

**PERSONAL PROPERTY  
SECURITY BILL**

**(The Bond Bill)**

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# PERSONAL PROPERTY SECURITY BILL

## TABLE OF PROVISIONS

<b>PART 1 - PRELIMINARY</b>		<b>4</b>
Section 1	Short title	4
Section 2	Commencement date	4
Section 3	Interpretation generally	4
Section 4	Meaning of possession in certain cases	4
Section 5	Meaning of “knowledge”	5
Section 6	Filing of financing statement not notice	5
Section 7	Application	5
Section 8	Scope of Act: security interests	5
Section 9	Scope of Act: security interests that do not secure payment or performance	6
Section 10	Exclusions from scope of Act	6
Section 11	Law applicable: general rules for goods and collateral in possession of secured party	7
Section 12	Law applicable: mobile goods, intangibles, etc.	7
Section 13	Law applicable: substance and procedure	8
<b>PART 2 - VALIDITY, ATTACHMENT, AND RIGHTS OF PARTIES TO A SECURITY AGREEMENT</b>		<b>8</b>
Section 14	Effectiveness of security agreement	8
Section 15	Writing requirements for security agreements	9
Section 16	Debtor to have copy of written agreement	9
Section 17	Attachment of security interests	9
Section 18	Security interests in after-acquired property	10
Section 19	Future advances	10
Section 20	Application of sale of goods law	10
Section 21	Rights and obligations of secured parties in possession of collateral	11
Section 22	Acquisition of information from secured parties	11
<b>PART 3 - PERFECTION AND PRIORITIES</b>		<b>14</b>
Section 23	When security interests are perfected	14
Section 24	Subordination of unperfected security interests	14
Section 25	Measure of damages suffered by lessor or consignor	15
Section 26	Security interests in favour of certain persons void in certain cases	15
Section 27	Perfection of purchase-money security interests	16
Section 28	Continuity of perfection	17
Section 29	Perfection by possession of the collateral	17
Section 30	Perfection by registration	17
Section 31	Temporary perfection	17
Section 32	Perfection if goods in hands of bailees	18
Section 33	Security interests in proceeds	18
Section 34	Security interests in returned or repossessed goods	19

Section 35	Protection of buyer or lessee of goods	20
Section 36	Protection of transferees of negotiable and quasi-negotiable collateral	21
Section 37	Priority of liens	22
Section 38	Transfer of debtors' rights in collateral	22
Section 39	Purchase-money security interests	23
Section 40	Residual priority rules	25
Section 41	Security interests in fixtures	26
Section 42	Security interests in crops	29
Section 43	Security interests in accessions	29
Section 44	Security interests in wool	32
Section 45	Security interests in processed or commingled goods	32
Section 46	Subordination or postponement of right to security interests	33
Section 47	Assignments of intangibles or chattel paper and security interests in deposit accounts	34
<b>PART 4 - REGISTRATION</b>		<b>36</b>
Section 48	Personal property registry	36
Section 49	Registration of financing statements	36
Section 50	Duration of and amendments to registrations	37
Section 51	Registration of transfers of security interests	38
Section 52	Registration documents	38
Section 53	Registration not notice	38
Section 54	Registry searches	39
Section 55	Registration in Land Titles Office	39
Section 56	Amendment or discharge of registrations	42
Section 57	Transfer of debtors' interests in collateral or change of debtors	43
Section 58	Recovery of loss caused by error in registry	45
Section 59	General	45
<b>PART 5 - RIGHTS AND REMEDIES ON DEFAULT</b>		<b>46</b>
Section 60	Application and interpretation	46
Section 61	Rights and remedies	47
Section 62	Collection of payments under intangibles or chattel paper	47
Section 63	Right of seizure or of repossession	48
Section 64	Disposition of collateral	49
Section 65	Distribution of amounts realized from disposition of collateral	51
Section 66	Voluntary foreclosure	52
Section 67	Rights of redemption and reinstatement	53
Section 68	Supervisory jurisdiction of the court	53
Section 69	Appointment and qualifications of receivers	54
<b>PART 6 - MISCELLANEOUS</b>		<b>54</b>
Section 70	Supplementary law	54
Section 71	Consequences of non-compliance with the Act	55
Section 72	Summary proceedings	55
Section 73	Extension of time for compliance	55

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Section 74	Service of statements, notices, and demands	55
Section 75	Conflicts with, and titles or consumer protection legislation	57
Section 76	Power to make regulations	57
<b>PART 7 - TRANSITION</b>		<b>58</b>
Section 77	TRANSITION PROVISIONS	58
<b>SCHEDULE 1 - DEFINITIONS</b>		<b>59</b>

# PERSONAL PROPERTY SECURITY BILL

**A Bill for an Act to reform the law relating to security interests in personal property.**

## PART 1 - PRELIMINARY

### SECTION 1 SHORT TITLE

This Act may be cited as the *Personal Property Security Act 2001*.

### SECTION 2 COMMENCEMENT DATE

This Act shall commence on [    ].

### SECTION 3 INTERPRETATION GENERALLY

- (1) Schedule 1 contains the principal definitions of words and expressions used in this Act.
- (2) Unless otherwise provided in this Act, the determination of whether goods are consumer goods, inventory or equipment is to be made as of the time when the security interest in the goods attaches.
- (3) Proceeds are traceable whether or not there is a fiduciary relationship between the person who has a security interest in the proceeds, as provided in section 33, and the person who has rights in or has dealt with the proceeds.

### SECTION 4 MEANING OF POSSESSION IN CERTAIN CASES

- (1) For the purposes of this Act, a person takes possession of a security if:
  - (a) in the case of a security that is evidenced by a security certificate, the person takes physical possession of that certificate; or
  - (b) in the case of a security that is traded or settled through a clearing house or securities depository, the clearing house or securities depository, as the case may be, records the interest of the person in the security; or
  - (c) in the case of a security that is not evidenced by a security certificate and that is not traded or settled through a clearing house or securities depository, the records maintained by the issuer, or on behalf of the issuer, record the interest of the person in the security; or
  - (d) in the case of an investment security that is held by a nominee, the records of the nominee record the interest of the person in the security.
- (2) For the purposes of this Act, a person takes possession of an instrument if:
  - (a) the person takes physical possession of the instrument; or
  - (b) in the case of an instrument that is settled or traded through a clearing house or securities depository, the clearing house or securities depository, as the case may be, records the interest of the person in the instrument.
- (3) For the purposes of this Act, a secured party is not in possession of collateral that is in the

actual or apparent possession of the debtor or the debtor's agent.

## **SECTION 5 MEANING OF "KNOWLEDGE"**

- (1) For the purposes of this Act:
- (a) An individual knows or has knowledge of a fact in relation to a particular transaction when that person has actual knowledge of the fact or receives a notice stating the fact or when information is acquired by that person under circumstances in which a reasonable person would take cognizance of it;
  - (b) An organisation knows or has knowledge of a fact in relation to a particular transaction when:
    - (i) the person within the organisation with responsibility for matters to which the transaction relates has actual knowledge of the fact; or
    - (ii) the organisation receives a notice stating the fact; or
    - (iii) the fact is communicated to the organisation in such a way that it would have been brought to the attention of the person with responsibility for matters to which the transaction relates if the organisation had exercised reasonable care.
- (2) For the purposes of subsection (1), an organisation exercises reasonable care if:
- (a) it takes reasonable steps to ensure that significant information is brought to the attention of the person within the organisation with responsibility for matters to which a particular transaction relates; but
  - (b) nothing in subparagraph (a) requires a person acting on behalf of the organisation to communicate information unless the communication is part of that person's regular duties or unless the person has reason to know of the transaction and that the transaction would be materially affected by the information.

