application of the secured party mentioned in subsection (5) or the person mentioned in subsection (6) as receiving the demand, the court, subject to section 69 (1), may exempt the secured party or person receiving the demand in whole or in part from complying with subsection (5) or (6), other than a demand made by the debtor, or may extend the time for compliance.

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

- (a) the accuracy of the information contained in the reply to the demand under subsection (1) (b), (c) or (d), and
- (b) that the copy of the security agreement that he provided in response to a demand under subsection (1) (a) is a true copy of the security agreement required to be provided under subsection (1) (a).

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

- (a) the accuracy of the information contained in the reply to the demand under subsection (1) (b), (c) or (d), and
- (b) that the copy of the security agreement that is provided in response to a demand under subsection (1) (a) is a true copy of the security agreement required to be provided under subsection (1) (a)

unless

- (c) the person who relied on the reply knows that the interest has been transferred to the successor in interest and knows his identity and address, or

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.

Perfection of purchase money security interests

22. (1) A purchase money security interest in
 - (a) collateral, other than an intangible, that is perfected not later than 15 days after the date the debtor, or a third person at the request of the debtor, obtains possession of the collateral, whichever is earlier, or
 - (b) an intangible that is perfected not later than 15 days after the day the security interest attaches
 has priority over the interests of persons mentioned in section 20(a) and (b).
- (2) For the purposes of this section, where goods are shipped by common carrier to a debtor or to a person designated by the debtor, the debtor does not have possession of the goods until the debtor or the third person at the request of the debtor has obtained actual possession of the goods or documents of title to the goods, whichever is earlier.

Continuity of perfection

23. (1) If a security interest is originally 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.

Perfection by possession of collateral

24. (1) Subject to section 19, possession of the collateral by the secured party, or on his behalf by another person, perfects a security interest in
 - (a) chattel paper,
 - (b) goods,
 - (c) an instrument,
 - (d) a security,
 - (e) a negotiable document of title, 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.
- (3) Where the collateral is a security, the transfer of which may be effected by the making of the appropriate entries in the records of a clearing corporation as provided in the law applicable to the transfer of securities, a secured party is deemed to have taken possession of the security when the appropriate entries have been made so as to indicate a transfer of the security to the secured party.

Perfection by registration

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

Temporary perfection

26. (1) A security interest perfected under section 24 in
 - (a) an instrument or a security that a secured party delivers to the debtor for the purpose of
 - (i) ultimate sale or exchange,
 - (ii) presentation, collection or renewal, or
 - (iii) registration of transfer, or
 - (b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of
 - (i) ultimate sale or exchange,
 - (ii) loading, unloading, storing, shipping or transshipping, or
 - (iii) manufacturing, processing, packaging or otherwise dealing with the goods in a manner preliminary to their sale or exchange
 remains perfected for the first 15 days after the collateral comes under the control of the debtor.
- (2) After the expiration of the period of time mentioned in subsection (1), a security interest mentioned in this section is subject to the provisions of the Act relating to the perfection of a security interest.

Perfection where goods in hands of bailees

27. (1) Subject to section 19, a security interest in goods in the hands of a bailee is perfected by
 - (a) issue of a document of title by the bailee in the name of the secured party,
 - (b) perfection of a security interest in a negotiable document of title to the goods where the bailee has issued one,
 - (c) holding by the bailee on behalf of the secured party pursuant to section 24,
 - (d) deposit, by a secured party to whom a non-negotiable receipt has been transferred, of the transfer with the warehouseman who issued the receipt, in accordance with section 21(2) of the *Warehouse Receipt Act*, or
 - (e) registration of a financing statement relating to the goods.
- (2) The issue of a negotiable document of title covering goods does not preclude any other security interest in the goods arising during the period that the negotiable document of title is outstanding.
- (3) A perfected security interest in a negotiable document of title covering goods takes priority over a security interest in goods otherwise perfected after the goods become covered by the negotiable document of title.

Security interests in proceeds

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

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

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

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

- (a) by 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 registering 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 registration of a financing statement that covers the original collateral, if the proceeds are cash proceeds.
- (3) Where the security interest in the original collateral was perfected other than in a manner mentioned in subsection (2), the security interest in the proceeds is a continuously perfected security interest but becomes unperfected on the expiration of 15 days after the security interest in the original collateral attaches to the proceeds.

Security interests in returned or repossessed goods

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

- (a) the goods are returned, seized or repossessed, and
 - (b) the obligation secured remains unpaid or unperformed.
- (2) Where a security interest reattaches under subsection (1), the perfection of the security interest and the time of registration or perfection is determined as if the goods had not been sold or leased if the security interest was perfected by registration at the time of the sale or lease and the registration is effective at the time of the return, seizure or repossession.

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

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

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

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

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

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

- (a) a security interest in the goods arising under subsection (1), and
- (b) a security interest in the goods as after-acquired property that attaches on the return, seizure or repossession of the goods

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

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

Protection of buyer or lessee of goods

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

"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.

"the ordinary course of business of the seller" includes the supply goods in the ordinary course of business as part of a contract of services and materials.

(2) A buyer or lessee of goods sold or leased in the ordinary course of business of the seller or lessor takes free of any perfected or unperfected security interest in the goods given by the seller or lessor or arising under section 28 or 29, whether or not the buyer or lessee knows of it, unless the buyer or lessee also knows that the sale or lease constitutes a breach of the security agreement under which the security interest was created.

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

- (a) gave new value for the interest acquired, and
 - (b) bought or leased the goods without knowledge of the security interest.
- (4) Subsection (3) does not apply to a security interest in
- (a) a fixture, or
 - (b) goods the purchase price of which exceeds \$1 000 or, in the case of a lease, the market value of which exceeds \$1 000.

(5) A buyer or lessee of goods takes free from a security interest that is temporarily perfected under section 26 (1), 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 mentioned 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 the buyer or lessee

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

Priority of liens

32. Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien of his 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.

Transfer of debtors' rights in collateral

33. The rights of a debtor in collateral may be transferred consensually or by operation of law notwithstanding a provision in a security agreement prohibiting transfer or declaring a transfer to be a default, but a transfer by the debtor does not prejudice the rights of the secured party under the agreement or otherwise, including the right to treat a prohibited transfer as an act of default.

Purchase money security interests

34. (1) Subject to section 28, a purchase money security interest in
- (a) collateral or its proceeds other than intangibles or inventory, that is perfected not later than 15 days after the day the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier, or
 - (b) an intangible or its proceeds that is perfected not later than 15 days after the day the security interest in the intangible attaches has priority over any other security interest in the same collateral given by the same debtor.
- (2) Subject to subsection (5) and section 28, a purchase money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor if
- (a) the purchase money security interest in the inventory is perfected at the time the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier,
 - (b) the secured party gives a notice to any other secured party who has registered a financing statement or security agreement containing a description that includes the same item or kind of collateral before the time of registration of the purchase money security interest,
 - (c) the notice referred to in paragraph (b) states that the person giving the notice expects to acquire a purchase money security interest in inventory of the debtor, and describes the inventory by item or kind, and
 - (d) the notice is given before the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier.
- (3) A notice mentioned in subsection (2) may be given in accordance with section 72 or by registered mail addressed to the address of the person to be notified as it appears in the security agreement or financing statement mentioned in subsection (2) (b).

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

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

(8) A sale or lease under subsection (2), (3), (5) or (6) may be for cash, by exchange for other property or on credit and includes delivering goods or documents of title to goods under a pre-existing contract for sale, but does not include a transfer as security for, or in total or partial satisfaction of, a money debt or past liability.