## **SECTION 6 FILING OF FINANCING STATEMENT NOT NOTICE**

Filing of a financing statement in the filing office does not by itself constitute express, constructive or implied notice to any person, or express, constructive or implied knowledge on the part of any person, of:

- (a) the financing statement or its contents; or
- (b) the security interest perfected by the financing statement or the contents of any security agreement.

## **SECTION 7 APPLICATION**

This Act binds the Crown.

## **SECTION 8 SCOPE OF ACT: SECURITY INTERESTS**

Subject to section 10, this Act applies:

- (a) 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 the collateral; and
- (b) without limiting the generality of paragraph (a), to a chattel mortgage, a

conditional sale, a hire purchase agreement, a floating charge, a pledge, a trust deed, a trust receipt, an assignment, a consignment, a lease, a trust, and a transfer of chattel paper if they secure payment or performance of an obligation.

## **SECTION 9 SCOPE OF ACT: SECURITY INTERESTS THAT DO NOT SECURE PAYMENT OR PERFORMANCE**

Subject to sections 10 and 60, this Act applies to:

- (a) a transfer of an account or chattel paper;
- (b) a commercial consignment; and
- (c) a lease for a term of more than one year;

that do not secure payment or performance of an obligation.

## **SECTION 10 EXCLUSIONS FROM SCOPE OF ACT**

Except as otherwise provided in this Act or the regulations, this Act does not apply to the following:

- (a) a lien, charge or other interest given by a rule of law or by an enactment unless the enactment contains an express provision that this Act applies;
- (b) the creation or transfer of an interest or claim in or under a contract of annuity or policy of insurance except the transfer of a right to money or other value payable under a policy of insurance as indemnity or compensation for loss of or damage to collateral;
- (c) the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for labour or personal services other than fees for professional services, the assignment or transfer of which is prohibited by any statute or rule of law;
- (d) the transfer of an interest in an unearned right to payment under a contract to a transferee who is to perform the transferor's obligations under the contract;
- (e) the creation or transfer of an interest in land, other than an interest arising under a licence,
- (f) the creation or transfer of an interest in a right to payment that arises in connection with an interest in land, including an interest in rental payments payable under a lease of land;
- (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) the creation or transfer of an interest in a right to damages in tort;
- (j) an assignment for the general benefit of creditors made pursuant to a statute relating to insolvency;
- (k) a mortgage registered under the Shipping Registration (Cwth);

- (l) subject to section 47, a right of set-off.

**SECTION 11 LAW APPLICABLE: GENERAL RULES FOR GOODS AND COLLATERAL IN POSSESSION OF SECURED PARTY**

- (1) Subject to sections 12 and 13, 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 located when the security interest attaches.

- (2) For the purposes of subsection (1) a security with a clearing agency is located where the records of the clearing agency are kept.
- (3) Subject to sections 12 and 13, where:
  - (a) the parties to a security agreement that creates a security interest in goods in one jurisdiction understand at the time when the security interest attaches that the goods will be kept in another jurisdiction; and
  - (b) 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, the perfection, and the effect of perfection or non-perfection of the security interest are determined by the law of the other jurisdiction.

**SECTION 12 LAW APPLICABLE: MOBILE GOODS, INTANGIBLES, ETC.**

- (1) For the purposes of this section, a debtor is 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 the principal 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, other than a foreign registered ship, that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or are 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) The validity, perfection, and effect of perfection or non-perfection of a security interest in a foreign registered ship is governed by the law of the jurisdiction where the ship is registered at the time that the security interest attaches.
- (4) Despite section 11(3) and subsection (2) of this section, the validity, perfection and effect of perfection or non-perfection of a security interest in minerals or hydrocarbons or in an account resulting from the sale of the minerals at the minehead or the hydrocarbons at the wellhead:
  - (a) that is provided for in a security agreement executed before the minerals or hydrocarbons are extracted; and
  - (b) that attaches to the minerals or hydrocarbons upon extraction or attaches to an account upon sale of the minerals or hydrocarbons;

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

- (5) Despite subsection (2), the validity, perfection and effect of perfection and non-perfection of a security interest in a licence is governed by this Act.

### **SECTION 13 LAW APPLICABLE: SUBSTANCE AND PROCEDURE**

- (1) Despite sections 11 and 12:
  - (a) procedural issues involved in the enforcement of the rights of a secured party against collateral, other than an intangible, are governed by the law of the jurisdiction in which the collateral is located when the rights are exercised;
  - (b) subject to paragraph (c), procedural issues involved in the enforcement of the rights of a secured party against an intangible are governed by the law of the forum;
  - (c) procedural issues involved in the enforcement of the rights of a secured party against a licence are governed by this Act; and
  - (d) 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 11 and 12, 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, ATTACHMENT, AND RIGHTS OF PARTIES TO A SECURITY AGREEMENT**

### **SECTION 14 EFFECTIVENESS OF SECURITY AGREEMENT**

Except as otherwise provided in this Act and subject to any laws relating to insolvency, a

security agreement is effective according to its terms.

## **SECTION 15 WRITING REQUIREMENTS FOR SECURITY AGREEMENTS**

- (1) Subject to subsection (2), a security interest is enforceable against a third party only where:
  - (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, or by reference to one or more of the following: goods, securities, instruments, documents of title, chattel paper, intangibles, money, crops or licence; or
    - (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:
      - (A) specified items or kinds of personal property; or
      - (B) one or more of the following: goods, securities, instruments, documents of title, chattel paper, intangibles, money, crops or licences.
- (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) Subject to subsection (6), 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 item or 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 enforceable against a third party whether or not the security agreement contains a definition of the proceeds.
- (6) If personal property is excluded from a description of collateral, the excluded property may be described as consumer goods without further reference to the item or kind of property excluded.

## **SECTION 16 DEBTOR TO HAVE COPY OF WRITTEN AGREEMENT**

If a security agreement is in writing, the secured party must 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 court may, on application by the debtor, order delivery of the copy to the debtor.

## **SECTION 17 ATTACHMENT OF SECURITY INTERESTS**

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

- (a) value is given;
- (b) the debtor has rights in the collateral; and
- (c) except for the purpose of enforcing rights between the parties to the security agreement, the security agreement become enforceable under section 15;

unless the parties have specifically agreed to postpone the time for attachment in which case the security interest will attach at the time specified in the agreement.

- (2) For the purposes of subsection (1)(b) and without limiting other rights, if any, which the debtor has in the collateral, a debtor has rights in goods leased to the debtor or consigned to the debtor when the debtor obtains possession of them in accordance with the lease or consignment.
- (3) For the purposes of subsection (1), a debtor has no rights in any of the following:
  - (a) crops until they become growing crops;
  - (b) the young of animals until they are conceived;
  - (c) minerals or hydrocarbons until they are extracted;
  - (d) trees, other than crops, until they are severed.
  - (e) wool until the wool has started to grow.

## **SECTION 18 SECURITY INTERESTS IN AFTER-ACQUIRED PROPERTY**

- (1) Subject to section 17 and to subsection (2), a security agreement that provides for a security interest in after-acquired property attaches to that property in accordance with the terms of the agreement without any need for a specific appropriation by the debtor.
- (2) A security interest does not attach to after-acquired property that is:
  - (a) a crop that becomes a growing crop more than one year after the security interest has been entered into, except that a security interest in a crop that is given in conjunction with a lease, purchase or mortgage of land, may, if the parties agree, attach to a crop to be grown on the land during the term of the lease, purchase or mortgage; or
  - (b) consumer goods other than an accession, unless the security interest is a purchase money security interest or a security interest in collateral obtained by the debtor as replacement for collateral described in the security agreement.

## **SECTION 19 FUTURE ADVANCES**

- (1) A security agreement may secure future advances.
- (2) Unless the parties otherwise agree, an obligation owing to a debtor to make future advances is not binding on a secured party if the collateral has been seized, attached, charged or made subject to an equitable execution under the circumstances described in section 24 and the secured party has knowledge of this fact before making the advances.

## **SECTION 20 APPLICATION OF SALE OF GOODS LAW**

If 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 obligation with respect to the goods.

## **SECTION 21 RIGHTS AND OBLIGATIONS OF SECURED PARTIES IN POSSESSION OF COLLATERAL**

- (1) In this section, "secured party" includes a receiver.
- (2) A secured party must use reasonable care in the custody and preservation of collateral in the possession of the secured party and, unless the parties otherwise agree, in the case of an instrument, a security or chattel paper, reasonable care includes taking necessary steps to preserve rights against other persons.
- (3) Unless otherwise agreed, if 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, maintaining possession of and preserving the collateral, are chargeable to the debtor and secured by the collateral;
  - (b) the risk of loss or damage to the collateral, unless 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, such as the young of animals or dividends paid in additional shares received from the collateral, and must apply any money so received, unless remitted to the debtor, immediately on its receipt to reduce the obligation secured by the collateral; and
  - (d) the secured party must keep the collateral identifiable, but fungible collateral may be commingled.
- (4) Subject to subsection (2), 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
  - (c) in accordance with an order of a court in the manner directed.

## **SECTION 22 ACQUISITION OF INFORMATION FROM SECURED PARTIES**

- (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:
  - (a) at the secured party's most recent address set out in a filed financing statement that relates to the property; or
  - (b) at the current address of the secured party, if known by the person who makes the demand, whether or not in the records of the filing office;

require the secured party to send or make available the information specified in subsection (2) 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.

- (2) The information that may be demanded under subsection (1) may be one or more of the following:

- 
- (a) a copy of any security agreement that provides 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 that 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 in the demand 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, as specified in the demand, to enable a person entitled to receive a copy of the security agreement to inspect it at that location.
- (3) 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 that provides for a security interest in the property in which that person has an interest.
- (4) A person who is entitled to make a demand under subsection (1) may demand that the secured party permit that person to inspect the security agreement or a copy of it during normal business hours at the location mentioned in subsection (2)(e).
- (5) If a demand is made requiring an approval or correction referred to in subsection (2)(c) and the secured party claims a security interest in:
- (a) all of the personal property of the debtor;
  - (b) all of the property of the debtor, other than a specified kind or item of personal property; or
  - (c) all of a specified kind of personal property of the debtor;
- the secured party may indicate this instead of approving or correcting the itemized list of the personal property.
- (6) If the secured party is a trustee under a trust deed, the secured party must reply to a demand under subsection (1) or (4) within 25 days after the demand is made.
- (7) A secured party, other than a trustee under a trust deed, must reply to the demand within 10 days after the demand is made.
- (8) If, without reasonable excuse:
- (a) the secured party fails to comply with the demand within the specified period; or
  - (b) in the case of a demand under subsection (1), the secured party's reply to the demand is incomplete or incorrect;
- the person making the demand, may in addition to any other remedy provided for in this Act, apply to a court for an order requiring the secured party to comply with the demand.
- (9) If a demand is made under subsection (1) or (4) and the person receiving the demand no longer has an interest in the obligation or property of the debtor that is the subject of the

demand, the person must, not later than 10 days after receiving the demand, disclose the name and address of the person's immediate successor in interest, and, if known to the person, the current successor in interest.

- (10) If, without reasonable excuse, the person receiving the demand fails to comply with subsection (9), the person making the demand may, in addition to any other remedy provided in this Act, apply to a court for an order requiring the person to whom the demand has been made to comply with this section.
- (11) On application under subsection (8) or (10), the court may make an order requiring the secured party or the person receiving the demand to comply with the demand or to disclose the information.
- (12) The court may provide for the actual or possible failure of a secured party to comply with an order under subsection (11) by making one or more of the following orders either on application or as part of the order under subsection (11):
- (a) any order the court considers necessary to ensure compliance with the demand;
  - (b) in the case of non-compliance by a secured party or the person receiving the demand, an 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.

- (13) On an application:

- (a) under subsection (10), or
- (b) under this subsection, made by:
  - (i) the secured party referred to in subsection (10), or
  - (ii) the person referred to in subsection (9) as receiving the demand,

the court, subject to section 71(2), may, unless the demand is made by the debtor, exempt the secured party or person receiving the demand in whole or in part from complying with subsections (7) to (9) or may extend the time for compliance.

- (14) A secured party who has replied to a demand referred to in subsection (1) is estopped, for the purposes of this Act:

- (a) against the person making the demand; or
- (b) against any other person who can reasonably be expected to rely on the reply;

to the extent that the person relies on the reply, from denying:

- (i) the accuracy of the information contained in the reply to the demand pursuant to subsection (2)(b),(c) or (d); or
- (ii) that the copy of the security agreement referred to in subsection (2)(a) that is provided in response to a demand under subsection (1) is a true copy of that security agreement;

but only to the extent that the debtor or the other person has in fact relied on the information referred to in section 14 (b)(i) or the accuracy of the copy of the

security agreement referred to in section 14 (b)(ii).

- (15) A successor in interest referred to in subsection (9) is estopped for the purposes of this Act, against:
- (a) the person making the demand referred to in subsection (1); and
  - (b) any other person who can reasonably be expected to reply on the reply to the demand;
- from denying, to the extent that the person relies on the reply:
- (i) the accuracy of the information referred to in subsections (2)(b), (c) and (d) and contained in the reply to the demand; and
  - (ii) that the copy of the security agreement referred to in subsection (2) (a) that is provided in response to a demand under subsection (1) is a true copy of that security agreement.
- (16) A successor in interest is not estopped under subsection (15) if:
- (a) the debtor or other person who relied on the reply knows that the interest has been transferred to the successor in interest and knows that person's identity and address; or
  - (b) before making the demand, a financing change statement has been filed disclosing the successor in interest as the secured party.
- (17) 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 reply to a demand, but the debtor is entitled to make a demand and receive a reply to it without charge once every 12 months.
- (18) A secured party who receives a demand that purports to be made by a person entitled to make it under subsection (1) may act as if the person is, in fact, entitled to make the demand unless the secured party knows that the person is not entitled to make it.