Protection of transferees of negotiable and quasi-negotiable collateral

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

- (a) acquired the money without knowledge that it was subject to a security interest, or
 - (b) is a holder for value, whether or not he acquired the money without knowledge that it was subject to a security interest.
- (2) A creditor who receives an instrument drawn or made by a debtor and delivered in payment of a debt owing to the creditor by that debtor has priority over a security interest in the instrument whether or not the creditor has knowledge of the security interest at the time of delivery.
- (3) A purchaser of an instrument or a security has priority over a security interest in the instrument or security perfected under section 25 or temporarily perfected under section 26 or 28 (3) if the purchaser
- (a) gave value for the instrument or security,
 - (b) acquired the instrument or security without knowledge that it was subject to a security interest,
 - (c) subject to paragraph (d), took possession of the instrument or security, and
 - (d) where the security is an uncertificated security, has caused the appropriate entry to be made in the records of the appropriate clearing corporation indicating that the security has been transferred to him.
- (4) A holder of a negotiable document of title has priority over a security interest in the document of title that is perfected under section 25 or temporarily perfected under section 26 or 28 (3), if the holder
- (a) gave value for the document of title, and
 - (b) acquired the document of title without knowledge that it was subject to a security interest.
- (5) A purchaser of chattel paper who takes possession of the chattel paper in the ordinary course of his business and for new value has priority over any security interest in it that
- (a) was perfected under section 25, if the purchaser does not know at the time of taking possession that the chattel paper is subject to a security interest, or,

- (4) Subject to section 28 a purchase money security interest in goods and its proceeds, taken by a seller, lessor or consignee of the collateral, that is perfected (a) in the case of inventory, at the date the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier, and (b) in the case of collateral other than inventory, not later than 15 days after the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier, has priority over any other purchase money security interest in the same collateral given by the same debtor.
- (5) A non-proceeds security interest in accounts given for new value has priority over a purchase money security interest in the accounts as proceeds of inventory if a financing statement relating to the security interest in the accounts is registered before the purchase money security interest is perfected or a financing statement relating to it is registered.
- (6) A non-proceeds purchase money security interest has priority over a purchase money security interest in the same collateral as proceeds, if the non-proceeds purchase money security interest, (a) in the case of inventory, is perfected at the date the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier, and (b) in the case of collateral other than inventory, is perfected not later than 15 days after the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier.
- (7) For the purposes of this section, where goods are shipped by common carrier to a debtor or to a person designated by a debtor, the debtor is deemed not to have obtained possession of the goods until the debtor, or another person at the request of the debtor, has obtained actual possession of the goods or a document of title to the goods, whichever is earlier.
- (8) A perfected security interest in crops or their proceeds, given for value to enable a debtor to produce the crops and given during a period of 6 months immediately prior to the time the crops become growing crops, has priority over any other security interest in the crops given by the same debtor.
- (9) 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 animals or fish has priority over any other security interest in the animals or fish other than a perfected purchase money security interest.
- Residual priority rules**
- 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, (ii) possession of the collateral pursuant to section 24, or (iii) perfection under section 5, 7, 26, 29 or 77, whichever is the earliest, (b) a perfected security interest has priority over an unperfected security interest, and
- (c) priority between unperfected security interests is determined by the order of attachment of the security interests.
- (2) For the purposes of subsection (1), a continuously perfected security interest shall be treated at all times as perfected by the method by which it was originally perfected.
- (3) Subject to section 28, for the purposes of subsection (1), the time of registration, possession or perfection of a security interest in original collateral is also the time of registration, possession or perfection of its proceeds.
- (4) A security interest in goods, 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), (7) or (8) unless a financing statement relating to the security interest and containing a description of the goods by serial number is registered.
- (5) Subject to subsection (6), the priority that a security interest has under subsection (1) applies to all advances, including future advances.
- (6) A perfected security interest has priority over the interests of persons mentioned in section 20 (a) or (b) only to the extent of (a) advances made before the interests of the persons arise, or made before the sheriff seizes the collateral or obtains a right to it, (b) advances made before the secured party acquires knowledge of the interests of the persons, of seizure of the collateral by the sheriff or of an order giving the sheriff right to the collateral, (c) advances made pursuant to a legally binding commitment entered into by the secured party before acquiring the knowledge mentioned in paragraph (b), and (d) reasonable costs incurred and expenditures made by the secured party for the protection, preservation or repair of the collateral.
- (7) Where registration of a security interest lapses as a result of failure to renew the registration or where a registration has been discharged without authorization or in error, and the secured party re-registers the security interest not later than 30 days after the lapse or discharge, the lapse or discharge does not affect the priority status of the security interest in relation to a competing perfected security interest that immediately prior to the lapse or discharge had a subordinate priority position, except to the extent that the competing security interest secures advances made or contracted for after the lapse or discharge and prior to the re-registration.
- (8) Where a debtor transfers an interest in collateral which, at the time of the transfer, is subject to a perfected security interest, that security interest has priority over any other security interest granted by the transferee before the transfer, except to the extent that the security interest granted by the transferee secures advances made or contracted for after the transfer and at a time when the security interest granted by the debtor is unperfected through the operation of section 51.
- (9) Subsection (8) does not apply where the transferee acquires the debtor's interest free from the security interest granted by the debtor.

Security interests in fixtures

- 36.** (1) Except as provided in this section and in section 30, a security interest in goods that attaches before or at the time the goods become fixtures has

- priority with respect to the goods over a claim to the goods made by a person with an interest in the land.
- (2) A security interest mentioned in subsection (1) is subordinate to the interest of
- a person who acquires for value a registered interest in the land after the goods become fixtures,
 - an assignee for value of the interest of a person with a registered interest in the land at the time the goods become fixtures, and
 - any person with a registered mortgage on the land who
 - makes an advance under the mortgage, but only with respect to the advance, or
 - obtains an order for sale or foreclosure without fraud and before the security interest is registered in accordance with section 49.
- (3) A security interest in goods that attaches after the goods become fixtures is subordinate to the interest of a person who
- has an interest in the land at the time the goods become fixtures and who
 - has not consented to the security interest,
 - has not disclaimed an interest in the goods or fixtures,
 - has not entered into an agreement under which a person is entitled to remove the goods, or
 - is not otherwise precluded from preventing the debtor from removing the goods, or
 - acquires an interest in the land after the goods become fixtures, if the interest is acquired without fraud and before the security interest in the goods is registered in accordance with section 49.
- (4) A security interest mentioned in subsection (1) or (3) is subordinate to the interest of a creditor of the debtor who caused to be registered pursuant to the *Court Order Enforcement Act*, a judgment in the appropriate land title office affecting the land before the security interest is registered in accordance with section 49.
- (5) The interest of a creditor mentioned in subsection (4) does not take priority over a purchase money security interest in goods that is registered in accordance with section 49 not later than 15 days after the goods are affixed to the land.
- (6) A secured party who, under this Act, has the right to remove goods from land shall exercise this right of removal in a manner that causes no greater damage or injury to the land and to other property situated on it or that puts the occupier of the land to no greater inconvenience than is necessarily incidental to the removal of the goods.
- (7) A person, other than the debtor, who has an interest in the land at the time the goods subject to the security interest are affixed to the land is entitled to reimbursement for any damages to his interest in the land caused during the removal of the goods, but is not entitled to reimbursement for diminution in the value of the land caused by the absence of the goods removed or by the necessity of replacement.
- (8) The person entitled to reimbursement as provided in subsection (7) may refuse permission to remove the goods until the secured party has given adequate security for reimbursement.
- (9) The secured party may apply to a court for one or more of the following orders:
- determining the person entitled to reimbursement under this section;
 - determining the amount and kind of security to be provided by the secured party;
 - prescribing the depository for the security;
 - dispensing with the consent of any or all persons mentioned in subsection (8).
- (10) 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 amount secured by the security interest having priority over his interest.
- (11) 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 title 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
- the name and address of the secured party,
 - a description of the goods to be removed,
 - the amount required to satisfy the obligation secured by the security interest,
 - a description of the land to which the goods are affixed, and
 - a statement of intention to remove the goods unless the amount secured is paid on or before a specified date that is not less than 15 days after the notice is given in accordance with subsection (12).
- (12) A notice mentioned in subsection (11) shall be given at least 15 days before removal of the goods, and may be given in accordance with section 72 or by registered mail addressed to the address of the person to be notified as it appears in the records of the land title office.
- (13) A person entitled to receive a notice under subsection (12) may apply to a court for an order postponing removal of the goods from the land.
- Security interests in crops**
37. (1) Except as provided in this section, a security interest in crops has priority with respect to the crops over an interest in the crops claimed by a person with an interest in the land.
- (2) A security interest mentioned in subsection (1) is subordinate to the interest of
- a person who acquires for value a registered interest in the land while the crops are growing crops,
 - an assignee for value of the interest of a person with a registered interest in the land where the assignee acquires his interest for value and while the crops are growing crops, and
 - a person with a registered mortgage on the land who
 - makes an advance under the mortgage, but only with respect to the advance, or
 - obtains an order for sale or foreclosure without fraud and before the security interest in the growing crops is registered in accordance with section 49.
- (3) A security interest mentioned in subsection (1) is subordinate to the interest of a creditor of the debtor who causes to be registered pursuant to the