### **PART 3 - PERFECTION AND PRIORITIES**

#### **SECTION 23 WHEN SECURITY INTERESTS ARE PERFECTED**

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.

#### **SECTION 24 SUBORDINATION OF UNPERFECTED SECURITY INTERESTS**

- (1) A security interest in collateral is subordinate to the interest of a person who causes the collateral to be seized pursuant to legal process to enforce a judgment, including execution, attachment or garnishment, or who has obtained a charging order or execution that affects or relates to the collateral if the security interest is unperfected at the time when the interest of the person arises.

- (2) A security interest in collateral is not effective against:
- (a) a trustee in bankruptcy if the security interest is unperfected at the date of the bankruptcy;
  - (b) a liquidator if the security interest is unperfected on the day that the winding up begins;
  - (c) an administrator of a company appointed pursuant to the Corporations Law or a deed of arrangement if the security interest is unperfected:
    - (i) in a case where a winding up of the company was in progress when the administration began, on the day that the winding up of the company is taken under the Corporations Law to have begun; and
    - (ii) otherwise, on the day when the administration began.
- (3) A security interest in goods, chattel paper, a security, a document of title, an instrument, an intangible or money is subordinate to the interest of a transferee who:
- (a) acquires the interest pursuant to a transaction that is not a security agreement;
  - (b) gives value; and
  - (c) acquires the interest without knowledge of the security interest before the security interest is perfected.

## **SECTION 25 MEASURE OF DAMAGES SUFFERED BY LESSOR OR CONSIGNOR**

Where the interest of a lessor pursuant to a lease for a term of more than one year or of a consignor pursuant to a commercial consignment is not effective against a judgment creditor pursuant to section 24(1) or a trustee or liquidator pursuant to section 24(2), the lessor or consignor is deemed, as against the lessee or consignee as the case may be, to have suffered, immediately before the seizure of the leased or consigned goods or the date of the bankruptcy or winding-up, damages in an amount equal to:

- (a) the value of the leased or consigned goods at the date of the seizure, bankruptcy or winding-up order; and
- (b) the amount of loss, other than that mentioned in paragraph (a), resulting from the termination of the lease or consignment.

## **SECTION 26 SECURITY INTERESTS IN FAVOUR OF CERTAIN PERSONS VOID IN CERTAIN CASES**

- (1) Where:
- (a) a security interest in collateral is given by a company in favour of a person who is, or in favour of persons at least one of whom is, a relevant person, as defined in subsection (6) of this section, in relation to the security interest; and
  - (b) within six months after the security interest is given, the secured party purports to take a step in the enforcement of the security interest without the court having, under subsection (3), given leave for the security interest to be enforced;

the security interest is, and shall be deemed always to have been, void.

- (2) On application by the secured party, the court may, if it is satisfied that:
- (a) the company was solvent immediately after it gave the security interest; and
  - (b) in all the circumstances of the case it is just and equitable for the court to do so;
- give leave for the security interest to be enforced.
- (3) Nothing in subsection (1) affects a debt, obligation or liability of a company that would, if that subsection had not been enacted, have been secured by a security interest given by the company.
- (4) Nothing in subsection (1) operates to affect the title of a person to property (other than the security interest concerned) purchased for value from a secured party, from an agent of a secured party or from a receiver appointed by a secured party if that person purchased the property in good faith and without knowledge that the security interest was created 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 security interest.
- (5) The onus of proving that a person purchased property in good faith and without knowledge that a security interest was given as mentioned in subsection (4) is on the person asserting that the property was so purchased.
- (6) In this section, “relevant person” means:
- (a) a person who is, at the time when the security is given, or who has been at any time during the period of six months ending at that time, an officer of the company or, if the company is a foreign company, a local agent of the company; or
  - (b) a person associated, in relation to the creation of the security interest, with a person of a kind referred to in paragraph (a).

## **SECTION 27 PERFECTION OF PURCHASE-MONEY SECURITY INTERESTS**

- (1) A purchase-money security interest in:
- (a) collateral, other than an intangible, that is perfected not later than 15 days after the day on which:
    - (i) the debtor obtains possession of the collateral; or
    - (ii) another person, at the request of the debtor, obtains possession of the collateral;whichever is the earlier; or
  - (b) an intangible that is perfected not later than 15 days after the day on which the security interest attaches;
- has priority over the interest of a person mentioned in Section 24(1) or (2).
- (2) For the purposes of this section, where goods are shipped by a common carrier to a debtor or to a person designated by the debtor, the debtor does not obtain possession of the goods until the debtor or a third party at the request of the debtor obtains actual possession of the goods or a document of title to the goods, whichever is earlier.

**SECTION 28 CONTINUITY OF PERFECTION**

- (1) If a security interest is originally perfected according to this Act and is again perfected in some other way pursuant to this Act without an intermediate period when 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 the perfection of the security interest as the transferor had at the time of the transfer.

**SECTION 29 PERFECTION BY POSSESSION OF THE COLLATERAL**

- (1) Subject to section 23, possession of the collateral by the secured party, or by another person on the secured party's behalf, perfects a security interest in
  - (a) chattel paper,
  - (b) goods,
  - (c) an instrument,
  - (d) a security that is constituted or evidenced by a document,
  - (e) a negotiable document of title, and
  - (f) money,except where possession is a result of seizure or repossession.
- (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) If the collateral is a security with a clearing agency, a secured party is deemed to have taken possession of the security when the appropriate entries have been made in the records of the clearing agency.

**SECTION 30 PERFECTION BY REGISTRATION**

Subject to section 23, the registration of a financing statement perfects a security interest in collateral.

**SECTION 31 TEMPORARY PERFECTION**

- (1) A security interest perfected under section 29 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 a transfer; or
  - (b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of:
    - (i) ultimate sale or exchange;

- (ii) loading, unloading, storing, shipping or transshipping; or
  - (iii) manufacturing, processing, packaging or otherwise dealing with the goods in a manner preliminary to their sale or exchange;
- remains perfected, notwithstanding section 15, 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 referred to in this section is subject to the provisions of this Act relating to the perfection of a security interest.

### **SECTION 32 PERFECTION IF GOODS IN HANDS OF BAILEES**

- (1) Subject to section 23, a security interest in goods in the possession of a bailee is perfected by:
- (a) the issue of a document of title by the bailee in the name of the secured party;
  - (b) if the bailee has issued a negotiable document of title to the goods, the perfection of a security interest in the negotiable document of title;
  - (c) a holding by the bailee on behalf of the secured party in accordance with section 29; or
  - (d) the registration of a financing statement relating to the goods.
- (2) The issuance 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.

### **SECTION 33 SECURITY INTERESTS IN PROCEEDS**

- (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 if 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 by the registration of a financing statement that:
- (a) contains a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind;
  - (b) covers the original collateral, if the proceeds are of a kind that are within the description of the original collateral; or

- (c) covers the original collateral, if the proceeds consist of money, cheques or deposit accounts in deposit taking institutions.
- (3) Where the security interest in the original collateral is perfected in a manner other than in a manner referred to in subsection (2), the security interest in the proceeds is a continuously perfected security interest, but becomes unperfected on the expiration of 15 days after the security interest in the original collateral attaches to the proceeds, unless the security interest in the proceeds is otherwise perfected by any of the methods and under the circumstances prescribed for original collateral of the same kind.
- (4) Proceeds are traceable whether or not there is a fiduciary relationship between the person who has a security interest in the proceeds, as provided in this section, and the person who has rights in or who has dealt with the proceeds.

### **SECTION 34 SECURITY INTERESTS IN RETURNED OR REPOSSESSED GOODS**

- (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 pursuant to section 33(1)(a) or section 35, the security interest reattaches to the goods if:
  - (a) the goods are returned to, or are seized or repossessed by the debtor or a transferee of chattel paper created by the sale or lease; and
  - (b) the obligation secured remains unpaid or unperformed.
- (2) Where a security interest reattaches under subsection (1), the perfection of the security interest and the time of registration or perfection are determined as if the goods had not been sold or leased if:
  - (a) the security interest was perfected by registration at the time of the sale or lease; and
  - (b) the registration is effective at the time of the return, seizure or repossession.
- (3) Where a sale or lease of goods creates an account or chattel paper, and:
  - (a) the account or chattel paper is transferred to a secured party; and
  - (b) the goods are returned to, seized or repossessed by, the debtor or a transferee of the chattel paper;

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

- (4) Notwithstanding anything in section 29(1), a security interest in goods that arises pursuant to subsection (3) of this section is perfected if the security interest in the account or chattel paper was perfected at the time of the return, seizure or repossession, but becomes unperfected on the expiry of 15 days after the return, seizure or repossession unless the transferee registers a financing statement relating to the security interest or takes possession of the goods, by seizure or repossession of the goods or otherwise, before the expiration 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 pursuant to subsection (1) and to a security interest of a transferee of chattel paper arising pursuant to 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 that reattaches pursuant to 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 36(7) as to the chattel paper over an interest in the chattel paper claimed by the holder of the security interest in the goods.
- (7) A security interest in goods given by a buyer or lessee of the goods referred to in subsection (1) that attaches while the goods are in the possession of the buyer, lessee or 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.

### SECTION 35 PROTECTION OF BUYER OR LESSEE OF GOODS

- (1) For the purposes of this section:
- (a) “**buyer of goods**” includes a person who obtains vested rights in goods under a contract to which the person is a party as a consequence of the goods becoming a fixture or accession to property in which the person has an interest;
  - (b) “**seller**” includes a person who supplies goods that become a fixture or accession under a contract with a buyer of goods or under a contract with a person who is party to a contract with the buyer;
  - (c) “**the ordinary course of business of the seller**” includes the supply of goods in the ordinary course of business as part of a contract for services and materials.
- (2) A buyer or lessee of goods that are acquired as consumer 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 33 or 34, 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 goods that are acquired as consumer goods takes free of a perfected or unperfected security interest in the goods if the buyer or lessee
- (a) gave 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) other goods if the purchase price of the goods exceeds \$1,000 or, in the case of a lease, their market value exceeds \$1,000.
- (5) A buyer or lessee of goods takes free from a security interest that is temporarily perfected under section 31(1), 33(3) or 34(4) or a security interest the perfection of which is continued under section 57 during any of the 15 day periods mentioned in those

subsections, if the buyer or lessee:

- (a) gave value for the interest acquired; and
  - (b) bought or leased the goods without knowledge of the security interest.
- (6) If goods are sold or leased, the buyer or lessee takes free from any security interest in the goods perfected under section 30, if
- (a) the buyer or lessee bought or leased the goods without knowledge of the security interest, and
  - (b) the goods were not described by serial number in the registration relating to the security interest.
- (7) Subsection (6) applies only to goods that are equipment and that are defined in the regulations as serial numbered goods.
- (8) A sale or lease referred to in subsection (2),(3), (5) or (6) may be:
- (a) for cash;
  - (b) by exchange for other property; or
  - (c) on credit;

and includes delivering goods or a document of title to goods pursuant to 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.

### **SECTION 36 PROTECTION OF TRANSFEREES OF NEGOTIABLE AND QUASI-NEGOTIABLE COLLATERAL**

- (1) A holder of money has priority over a security interest in it perfected under section 30, or temporarily perfected under section 33(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 the holder acquired the money with knowledge that it was subject to a security interest.
- (2) A creditor who receives payment of a debt owing by a debtor through a debtor-initiated payment has priority over a security interest in:
- (a) the funds paid;
  - (b) the intangible that was the source of the payment; and
  - (c) any instrument used to effect the payment;
- whether or not the creditor has knowledge of the security interest at the time of the payment.
- (3) In subsection (2), “debtor-initiated payment” means a payment made by the debtor through the use of:
- (a) an instrument or an electronic funds transfer; or

- (b) a debit, a transfer order, an authorisation or a similar written payment mechanism executed by the debtor when the payment is made.
- (4) A purchaser of an instrument or a security has priority over a security interest in the instrument or security perfected pursuant to section 30 or temporarily perfected under section 31 or 33(3) if:
- (a) the purchaser gave value for the instrument or security;
  - (b) the purchaser acquired the instrument or security without knowledge that it was subject to a security interest; and
  - (c) in the case of a security or instrument that:
    - (i) is not a security with a clearing agency, the purchaser took possession of the instrument or security, or
    - (ii) is a security with a clearing agency, an entry has been made in the records of the appropriate clearing agency indicating that the security has been transferred to the purchaser.
- (5) A holder of a negotiable document of title has priority over a security interest in the document of title that is perfected pursuant to section 30 or temporarily perfected under section 31 or 33(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.
- (6) For the purposes of subsections (4) and (5), a purchaser of an instrument or a security or a holder of a negotiable document of title who acquired it pursuant to a transaction entered into in the ordinary course of the transferor's business has knowledge only if the purchaser acquired the interest with knowledge that the transaction violates the terms of the security agreement that creates or provides for the security interest.
- (7) A purchaser of chattel paper who takes possession of it in the ordinary course of business and for new value has priority over any security interest in the chattel paper that:
- (a) was perfected pursuant to section 30, if the purchaser does not have knowledge at the time of taking possession that the chattel paper is subject to a security interest; or
  - (b) has attached to proceeds of inventory under section 33, whatever the extent of the purchaser's knowledge.

### **SECTION 37 PRIORITY OF LIENS**

Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, a lien that the person has with respect to those 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 priority.

### **SECTION 38 TRANSFER OF DEBTORS' RIGHTS IN COLLATERAL**

- (1) In this section, "transfer" includes a sale, the creation of a security interest, and a transfer pursuant to judgment enforcement proceedings.

- (2) The rights of a debtor in collateral may be transferred consensually or by operation of law notwithstanding a provision in the security agreement that prohibits transfer or declares a transfer to be a default, but a transfer by the debtor does not prejudice the rights of the secured party pursuant to the security agreement or otherwise, including the right to treat a prohibited transfer as a default.