Court Order Enforcement Act a judgment in the appropriate land title office affecting the land on which the crops are growing before the security interest is registered in accordance with section 49.

(4) The interest of a creditor mentioned in subsection (3) does not take priority over a purchase money security interest in the crops, or a security interest in the crops mentioned in section 34 (8), that is registered in accordance with section 49 not later than 15 days after the time the security interest in the crops attaches.

(5) Section 36 (6) to (13) applies with all necessary modifications to seizure and removal of growing crops from land.

Security interests in accessions

38. (1) In this section

"other goods" means goods to which an accession is installed or affixed;

"the whole" means an accession and the goods to which the accession is installed or affixed.

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

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

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

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

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

- (a) has an interest in the other goods at the time the goods become an accession and who
 - (i) has not consented to the security interest,
 - (ii) has not disclaimed an interest in the accession,
 - (iii) has not entered into an agreement under which a person is entitled to remove the accession, or
 - (iv) is not otherwise precluded from preventing the debtor from removing the accession, or
- (b) acquires an interest in the whole after the goods become an accession, if the interest is acquired without knowledge and before the security interest in the accession is perfected.

(5) A security interest mentioned in subsections (2) and (4) is subordinate to the interest of a creditor or of a sheriff who has seized or caused the whole to be seized under legal process to enforce a judgment, if the seizure occurs under

circumstances referred to in section 20 and if the security interest is not perfected at the date of seizure.

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

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

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

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

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

- (a) determining the person entitled to reimbursement under this section;
- (b) determining the amount and kind of security to be provided by the secured party;
- (c) prescribing the depository for the security;
- (d) dispensing with the consent of any or all persons mentioned in subsection (9).

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

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

- (a) 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 obligation 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 secured is paid on or before a specified date that is not less than 15 days after the notice is given in accordance with subsection (13).

(13) A notice mentioned in subsection (12) shall be given at least 15 days before removal of the accession, and may be given in accordance with section 72 or by registered mail addressed to the address of the person to be notified as it appears on the security agreement or financing statement.

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

Security interests in processed or commingled goods

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

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

(3) A perfected purchase money security interest in goods that continues in the product or mass under subsection (1) has priority over

- (a) a non-purchase money security interest in the goods that continues in the product or mass under subsection (1),
- (b) a non-purchase money security interest in the product or mass, other than as inventory, given by the same debtor, and
- (c) a non-purchase money security interest in the product or mass as inventory given by the same debtor if

- (i) the secured party with the purchase money security interest in the product or mass gives a notice to any secured party with the non-purchase money security interest in the product or mass, who registers a financing statement containing a description of collateral that includes the product or mass, before the identity of the goods is lost in the product or mass,
- (ii) the notice contains a statement that the person giving the notice has acquired or expects to acquire a purchase money security interest in goods supplied to the debtor as inventory, and
- (iii) the notice is given before the identity of the goods is lost in the product or mass.

(4) A notice mentioned in subsection (3) (c) may be given in accordance with section 72 or by registered mail addressed to the address of the person to be notified as it appears in the financing statement mentioned in subsection (3) (c).

(5) This section does not apply to a security interest in an accession to which section 38 applies.

Subordination of security interests

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 person for whose benefit the agreement was intended.

Assignments of intangibles or chattel paper

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

(2) The rights of an assignee of collateral which 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 from it, and
- (b) any other defence or claim of the account debtor against the assignor that accrues before the account debtor receives notice of the assignment,

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

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

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

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

- (a) before the account debtor receives a notice that

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

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

- (b) after

- (i) the account debtor requests the assignee to furnish proof of the assignment, and
- (ii) the assignee fails to furnish the proof within 15 days from the date of the request.

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

PART 4 REGISTRATION

Personal Property Registry

42. (1) There shall be a registry known as the Personal Property Registry for the purposes of registrations under this Act and for registrations that are permitted or required to be registered under any other Act to be made in the registry.
- (2) The registrar may have a seal of office in the form prescribed.
- (3) The minister may designate a person as registrar.
- (4) The registrar may designate one or more persons as deputy registrars.
- (5) The registrar shall direct and supervise the operation of the registry under the direction of the minister.
- (6) Notwithstanding any regulation made under section 78, when in the opinion of the registrar, the circumstances are such that operation of the registry is not practicable, the registrar may
- (a) refuse to register financing statements,
 - (b) refuse to accept requests for search results, and
 - (c) otherwise suspend one or more of the functions of the registry for the period of time during which, in his opinion, the circumstances prevail.

Registration of financing statements

43. (1) A financing statement may be submitted for registration at an office of the registry.
- (2) Registration of a financing statement is effective from the date assigned to it in the office of the registry, and, where 2 or more financing statements are assigned the same date, the order of registration is determined by reference to the registration numbers placed on the financing statements in the registry office.
- (3) The registrar shall not register a financing statement or issue a search result under this Part until any prescribed fees have been paid or arrangements for their payment have been made.
- (4) Subject to this Act, a financing statement may be registered before a security agreement is made and before a security interest attaches.
- (5) A registration may relate to one or more than one security agreement.
- (6) The validity of the registration of a financing statement or a notice 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) Where collateral is of a kind that is required to be described in a financing statement by serial number and there is a seriously misleading defect, irregularity, omission or error in
- (a) the debtor's name, or
 - (b) the serial number of the collateral,
- the registration is invalid.
- (8) Nothing in subsections (6) and (7) shall require as a condition to a finding that a defect, irregularity, omission or error is misleading, proof that anyone was actually misled by it.

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

- (10) Failure to indicate the prior registration law on a financing change statement providing for the continuation of a registration under prior law as provided in section 77 is not seriously misleading for the purposes of subsection (6).

- (11) A person who fails to indicate in the prescribed manner the appropriate prior registration law on a financing change statement providing for the continuation of a registration under prior law fails to discharge an obligation within the meaning of section 69 to any person who has suffered damages as a result of reliance on the financing change statement.

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

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

Duration of and amendments to registrations

44. (1) Except as otherwise prescribed, 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, except as otherwise prescribed, the renewed registration is effective from the registration date of the renewal to the expiry of the period indicated on the financing change statement.

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

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

Registration of transfers of security interests

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

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

- (3) When a secured party transfers an interest in collateral and the security interest of the secured party is not perfected by registration, a financing

statement may be registered in which the transferee is disclosed as the secured party.

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

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

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

Registration documents

46. (1) Where a financing statement is registered in the registry, the registrar may have the statement photographed or otherwise reproduced, and the reproduction is for all purposes deemed to be the statement photographed or 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,
- (c) if the secured party fails to submit to the registrar a court order maintaining the registration under section 50, or
- (d) on receipt of an order of a court compelling the discharge or partial discharge of a registration.

Registration not constructive notice

47. For the purposes of this Act, registration of a financing statement in the registry is not constructive notice or knowledge of its existence or contents to third parties.

Registry searches

48. (1) A person may, in the manner prescribed, request one or more of the following:

- (a) a search against the name of a debtor and the issue of the search result;
 - (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 and the issue of the search result;
 - (c) a search according to a registration number and the issue of a search result;
 - (d) a 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 shown on a search result issued under this section is prima facie proof of the date of registration of

the financing statement, and the registration number as shown on the search result is prima facie proof of the order of registration of the financing statement.

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

Registration in land title office

49. (1) For the purposes of this section "secured party" includes any person identified on a notice as a secured party;

"debtor" includes any person identified on a notice as a debtor.

(2) A security interest in a fixture under section 36, and a security interest in a growing crop under section 37 may be registered by tendering a prescribed notice to the land title office for the land title district where the land is located to which the fixture or growing crop, as the case may be, has been or is to be attached or grown.

(3) The registrar of the land title 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 title 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 a subordination of the security interest to another interest, may be registered in the land title office, and, on its being so registered, the registrar of the land title office shall make a memorandum of it on the proper certificate of title or condominium plan, as the case may be.

(5) Sections 43 to 45 apply, with all necessary modifications, to a notice registered under this section.

(6) If a notice registered under this section expires, the registrar of the land title office in which it has been registered may vacate the registered notice and any other notice that relates to the same security interest and may strike a memorandum of the notice made on a certificate of title or condominium plan.

(7) A notice registered under this section may be discharged by registering a discharge.

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

- (a) all of the obligations under the security agreement to which the notice relates have been performed,
- (b) the secured party has agreed to release part or all of the collateral described in the notice,
- (c) the description of the collateral contained in the notice includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor, or
- (d) no security agreement exists between the secured party and the debtor,

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

(9) The demand under subsection (8) may require that,

- (a) in a case falling within subsection (8) (a) or (d), the registration of the notice be discharged,
- (b) in a case falling within subsection (8) (b), the registration be amended or discharged, as the case may be, to reflect the terms of the agreement, or
- (c) in a case falling within subsection (8) (c), the collateral description on the notice be amended to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor.

and the secured party shall amend or discharge the registration of the notice accordingly not later than 15 days after the demand is given.

(10) If the secured party fails to amend or discharge the notice as required in subsection (9), the person who has made the demand may require the registrar of the land title office in which the registration has been made pursuant to this section, to give notice in writing to the secured party stating that the registration will be discharged or amended, as the case may be, by the registrar in accordance with the demand, on the expiry of 40 days after the day the registrar gives the notice to the secured party, unless in the meantime the secured party tenders to the registrar a court order maintaining the registration.

(11) The demand mentioned in subsection (8) and the notice mentioned in subsection (10) may be given in accordance with section 72 or by registered mail addressed to the address of the secured party as it appears on the notice registered under this section.

(12) Section 50 (7) to (10) applies with all necessary modifications to a notice registered under this section.

(13) No fee or expense shall be charged and no amount shall be accepted by a secured party for compliance with a demand made under subsection (8).

Amendment or discharge of registrations

50. (1) For the purposes of this section,

"secured party" includes any person identified on a registered financing statement as a secured party;

"debtor" includes any person identified on a registered financing statement as a debtor.

(2) Where a registration relates exclusively to a security interest in consumer goods, the secured party shall discharge the registration not later than one month after all obligations under the security agreement creating the security interest are performed, unless prior to the expiry of that one month period the registration lapses.

(3) Where a financing statement is registered and

- (a) all of the obligations under the security agreement to which it relates have been performed,
- (b) the secured party has agreed to release part or all of the collateral described in the financing statement,
- (c) the description of the collateral contained in the financing statement includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor, or
- (d) no security agreement exists between the secured party and the debtor,

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

(4) The demand under subsection (3) may require that,

- (a) in a case falling within subsection (3) (a) or (d), the registration be discharged,
- (b) in a case falling within subsection (3) (b), the registration be amended or discharged, as the case may be, to reflect the terms of the agreement, or
- (c) in a case falling within subsection (3) (c), the collateral description be amended to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor.

and the secured party shall amend or discharge the registration not later than 15 days after the demand is given.

(5) If the secured party fails to amend or discharge the registration as required in subsection (4), the person who has made the demand may require the registrar to give a notice in writing to the secured party stating that the registration will be discharged or amended, as the case may be, by the registrar in accordance with the demand, on the expiry of 40 days after the day the registrar gives the notice to the secured party, unless in the meantime the secured party registers an order of a court maintaining the registration.

(6) The demand mentioned in subsection (3) and the notice mentioned in subsection (5) may be given in accordance with section 72 or by registered mail addressed to the address of the secured party as it appears on the security agreement or financing statement.

(7) If the secured party who has been given a notice mentioned in subsection (5) fails to

- (a) register a financing change statement amending or discharging the registration as required in the demand made under subsection (3), or
- (b) obtain a court order as provided in subsection (8)

before the expiry of 40 days after the notice has been given to him, the registrar may amend or discharge the registration to which the demand made under subsection (3) relates in accordance with the demand.

(8) On application to a court by the secured party, the court may order that the registration

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

(9) Subsections (5) and (7) do not apply to a registration of a security interest provided for in a trust indenture if the financing statement through which the security interest was registered indicates that the security agreement providing for the security interest is a trust indenture.

(10) Where a registration relates to a security interest created under a trust indenture and the secured party fails to amend or discharge the registration as required by subsection (4), the person making the demand under subsection (3) may apply to a court for an order directing that the registration be amended or discharged.

(11) No fee or expense shall be charged and no amount shall be accepted by a secured party for compliance with a demand made under subsection (3).

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

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

- (a) an interest, other than a security interest in the transferred collateral, arising in the period from the expiry of the 15th day after the transfer to, but not including, the day the secured party amends the registration to name the transferee of the collateral as the new debtor or takes possession of the collateral,
- (b) a perfected security interest in the collateral registered or perfected in the period mentioned in paragraph (a), and
- (c) a perfected security interest in the collateral registered or perfected after the transfer and before the expiry of the 15th day after the transfer if the registration of the security interest first mentioned in this subsection is not amended before the expiry of the 15 days.

(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 showing the transferee as the new debtor, where the debtor has transferred all or part of the debtor's interest in the collateral, or
- (b) the new name of the debtor, where there has been a change in the debtor's name,

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

- (c) an interest, other than a security interest, in the transferred collateral, arising in the period from the expiry of the 15th day after the secured party has knowledge of information mentioned in paragraph (a) or the new name of the debtor, as the case may be, to, but not including, the day the secured party amends the registration to name the transferee of the collateral as the new debtor, or to indicate the new name of the debtor, as the case may be, or takes possession of the collateral,
- (d) a perfected security interest in the collateral registered or perfected in the period referred to in paragraph (c), or
- (e) a perfected security interest in the collateral registered or perfected after the secured party has knowledge of the information mentioned in paragraph (a) or of the new name of the debtor, as the case may be, and before the expiry of the 15th day referred to in paragraph (c), if the registration of the security interest first mentioned in this subsection is not amended before the expiry of the 15 days.