### **SECTION 39 PURCHASE-MONEY SECURITY INTERESTS**

- (1) In this section, a “non-proceeds security interest” or “non-proceeds purchase-money security interest” means a security interest or purchase-money security interest, as the case may be, in the original collateral.
- (2) Subject to subsection (6) and section 33, 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.
- (3) Subject to subsection (6) and section 33, 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, before the time of the filing of the purchase-money security interest, filed a financing statement containing a description that includes the same item or kind of collateral; and
  - (c) the notice mentioned in paragraph (b):
    - (i) 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
    - (ii) is given before the debtor, or another person at the request of the debtor, obtains possession of the collateral,whichever is earlier.
- (4) A notice referred to in subsection (3) may be given in accordance with section 74 or by registered mail addressed to the address of the person to be notified as it appears in the financing statement referred to in paragraph (3)(b)
- (5) Subject to section 33, a purchase-money security interest in goods and their proceeds, taken by a seller, lessor or consignor of the collateral, that is perfected:
- (a) in the case of inventory, at the day on which a debtor, or another person at the

request of the debtor, obtains possession of the collateral, whichever is earlier; and

- (b) in the case of collateral other than inventory, not later than 15 days after the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier,

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

- (6) A non-proceeds security interest in accounts given for new value has priority over a purchase-money security interest in the accounts as proceeds of inventory if a financing statement relating to the security interest in the accounts is registered before the purchase money security interest is perfected or a financing statement relating to it is filed.
- (7) Subsection (6) does not apply to an account in the form of a deposit with a deposit-taking institution.
- (8) 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 is perfected:
  - (a) in the case of inventory, at the day on which a 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.
- (9) 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.
- (10) A purchase-money security interest in an item of collateral does not extend to or continue in the proceeds of the item after the obligation to pay the purchase price of the item or to repay the value given for the purpose of enabling the debtor to acquire rights in it has been discharged.
- (11) A perfected security interest in crops or their proceeds that is given for value to enable a debtor to produce or harvest the crops and that is given:
  - (a) while the crops are growing crops; or
  - (b) during a period of six months immediately before the time when the crops become growing crops;

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

- (12) A perfected security interest in wool or its proceeds that is given for value to enable a debtor to produce the wool, and that is given:
  - (a) while the wool is growing; or
  - (b) during a period of six months immediately before the wool starts to grow;

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

- (13) A perfected security interest in fowl, cattle or fish or their proceeds that is 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 same collateral given by the same debtor other than a perfected purchase money security interest.

#### **SECTION 40 RESIDUAL PRIORITY RULES**

- (1) Where this Act provides no other method for determining priority between security interests:
- (a) priority between conflicting perfected security interests in the same collateral is determined by the order of the occurrence of the following:
    - (i) the registration of a financing statement without regard to the date of attachment of the security interest;
    - (ii) possession of the collateral pursuant to section 29 without regard to the date of attachment of the security interest;
    - (iii) perfection under sections 11, 12, 31, 34 or 78,whichever is the earliest;
  - (b) a perfected security interest has priority over an unperfected security interest; and
  - (c) priority between conflicting 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 must be treated at all times as perfected by the method by which it was originally perfected.
- (3) Subject to section 33, 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) Subject to subsection (5), the priority that a security interest has under subsection (1) applies to all advances, including future advances.
- (5) A perfected security interest has priority over the interest of a person mentioned in section 24(1) only to the extent of:
- (a) advances made before the interest of the person arises, or before the collateral is seized in any of the circumstances referred to in section 24(1);
  - (b) advances made before the secured party acquires knowledge of the interest of the person or seizure of the collateral;
  - (c) advances made pursuant to:
    - (i) a statutory requirement; or
    - (ii) a legally binding obligation owing to a person other than the debtor, that was entered into by the secured party before the secured party acquired the knowledge referred to in paragraph (b); and

- (d) reasonable costs and expenses incurred by the secured party for the protection, preservation, maintenance or repair of the collateral.
- (6) Where:
- (a) registration of a security interest:
    - (i) lapses as a result of failure to renew the registration; or
    - (ii) is a registration has been discharged without authorization or in error; and
  - (b) 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 before the re-registration.

- (7) Where a debtor transfers an interest in collateral which, at the time of the transfer, is subject to a perfected security interest, that security interest has priority over any other security interest granted by the transferee before the transfer, except to the extent that the security interest granted by the transferee secures advances made, or contracted for:
- (a) after the expiry of 15 days from the day the secured party who holds the security interest in the transferred collateral has knowledge of the information required to file a financing statement disclosing the transferee as the new debtor; and
  - (b) before the secured party mentioned in paragraph (a) amends the registration to disclose the name of the transferee as the new debtor or takes possession of the collateral.
- (8) Subsection (7) does not apply if the transferee acquires the debtor's interest free from the security interest granted by the debtor.

#### **SECTION 41 SECURITY INTERESTS IN FIXTURES**

- (1) In this section, “**secured party**” includes a receiver.
- (2) This section applies to land for which a certificate of title has been issued pursuant to the legislation relating to the registration of the transfer of land.
- (3) Except as provided in this section and in section 35, a security interest in goods that attaches before or at the time when 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.
- (4) A security interest referred to in subsection (3) is subordinate to the interest of:
  - (a) a person who acquires for value an interest in the land after the goods become fixtures, including an assignee for value of the interest of a person with an interest in the land at the time the goods become fixtures; and
  - (b) any person with a registered mortgage on the land who, after the goods become fixtures:
    - (i) makes an advance pursuant to the mortgage, but only with respect to the

advance; or

- (ii) obtains an order for sale or foreclosure;

without fraud and before the notice of the security interest is filed in accordance with section 55.

- (5) Where:

- (a) a search is made of a certificate of title to land;
- (b) at the time of the search there is no memorandum pursuant to section 55 on the certificate of title; and
- (c) on the day on which the search is made, an advance is made pursuant to a mortgage that is registered against the certificate of title;

the advance is deemed to have been made before registration of a notice pursuant to section 55 that was not disclosed by the search, notwithstanding that the notice was registered on the day that the search was made.

- (6) A security interest in goods that attaches after the goods become fixtures is subordinate to the interest of a person who:
  - (a) has an interest in the land at the time the goods become fixtures and who:
    - (i) has not consented to the security interest;
    - (ii) has not disclaimed an interest in the goods or fixtures;
    - (iii) has not entered into an agreement pursuant to which a person is entitled to remove the goods; or
    - (iv) is not otherwise precluded from preventing the debtor from removing the goods; or
  - (b) acquires an interest in the land after the goods become fixtures, if the interest is acquired without fraud and before the notice of the security interest in the goods is filed in accordance with section 55.
- (7) A security interest referred to in subsection (3) or (6) is subordinate to the interest of a creditor of the debtor if a memorandum is entered in the Register pursuant to legislation relating to the registration of transfers of interests in land before the security interest is filed in accordance with section 55.
- (8) The interest of a creditor referred to in subsection (6) does not take priority over a purchase money security interest in goods a notice of which is filed in accordance with section 55 not later than 15 days after the goods are affixed to the land.
- (9) A secured party who, pursuant to this Act, has the right to remove goods from land must exercise this right of removal in a manner that causes no greater damage or injury to the land and to other property located on it or that puts the occupier of the land to no greater inconvenience than is necessarily incidental to the removal of the goods.
- (10) A person, other than the debtor, who has an interest in the land at the time the goods that are subject to the security interest are affixed to the land is entitled to reimbursement for