(3) This section does not have the effect of subordinating a prior security interest under prior registration law deemed under section 77 to be registered under this Act.

(4) Where the debtor's interest in part or all of the collateral is transferred by the debtor without the consent of the secured party and there are one or more subsequent transfers of the collateral without the consent of the secured party before the secured party learns the name of the transferee who has possession of the collateral, 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 transferee who has possession of the collateral and the information required to register a financing change statement, and the secured party need not register financing change statements with respect to any intermediate transferee.

Recovery of loss caused by error in registry

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

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

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

(4) Notwithstanding the *Crown Proceeding Act*, no action may be brought against the Crown in right of the Province, the registrar or an officer or employee of the registry for any error or omission of the registrar or an officer or employee of the registry in respect of the discharge or purported discharge of any duty or function under this Act, the regulations or under any other Act except as provided in this section and in section 53.

Recovery of loss where trust deeds involved

53. (1) An action for recovery of damages under section 52 brought by a trustee under a trust indenture or by a person with an interest in a trust indenture shall be brought on behalf of all persons with interests in the same trust indenture, and the judgment in the action, except to the extent that it provides for subsequent determination of the amount of damages suffered by each person, constitutes a judgment between each person and the registrar in respect of each error or omission.

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

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

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

Payment of claim for loss

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

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

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

PART 5

RIGHTS AND REMEDIES ON DEFAULT

Default rights and remedies: general provisions

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

(2) Except as provided in sections 58 (2) and 67 the rights and remedies mentioned in this Part are cumulative.

(3) This Part does not apply to a transaction between a pledgor and a pawnbroker.

(4) In this Part, "receiver" includes receiver-manager except where the context indicates otherwise.

(5) The rights and remedies provided in a security agreement, in this Part and in section 17, shall be exercised in good faith and in a commercially reasonable manner.

(6) Subject to any other Act or rule 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 personal property as if the personal property were land in which case the secured party's rights, remedies and duties in respect of the land apply with necessary modifications as if the personal property were land, and this Part does not apply.

(7) Except as provided in section 67 a security interest does not merge merely because a secured party has reduced his claim to judgment.

Limitations on waiver of rights

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, remedies and obligations 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 statute or rule of law not inconsistent with this Act, and the rights and remedies provided in this Part and in section 17.

(2) Except as provided in subsection (3) and sections 17 (2) and 59, no provision of sections 17 or 58 to 69, 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.

(3) A spouse as defined in the *Family Relations Act* may, with respect to a security agreement entered into by the spouse pursuant to an order under section 52 (2) (f) of the *Family Relations Act* or a written separation agreement, in writing waive or release a right, benefit or protection given by section 67 (1) and (2) of this Act, but the waiver or release is void where the person relying on it is other than the spouse to whom it was given.

Collection of payments under intangibles or chattel paper

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

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

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

Right of seizure or repossession

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

- (a) the secured party has, unless otherwise agreed, the right to seize or repossess the collateral by any method permitted by law,
- (b) 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, if the secured party's interest is perfected by registration,
- (c) where paragraph (b) applies, 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, and
- (d) 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 necessary modifications, with respect to the goods covered by it.
- (2) Subject to subsection (3), where a debtor, who is in default under a security agreement that provides for a security interest in goods which at the time of execution of the agreement are being acquired or held as consumer goods by the debtor, has paid at least 2/3 of the total amount of the obligation secured, the secured party shall not seize the goods.
- (3) On application by the secured party, a court may order that subsection (2) does not apply, and the order may be subject to conditions.
- (4) In an application under subsection (3) the court may take into consideration all relevant circumstances, including the value of the collateral, the amount of the obligation that has been discharged, the reasons for default and the present and future financial circumstances of the parties.
- Regulation of disposition of collateral**
59. (1) After seizing or repossessing the collateral, a secured party may dispose of it in its condition either before or after repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to
- the reasonable expenses of seizing, repossessing, holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expenses incurred by the secured party, and
 - the satisfaction of the obligations secured by the security interest of the party making the disposition,
- and any surplus shall be dealt with in accordance with section 60.
- (2) Collateral may be disposed of
- by private sale,
 - by public sale, including public auction or closed tender with sale to the highest bidder or tenderer,
 - as a whole or in commercial units or parts, or
 - if the security agreement so provides, by lease or by deferred payment.
- (3) The secured party may delay disposition of the collateral in whole or in part.
- (4) Not less than 20 days prior to the disposition of the collateral, the secured party shall give notice of disposition to
- the debtor or any other person who is known by the secured party to be an owner of the collateral,
 - any creditor or person with a security interest in the collateral whose interest is subordinate to that of the secured party
- who has registered a financing statement using the name of the debtor or according to the serial number of the collateral when it is required or permitted for registration, or
 - whose security interest is perfected by possession at the time the secured party seized or repossessed the collateral, and
- any other person with an interest in the collateral who has given notice to the secured party of his interest in the collateral prior to the day that notice of disposition is given to the debtor.
- (5) The notice of disposition mentioned in subsection (4) shall contain
- a description of the collateral,
- the amount required to satisfy the obligation secured by the security interest,
 - the sum actually in arrears, exclusive of the operation of an 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,
 - the amount of the applicable expenses mentioned in subsection (1) (a) or, where the amount of the expenses has not been determined, a reasonable estimate,
 - a statement that on payment of the amounts due under paragraphs (b) and (d), any person entitled to receive the notice may redeem the collateral,
 - a statement that on payment of the sum in arrears or the curing of any other default, as the case may be, together with the amounts due under subsection (1) (a), the debtor may reinstate the security agreement,
 - a statement that, unless the collateral is redeemed or the security agreement is reinstated, it will be disposed of and the debtor may be liable for a deficiency, and
 - the date, time and place of any sale by public auction, or the place to which closed tenders may be delivered and the date after which closed tenders will not be accepted or after which any private disposition of the collateral is to be made.
- (6) Where the notice required by subsection (4) is given to a person other than the debtor, it need not contain the information specified in subsection (5) (c), (f), and (g).
- (7) A statement mentioned in subsection (5) (g) shall not contain reference to any liability on the part of the debtor to pay a deficiency if under this or any other Act or rule of law the secured party does not have the right to collect the deficiency from the debtor.
- (8) Not less than 20 days prior to the disposition of the collateral, a receiver shall give a notice to
- the debtor, and where the debtor is a corporation, a director of the corporation,
 - any other person who is known by the secured party to be an owner of the collateral,
 - a person mentioned in subsection (4) (b), and
 - any other person with an interest in the collateral who has given a notice to the receiver of his interest in the collateral prior to its disposition.
- (9) The notice mentioned in subsection (8) shall contain
- a description of the collateral,
 - a statement that unless the collateral is redeemed it will be disposed of, and
 - the date, time and place of any sale by public auction, or the place to which closed tenders may be delivered and the date after which closed tenders will not be accepted or after which any private disposition of the collateral is to be made.
- (10) The notice required by subsection (4) or (8) may be given in accordance with section 72 or, where it is to be given to a person who has registered a

financing statement, by registered mail addressed to the address of the person to whom it is to be given as it appears on the security agreement or financing statement.

(11) The secured party may purchase the collateral or any part of it at a public sale as mentioned in subsection (2) (b) but only for a price that bears a reasonable relationship to the market value of the collateral.

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

- (a) the interest of the debtor,
- (b) an interest subordinate to that of the debtor, and
- (c) an interest subordinate to that of the secured party

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

(13) Subsection (12) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 77 who has not been given a notice under this section.

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

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

- (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) for any other reason, a court on an ex parte application is satisfied that a notice is not required, or
- (e) after default, each person entitled to receive a notice of disposition consents in writing to the immediate disposition of the collateral.

Distribution of amounts realized from disposition of collateral

60. (1) Where a security agreement secures an indebtedness and the secured party has dealt with the collateral under section 57, or has disposed of it in accordance with section 59 or otherwise, any surplus shall, unless otherwise provided by law or by the agreement of all interested parties, be accounted for and paid in the following order to

- (a) a person who has a subordinate security interest in the collateral
 - (i) who registers a financing statement, using the name of the debtor or according to the serial number of the collateral when it may or is required to be registered, prior to the distribution of the surplus, or
 - (ii) whose interest was perfected by possession at the time the collateral was seized,

- (b) any other person with an interest in the surplus, if that person has given a notice of his interest to the secured party prior to the distribution, and

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

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

(2) The secured party shall give a written accounting of

- (a) the amount received from the disposition of collateral,
- (b) the manner in which the collateral was sold,
- (c) the amount of expenses as provided in sections 17 and 59, and
- (d) the distribution of the amount received from the disposition

to a person mentioned in subsection (1) within 30 days after receipt of a written demand for an accounting.

(3) Where there is a question as to who is entitled to receive payment under subsection (1), the secured party may pay the surplus into court and the surplus shall not be paid out except on an application under section 70 by a person claiming an entitlement to it.

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

Voluntary foreclosure

61. (1) After default, a secured party may propose to take the collateral in satisfaction of the obligation secured by it, and shall give a notice of the proposal to

- (a) the debtor or any other person who is known by the secured party to be an owner of the collateral,
- (b) a creditor or person with a security interest in the collateral whose interest is subordinate to that of the secured party
 - (i) who has registered a financing statement using the name of the debtor or according to the serial number of the collateral when it is required or permitted for registration, or
 - (ii) whose security interest is perfected by possession at the time the secured party seized or repossessed the collateral, and
- (c) another person with an interest in the collateral who has given a notice to the secured party of an interest in the collateral prior to the date that the notice is given to the debtor.

(2) If any person, who is entitled to a notice under subsection (1) and whose interest in the collateral would be adversely affected by the secured party's proposal, gives to the secured party a notice of objection within 15 days after the notice under subsection (1) is given, the secured party shall dispose of the collateral under section 59.

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

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

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

who has been given the notice.

(4) The notice required by subsection (1) may be given in accordance with section 72 or, if it is to be given to a person who has registered a financing statement, by registered mail addressed to the address of the person to whom it is to be given as it appears on the security agreement or financing statement.

(5) The secured party may request that a person mentioned in subsection (1), other than the debtor, furnish him with proof of that person's interest, and, unless the person furnishes the proof not later than 10 days after the secured party's request, the secured party may proceed as if no objection had been received from the person.

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

- (a) the person made the objection for a purpose other than the protection of an interest in the collateral or proceeds of a disposition of the collateral, or
- (b) the market value of the collateral is less than the total amount owing to the secured party and the costs of disposition.

(7) Where a secured party disposes of the collateral to a purchaser who

acquires his interest for value and in good faith and who takes possession of it, the purchaser acquires the collateral free from

- (a) the interest of the debtor,
- (b) an interest subordinate to that of the debtor, and
- (c) an interest subordinate to that of the secured party

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

(8) Subsection (7) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 77 who has not received a notice under this section.

Rights of redemption and reinstatement

62. (1) At any time before the secured party has disposed of the collateral or contracted for its disposition under section 59, or before the secured party is deemed to have irrevocably elected to retain the collateral under section 61,

- (a) a person entitled to receive a notice of disposition under section 59 (4) or (8) may, unless the person has otherwise agreed in writing after default, redeem the collateral by tendering fulfillment of the obligations secured by the collateral, or
- (b) the debtor may, unless the debtor has otherwise agreed in writing after default, reinstate the security agreement by paying the sums actually in arrears exclusive of the operation of an acceleration clause in the security agreement and by curing any other default by reason of which the secured party intends to dispose of the collateral, together with a sum equal to the reasonable expenses incurred by the secured party in seizing, repossessing, holding, repairing, processing, or otherwise preparing the collateral for disposition.

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

- (a) more than twice, if the security agreement provides for payment in full by the debtor within 12 months after the day value was given by the secured party, or
- (b) more than twice each year, if the security agreement provides for payment by the debtor during a period of time in excess of one year after the day value was given by the secured party.

Supervisory jurisdiction of court

63. (1) Subject to subsection (2), on application of a debtor, a creditor of a debtor, a secured party, a sheriff or a person with an interest in the collateral, a court may make one or more of the following orders:

- (a) make any order, including a binding declaration of right and injunctive relief, that is necessary to ensure compliance with this Part or section 17, 36, 37 or 38;
- (b) give directions to a person with respect to the exercise of his rights or the discharge of his obligations under this Part or section 17, 36, 37 or 38;
- (c) relieve a person from compliance with the requirements of this Part or section 17, 36, 37 or 38, but only on terms that are just and reasonable to all parties affected;
- (d) stay enforcement of rights provided in this Part or section 17, 36, 37 or 38;
- (e) make any order necessary to ensure protection of the collateral.

(2) Nothing in subsection (1) (c) and (d) affects the application of sections 58

(2) to (4) and 67.

Appointment and qualifications of receivers

64. (1) Subject to any other Act, a security agreement may provide for the appointment of a receiver and, except as provided in this Act, prescribe the rights and duties of the receiver, provided that only a person who is licensed as a trustee under the *Bankruptcy Act* (Canada) may be appointed pursuant to a security agreement as a receiver-manager.

(2) No person is qualified to act as a receiver appointed pursuant to a security agreement or an order of a court who is

- (a) under the age of 18 years,
- (b) found to be incapable of managing his own affairs by reason of mental infirmity,
- (c) a corporation, except a trust company registered under the *Trust Company Act* or a corporation licensed as a trustee under the *Bankruptcy Act* (Canada),
- (d) an undischarged bankrupt,
- (e) an insider, as defined in the *Company Act*, of an incorporated debtor or of any of its affiliates, as defined in the *Company Act*, an auditor of the debtor or a person who has been an insider or auditor of the debtor or an affiliate of an incorporated debtor within the preceding 2 years,
- (f) unless a court orders otherwise, a trustee under a trust indenture to which the debtor is a party,

- (g) unless a court orders otherwise, a person convicted in the Province or elsewhere of an offence in connection with the promotion, formation or management of a business or involving fraud, unless 5 years have elapsed since the expiration of the period fixed for suspension of the passing of sentence without sentencing or since a fine was imposed, or the term of imprisonment or probation imposed, if any, was concluded, whichever is the latest, but the disability imposed by this paragraph ceases on a pardon being granted under the *Criminal Records Act* (Canada), or
- (h) a person who does not reside in the Province, unless appointed by a court.

(3) Every person who

- (a) appoints a person to act as a receiver, or
(b) acts as a receiver or receiver-manager

when the person acting as a receiver or receiver-manager is not qualified to do so under subsection (1) or (2) commits an offence and is liable in damages as provided in section 69.

- (4) Unless otherwise ordered by a court, the acts of a person appointed as a receiver pursuant to a security agreement shall be valid notwithstanding that the person is not qualified to act as a receiver.