- any damages to that interest in the land caused during the removal of the goods, but is not entitled to reimbursement for reduction in the value of the land caused by the absence of the goods removed or by the necessity to replace them.
- (11) The person entitled to reimbursement under subsection (10) may refuse permission to remove the goods until the secured party has given adequate security for reimbursement.
- (12) The secured party may apply to the court for one or more of the following:
- (a) an order determining the person entitled to reimbursement pursuant to this section;
  - (b) an order determining the amount and kind of security to be provided by the secured party;
  - (c) an order designating the depository for the security;
  - (d) an order authorizing the removal of the goods without the provision of security for reimbursement under subsection (11).
- (13) A person having an interest in the land that is subordinate to a security interest as provided in this section may, before the goods have been removed from the land by the secured party, retain the goods on payment to the secured party of the lesser of:
- (a) the amount secured by the security interest that has priority over the interest; and
  - (b) the market value of the goods if the goods were removed from the land.
- (14) A secured party who has a right to remove goods from the land must give to each person, who appears from the certificate of title to have an interest in the land, a notice of the intention of the secured party to remove the goods, unless the amount referred to in subsection (13) is paid on or before a specified day that is not less than 15 days after the notice is given in accordance with subsections(15) and (16).
- (15) A notice mentioned in subsection(14) is to contain:
- (a) the name and address of the secured party;
  - (b) a description of the goods to be removed;
  - (c) the amount required to satisfy the obligation secured by the security interest;
  - (d) the market value of the goods;
  - (e) a description of the land to which the goods are affixed; and
  - (f) a statement of intention to remove the goods.
- (16) A notice referred to in subsection (14) must be given at least 15 days before removal of the goods, and may be given in accordance with section 74 or by registered mail addressed to the postal address of the person to be notified as it appears in the records of the Land Titles Office.
- (17) A person who is entitled to receive a notice under subsection (14) may apply to a court for an order postponing removal of the goods from the land.
- (18) The priority rights of persons mentioned in subsection(4) are not affected by priority rights

to the land that are provided in the legislation relating to the registration and transfer of interests in land.

## **SECTION 42 SECURITY INTERESTS IN CROPS**

- (1) In this section, “secured party” includes a receiver.
- (2) This section applies to land for which a certificate of title has been issued under the legislation relating to the registration and transfer of interests in land.
- (3) Except as provided in this section, a security interest in growing crops has priority with respect to the crops over an interest in the crops claimed by a person with an interest in the land.
- (4) A security interest referred to in subsection (3) is subordinate to the interest of:
  - (a) a person who acquires for value an interest in the land while the crops are growing crops, including an assignee for value of the interest in the land of a person who acquires the interest for value and while the crops are growing crops; and
  - (b) a person with a registered mortgage on the land who, after the crops become growing crops:
    - (i) makes an advance pursuant to the mortgage, but only with respect to the advance; or
    - (ii) obtains an order for sale or foreclosure;without fraud and before the notice of the security interest in the growing crops is filed in accordance with section 55.
- (5) A security interest referred to in subsection (3) is subordinate to the interest of a creditor of the debtor if a memorandum is entered in the register pursuant to the Land Titles Act before the security interest is registered in accordance with section 55.
- (6) The interest of a creditor referred to in subsection (5) does not take priority over:
  - (a) a purchase-money security interest in the crops; or
  - (b) a security interest in the crops referred to in section 39(11);that is filed in accordance with section 55 not later than 15 days after the time when the security interest in the crops attaches.
- (7) Subsections (9) to (17) of section 41 apply, with any necessary modification, to seizure and removal of growing crops from the land.

## **SECTION 43 SECURITY INTERESTS IN ACCESSIONS**

- (1) In this section:
  - (a) “**other goods**” means goods to which an accession is installed or affixed;
  - (b) “**secured party**” includes a receiver;
  - (c) “**the whole**” means an accession and the goods to which the accession is installed or affixed.

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- (2) Except as provided in this section and section 35, a security interest in goods that attaches before or at the time when the goods become an accession has priority with respect to the goods over a claim to the goods as an accession made by a person with an interest in the whole.
- (3) A security interest referred to in subsection (2) is subordinate to the interest of:
- (a) a person who acquires for value an interest in the whole after the goods become an accession, including an assignee for value of the interest of a person with an interest in the whole at the time the goods become an accession: and
  - (b) a person with a security interest taken and perfected in the whole who:
    - (i) makes an advance pursuant to a security agreement after the goods become an accession, 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 goods or the accession;
    - (iii) has not entered into an agreement pursuant to 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) or (4) is subordinate to the interest of a creditor who has seized or caused the whole to be seized under legal process to enforce a judgment, if the security interest is not perfected at the time of seizure.
- (6) The interest of a creditor referred to in subsection (5) does not take priority over a purchase-money security interest in goods that is perfected not later than 15 days after the goods become an accession.
- (7) A secured party who, pursuant to this Act, has the right to remove an accession from the whole must exercise the right of removal in a manner that:
- (a) causes no greater damage or injury to the whole or to other goods; or
  - (b) 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 whole at the time the goods subject to the security interest become an accession is entitled to reimbursement for any damages to the interest of the person in the whole that is caused during the removal of the accession, but is not entitled to reimbursement for diminution in the value of the whole that is 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:
  - (a) an order determining the person entitled to reimbursement pursuant to this section;
  - (b) an order determining the amount and kind of security to be provided by the secured party;
  - (c) an order prescribing the depository for the security;
  - (d) an order authorizing the removal of the goods without the provision of security for reimbursement pursuant to subsection (9).
- (11) A person having an interest in the whole that is subordinate to a security interest as provided in this section may, before the accession has been removed from the whole by the secured party, retain the accession on payment to the secured party of the lesser of:
  - (a) the amount secured by the security interest entitled to priority; and
  - (b) the market value of the accession if the accession were removed from the other goods.
- (12) The secured party who has a right to remove the accession from the whole must give a notice of the secured party's intention to remove the accession to each person:
  - (a) who is known by the secured party to have an interest in the other goods or in the whole; or
  - (b) who has registered a financing statement using the name of the debtor and referring to the other goods.
- (13) The notice referred to in subsection (12) is to contain:
  - (a) the name and address of the secured party;
  - (b) a description of the goods to be removed;
  - (c) the amount required to satisfy the obligations secured by the security interest;
  - (d) the market value of the accession;
  - (e) a description of the other goods; and
  - (f) a statement of the intention to remove the accession unless the amount referred to in subsection (11) is paid on or before a specified date that is not less than 15 days

after the notice is given in accordance with subsection (14).

- (14) A notice referred to in subsection (12) is to be given in accordance with section 74 or by registered mail addressed to the address of the person to be notified as it appears on the financing statement.
- (15) A person entitled to receive a notice pursuant to subsection (12) may apply to a court for an order postponing removal of the accession.

#### **SECTION 44 SECURITY INTERESTS IN WOOL**

- (1) In this section, “secured party” includes a receiver.
- (2) Except as provided in this section, a security interest in wool that is yet to be clipped has priority with respect to the wool over a claim to the wool made by a person with an interest in the stock.
- (3) A security interest referred to in subsection (2) is subordinate to the interest of:
  - (a) a person with a perfected security interest in the stock who:
    - (i) makes an advance pursuant to a security agreement after the wool has started to grow, but only with respect to that advance; or
    - (ii) acquires the right to retain the stock in satisfaction of the obligation secured;without knowledge of the security interest in the wool and before it is perfected.
- (4) A security interest mentioned in subsection (2) is subordinate to the interest of a creditor who has seized the stock or caused it to be seized pursuant to a legal process to enforce judgment if the security interest is not perfected at the time of seizure.
- (5) Subsections (7)-(14) of section 55 apply with any necessary modifications where a secured party has the right under this Act to shear stock and take possession of the wool.