Reporting and disclosure obligations of receivers

65. (1) A receiver shall,

- (a) not later than 14 days after being appointed receiver, publish a notice of the appointment in one issue of a local newspaper circulating in the district where the debtor's principal place of business in the Province is located,
- (b) take into custody or control the collateral in accordance with the security agreement or order providing for the appointment of the receiver but, unless appointed a receiver-manager or unless a court orders otherwise, shall not carry on the business of the debtor for more than 14 days after the appointment,
- (c) open and maintain in his name as receiver one or more accounts at a bank, credit union or other institution licensed to accept deposits in the Province, for the deposit of all money coming under his control as the receiver,
- (d) keep records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions involving collateral or other property of the debtor,
- (e) prepare monthly summaries of accounts of the administration of the collateral or other property of the debtor, and
- (f) indicate on every business letter, invoice, contract or similar document used or executed in connection with the receivership that he is acting as a receiver.
- (2) The debtor, a sheriff, a secured party with a security interest in the collateral in the custody or control of a receiver, or any other person with an interest in the collateral, or their authorized representative, may, by a demand in writing delivered to a receiver, require the receiver to provide copies of the summaries of accounts prepared in accordance with subsection (1) (e) or make

available the summaries for inspection during regular business hours at the place of business of the receiver in the Province.

- (3) The receiver shall comply with the demand mentioned in subsection (2) not later than 10 days from the date of receipt of the demand.

(4) The receiver may require payment in advance of a prescribed fee for each demand, but the sheriff and the debtor or, in the case of an incorporated debtor, a director of the debtor, are entitled to inspect or to receive a copy of each summary without charge.

Court supervision of receiverships

66. (1) On application by an interested person, a court may do one or more of the following:

- (a) appoint a receiver;
(b) remove, replace or discharge a receiver, whether appointed by a court or pursuant to a security agreement;
(c) give directions on any matter relating to the duties of a receiver;
(d) approve the accounts and fix the remuneration of a receiver;
(e) 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 the receiver is appointed, to make good any default in connection with the receiver's custody, management or disposition of collateral or of other property of the debtor or failure to comply with this Part;
(f) exercise with respect to receivers appointed pursuant to a security agreement the jurisdiction that it has over receivers appointed by the court.
- (2) Unless a court orders otherwise, a receiver is required to comply with sections 59 and 60 only when the receiver deals with collateral other than in the ordinary course of operating the business of a debtor.
- (3) The powers referred to in subsection (1) and in section 63 are in addition to any other powers a court may exercise in its jurisdiction over receivers.

Rights and remedies: consumer goods

67. (1) Subject to section 58 (2), where a debtor is in default under a security agreement that provides for a security interest in goods which at the time of execution of the agreement are being acquired or held as consumer goods by the debtor, the secured party may

- (a) exercise his rights as provided in section 58,
(b) proceed as provided in section 61,
(c) accept surrender of the goods by the debtor, or
(d) subject to the terms of the agreement, bring action to recover a judgment or take proceedings to obtain a certificate under the *Creditor Assistance Act* against the debtor.

(2) Where the secured party proceeds under subsection (1) (a), (b) or (c), the debtor's unperformed obligations under the security agreement or a related agreement, other than a mortgage on land executed before July 1, 1973, and the obligations of a guarantor or of indemnitor with respect to such obligations are extinguished.

(3) Where the secured party exercises his rights under an agreement for sale or mortgage on land that also secures the obligation secured by a security interest in consumer goods but does not exercise his rights under subsection (1) (a), (b) or (c), the obligation is not thereby extinguished unless otherwise provided by the law relating to enforcement of security interests in land.

(4) Where a secured party who has a purchase money security interest in the goods mentioned in subsection (1) proceeds under paragraph (a), (b) or (c) with respect to some but not all of the goods, subsection (2) applies to that portion of the total obligation of the debt specifically identified in the security agreement as relating to the goods seized, repossessed or surrendered.

(5) Where a secured party proceeds under subsection (1) (d) and, as a result of legal proceedings taken to enforce a judgment against the debtor or proceedings to enforce a lien against the goods mentioned in subsection (1), the goods are seized and sold and the secured party receives money or other value as a result of the proceedings, the right of the secured party to recover under his judgment against the debtor or against a guarantor of or indemnitor with respect to the debtor's obligations under the security agreement is limited to the gross amount realized from the sale of the goods mentioned in subsection (1) under the proceedings.

(6) When the total amount received by the secured party as a result of legal proceedings to enforce a judgment against the debtor or proceedings to enforce a lien against the goods mentioned in subsection (1) is equal to the gross amount realized from the sale of such goods under the proceedings,

(a) any remaining liability of the debtor under a judgment obtained by the secured party through an exercise of his rights under subsection (1) (d), and

(b) the obligations of a guarantor of or indemnitor with respect to the obligations of the debtor under the security agreement are discharged.

(7) Where a secured party proceeds under subsection (1) (a) or (d) and it is discovered after seizure or repossession that an accession which was collateral under the security agreement has been removed and not replaced by other goods of equivalent value and free from any prior security interest, nothing in subsection (2), (4) or (5) bars the secured party from proceeding to recover or to enforce a judgment against the debtor or a guarantor of or indemnitor with respect to the obligations of the debtor under the security agreement to the extent of the value of the accession.

(8) If through willful or reckless acts or neglect on the part of the debtor or on the part of anyone in possession of the goods with the consent of the debtor, the goods have been substantially damaged or have been allowed to deteriorate to an extent greater than that which would normally be expected with respect to goods of that kind, a court, on application, may order that subsections (1) to (6) or any one or more of them do not apply so as to limit the rights and remedies of the secured party as otherwise provided in this Part.

(9) Where a security agreement provides for a security interest in collateral, other than goods mentioned in subsection (1), to secure an obligation and the secured party takes as additional security a guarantee of performance of the obligation or an indemnity with respect to it from a person other than a corporation,

(a) seizure or repossession of the collateral pursuant to section 58,

(b) acceptance of surrender of the collateral by the debtor, or
(c) taking possession of the collateral pursuant to section 61,
does not extinguish the obligations of the guarantor or indemnitor.

(10) When the secured party exercises his rights under subsection (1) (d),
(a) the security interest in the goods mentioned in subsection (1) is extinguished, and

(b) the secured party shall discharge any registration relating to the security interest not later than one month thereafter.

PART 6

MISCELLANEOUS

Supplementary law

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

Consequences of non-compliance with Act

69. (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 (13), 49, 50, 58 or 67, or

(b) in section 17, 18, 59, 60 or 61, and the collateral is consumer goods, the debtor or, in a case of non-compliance with section 49 or 50, the person named as debtor in a registration, shall be deemed to have suffered damages not less than the prescribed amount.

(3) In an action for a deficiency, the defendant may raise as a defence the failure on the part of the secured party to comply with obligations in section 17, 18, 59 or 60, but non-compliance shall limit the right to the deficiency only to the extent that it has affected the right of the defendant to protect his interest in the collateral or has made the accurate determination of the deficiency impracticable.

(4) Where a secured party fails to comply with obligations in section 17, 18, 59 or 60, the onus is on the secured party to show that the failure,

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

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

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

(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.

Conflicts with legislation in general

73. Except as otherwise provided in this Act or any other Act, if there is a conflict between a provision of this Act and a provision of any other Act other than a provision mentioned in section 74, the provision of this Act prevails.

Conflicts with consumer protection legislation

74. If there is a conflict between a provision of this Act and the *Consumer Protection Act*, the *Trade Practice Act* or a provision for the protection of consumers in any other Act, the provision of that Act prevails.

References to other Acts

75. (1) A reference in an Act, regulation or writing to the *Book Accounts Assignment Act*, the *Chattel Mortgage Act*, the *Company Act*, the *Mobile Home Act* or the *Sale of Goods on Condition Act* that relates to a security interest is deemed to be a reference to this Act, or to the corresponding provisions of this Act.

(2) A reference in an Act, regulation, agreement or document to a chattel mortgage, conditional sales contract, floating charge, pledge, assignment of book accounts or other similar agreement is deemed to be a reference to the corresponding kind of security agreement under this Act.

Transition: applicable law

76. (1) In this section and section 77

"prior law" means the law in force immediately before the coming into force of this Act;

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

(2) Subject to subsection (3), this Act applies

(a) to every security agreement made after this Act comes into force, including an agreement that renews, extends or consolidates an agreement made before this Act comes into force;

(b) to every security agreement made before this Act comes into force that has not been validly terminated in accordance with prior law before this Act comes into force; and

(c) subject to subsections (4) and (5), to every prior security interest that is not enforced or otherwise validly terminated in accordance with prior law before this Act comes into force.

(3) Sections 23, 24 (3) and (4), 25 (2), 26, 27 and 28 of the *Chattel Mortgage Act*, and sections 19, 20 (3) and (4), 22, 23 and 24 of the *Sale of Goods on Condition Act* apply to chattel mortgages and conditional sale contracts, respectively, executed before this Act comes into force, and sections 58 (2) to (4) and 67 do not apply to such transactions.

Summary proceedings

70. On application of an interested person, a court may

- (a) make an order determining questions of priority or entitlement to collateral, or
- (b) direct an action to be brought or an issue to be tried.

Extension of time for compliance

71. Where in sections 11, 36, 38 (13) and 43 (13) of this Act a time is prescribed not later than or before which an act or thing must be done, a court, on application made before or after the time has expired, may extend or abridge, conditionally or otherwise, the time for compliance.

Service of notices and demands

72. (1) A notice or demand under this Act means a notice or demand given to

- (a) 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) 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

- (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

- (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

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

- (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

(4) The validity of a prior security interest is governed by prior law.

(5) The order of priorities

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

Transition: registrations

77. (1) In this section, "prior registration law" means the *Book Accounts Assignment Act*, the *Chattel Mortgage Act*, the *Company Act*, the *Mobile Home Act* and the *Sale of Goods on Condition Act* as they existed immediately before the coming into force of this Act.

(2) Except as otherwise provided in this section, a prior security interest that, when this Act comes into force, 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 this Act comes into force.

(3) A registration of a prior security interest in

- (a) the office of the Registrar of Companies as provided by
 - (i) the *Company Act*,
 - (ii) section 4 (2) of the *Sale of Goods on Condition Act*, to the extent that the security interest is not taken in a motor vehicle as defined in the *Sale of Goods on Condition Act*,
 - (iii) section 7 of the *Chattel Mortgage Act*, to the extent that the security interest is not taken in a motor vehicle as defined in the *Chattel Mortgage Act*,
 - (iv) section 5 of the *Book Accounts Assignment Act*, to the extent it applies to a registration of an assignment made by a corporation, and
 - (v) section 136 of the *Railway Act*,
 - (b) the office of the Registrar General pursuant to section 75 (4) of the *Company Act*, or
 - (c) the office of the Provincial Secretary as provided in section 31 of the *Sale of Goods on Condition Act*
- is deemed to have been registered and perfected under this Act, and the perfected status of the interest expires 5 years from the date this section comes into force, 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 this Act comes into force.

(4) A registration of a prior security interest

- (a) in the form of a chattel mortgage referred to in section 10 of the *Chattel Mortgage Act*, granted to the Farm Credit Corporation, or
- (b) subject to subsection (5), in a mobile home as provided in the *Mobile Home Act*.

is deemed to have been registered and perfected under this Act, and the perfected status of the interest expires 3 years from the date this section comes into force, 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 this Act comes into force.

(5) A prior security interest in the form of

- (a) a floating charge, whether or not crystallized, or
- (b) a mortgage given by a corporation

under which a mobile home as defined in the *Mobile Home Act* is collateral is deemed to have been registered and perfected under this Act and the perfected status of the interest expires 5 years from the date this section comes into force, but may be further continued under this Act if the security interest could have been perfected by registration if it had attached after this Act comes into force.

(6) 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 for 3 years from the date this Act comes into force, after which it becomes unperfected unless, being a security interest that could have been perfected under this Act if it had arisen after this Act comes into force, it is otherwise perfected under this Act.

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

- (a) filed or registered under prior registration law, or
- (b) perfected under prior law through possession of the collateral by the secured party

may, if it is a security interest that could have been perfected by registration or possession under this Act if it had arisen after this Act comes into force, may be perfected by registration or possession in accordance with this Act.

(8) A prior security interest that under this Act may be perfected by the secured party taking possession of the collateral is perfected for the purposes of this Act when possession of the collateral is taken in accordance with section 24 whether the possession was taken before or after this Act comes into force and notwithstanding that under prior law the security interest could not be perfected by taking possession of the collateral.

(9) A prior security interest that, when this Act came into force, was covered by an unexpired filing or registration under prior registration law, which is perfected under this Act without registration or the secured party taking possession of the collateral, remains perfected under this Act.

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

Regulations

78. The Lieutenant Governor in Council may make regulations

- (a) respecting the kinds of goods the leases of which are not within the scope of this Act,
- (b) respecting the location and hours for the offices of the registrar or any of them.

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CONSEQUENTIAL LEGISLATION**

- (c) respecting the registry, including the transition from a prior registry system to the system established by this Act,
- (d) respecting fees including different fees for different periods of registration,
- (e) respecting the registration of financing statements,
- (f) respecting
 - (i) the form, content and manner of use of financing statements,
 - (ii) the form, content and manner of use of notices and certificates mentioned in this Act, including notices and discharges referred to in section 49, and
 - (iii) the manner in which collateral, including proceeds collateral, is described in financing statements and prescribing what kinds of goods may be or shall be described in part by serial number, and may make different regulations for different classes of persons,
- (g) respecting searches of the registry and the method of disclosure of registered information, including the form of a search result
- (h) requiring or permitting the use of statements to confirm the registration of information on financing statements and financing change statements,
- (i) respecting the registrar's power to amend a registration that contains an error caused by the act of the registrar or registry employees,
- (j) respecting abbreviations, expansions or symbols that may be used in a financing statement or other form, notice or document used in connection with the registration of security interests or the disclosure of information in the registry,
- (k) defining a word or expression used in this Act, and
- (l) respecting any matter required or authorized by this Act to be prescribed.

Adoption of the Personal Property Security Act will necessitate the following consequential legislation:

- ° Repeal of:
 - Sale of Goods on Condition Act, RSBC 1979, c. 373,
 - Chattel Mortgage Act, RSBC 1979, c. 48; and
 - Book Accounts Assignment Act, RSBC 1979, c. 32.
- ° Amendment of:
 - Company Act, RSBC 1979, c. 59,
 - Mobile Home Act, RSBC 1979, c. 281,
 - Repairers Lien Act, RSBC 1979, c. 363,
 - Woodworker Lien Act, RSBC 1979, c. 436,
 - Tug Boat Worker Lien Act, RSBC 1979, c. 417,
 - Warehouse Receipt Act, RSBC 1979, c. 427,
 - Sale of Goods Act, RSBC 1979, c. 370,
 - Forest Act, RSBC 1979, c. 140,
 - Railway Act, RSBC 1979, c. 354,
 - various taxation statutes; and
 - various private incorporation bills.

LAW REFORM SECTION: NEW ZEALAND
New Zealand. Law Commission
Reform of personal property security law
Preliminary paper ; 6 : 1988
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