#### **SECTION 45 SECURITY INTERESTS IN PROCESSED OR COMMINGLED GOODS**

- (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) Subject to subsections (4) and (6), if 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) For the purposes of section 40, perfection of a security interest in goods that subsequently become part of a product or mass is also a perfection of the security interest in the product or mass.
- (4) For the purposes of subsection (2), the obligation secured by a security interest does not exceed the market value of the goods at the date that the goods become part of the product or mass.

- (5) Any priority that a perfected security interest continuing in the product or mass pursuant to subsection (1) has over a perfected security interest in the product or mass is limited to the value of the goods at the date they became part of the product or mass.
- (6) A perfected purchase-money security interest in goods that continues in the product or mass has priority over:
- (a) a non-purchase-money security interest in the goods that continues in the product or mass pursuant to 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 gives a notice to any secured party with a non-purchase-money security interest in the product or mass, who registered 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 referred to in subparagraph (i) 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 referred to in subparagraph (i) is given before the identity of the goods is lost in the product or mass.
- (7) A notice referred to in subsection(6)(c) (i) may be given in accordance with section 74 or by registered mail addressed to the address of the person to be notified as it appears in the financing statement mentioned in subsection (6)(c)(i).
- (8) This section does not apply to a security interest in an accession to which section 43 applies.

#### **SECTION 46 SUBORDINATION OR POSTPONEMENT OF RIGHT TO SECURITY INTERESTS**

- (1) A secured party may, in a security agreement or otherwise, subordinate his or her security interest to any other interest and the subordination is effective according to its terms between the parties and may be enforced by a third party if the third party is the person or one of a class of persons for whose benefit the subordination was intended.
- (2) An agreement or undertaking to postpone or subordinate:
- (a) the right of a person to the performance of all or any part of an obligation to the right of another person to the performance of all or any part of another obligation by the same debtor; or
  - (b) all or any part of the rights of a secured party pursuant to a security agreement to all or any part of the rights of another secured party pursuant to another security agreement with the same debtor;

does not, by virtue of the subordination or postponement alone, create a security interest.

**SECTION 47 ASSIGNMENTS OF INTANGIBLES OR CHATTEL PAPER AND SECURITY INTERESTS IN DEPOSIT ACCOUNTS**

- (1) In this section:
  - (a) “**account debtor**” means a person who is obligated pursuant to an intangible or chattel paper;
  - (b) “**assignee**” includes a secured party and a receiver.
- (2) Unless the account debtor on an intangible or chattel paper has made an enforceable agreement not to assert defences to claims arising out of a contract, the rights of an assignee of the intangible or chattel paper are subject to:
  - (a) the terms of the contract between the account debtor and the assignor and any defence or claim arising out of the contract or a closely connected contract; and
  - (b) any other defence or claim of the account debtor against the assignor that accrues before the account debtor acquires knowledge of the assignment.
- (3) A modification of, or a substitution for, a contract made in good faith and in accordance with reasonable commercial standards and without material adverse effect on the assignee’s rights pursuant to the contract or the assignor’s ability to perform the contract is effective against the assignee, unless the account debtor has otherwise agreed.
- (4) Subsection (3) applies:
  - (a) to the extent that an assigned right to payment arising out of the contract has not been earned by performance; and
  - (b) even if there has been notice of the assignment to the account debtor.
- (5) Where a contract has been substituted or modified in the manner described in subsection (3), the assignee obtains rights that correspond to the rights of the assignor pursuant to the substituted or modified contract.
- (6) Nothing in subsections (3) to (5) affects the validity of a term in an assignment agreement that provides that a modification or substitution referred to in subsection(3) is a breach of contract by the assignor.
- (7) Where collateral that is an intangible or chattel paper is assigned, the account debtor may make payments pursuant to the contract to the assignor:
  - (a) before the account debtor receives a notice that:
    - (i) states that the amount payable or to become payable pursuant to the contract has been assigned and that payment is to be made to the assignee; and
    - (ii) identifies the contract pursuant to 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.
- (8) Payment by an account debtor to an assignee pursuant to a notice referred to in subsection (7)(a) discharges the obligation of the account debtor to the extent of the payment.
- (9) A term in a contract between a debtor on an account or on chattel paper and an assignor that prohibits or restricts assignment of the whole of the account or chattel paper for money due or to become due:
  - (a) is binding on the assignor, but only to the extent of making the assignor liable in damages for breach of contract; and
  - (b) is unenforceable against third parties.
- (10) Except as otherwise provided in subsection (12), an ADI with which a deposit account is maintained may exercise any right of set-off against a secured party that holds a security interest in the deposit account.
- (11) Except as otherwise provided in subsection (12), the application of this Act to a security interest in a deposit account does not affect a right of set-off of the secured party as to a deposit account maintained with the secured party.
- (12) The exercise by an ADI of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected under subsection (13), if the set-off is based on a claim against the debtor.
- (13) A secured party has a perfected security interest in a deposit account if:
  - (a) the secured party is the ADI with which the deposit account is maintained;
  - (b) the debtor, the secured party and ADI have agreed that the ADI will comply with instructions by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
  - (c) the secured party becomes the ADI's customer with respect to the deposit account.
- (14) A secured party that has satisfied subsection (13) has a perfected security interest in the deposit account, even if the debtor retains the right to direct the disposition of funds from the deposit account.
- (15) Except as otherwise provided in subsection (13), and unless the ADI otherwise agrees, an ADI's rights and duties with respect to a deposit account maintained with the ADI are not terminated, suspended, or modified by:
  - (a) the creation, attachment or perfection of a security interest in the deposit account; or
  - (b) the ADI's knowledge of the security interest.
- (16) An ADI may take a security interest in a deposit account maintained with that ADI to secure the obligations of any person.
- (17) This Act does not require an ADI to enter into an agreement of the kind described in subsection (13)(b), even if its customer requests or directs it to do so. An ADI that has

entered into such an agreement is not required to confirm the existence of this agreement to another person unless requested to do so by its customer.

## **PART 4 - REGISTRATION**

### **SECTION 48 PERSONAL PROPERTY REGISTRY**

- (1) There must 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 under any other Act to be made in the registry.
- (2) The minister may designate a person as registrar.
- (3) The registrar may designate one or more persons as deputy registrars.
- (4) Despite any regulation made under section 76, when in the opinion of the registrar the circumstances are such that it is not practicable to provide one or more registry services, 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 the opinion of the registrar, those circumstances prevail.

### **SECTION 49 REGISTRATION OF FINANCING STATEMENTS**

- (1) A person who wishes to have a financing statement registered must submit it in accordance with the Regulations.
- (2) Registration of a financing statement is effective from the time assigned to it in the office of the registry and, if two or more financing statements are assigned the same time, the order of registration is determined by reference to the registration numbers assigned to the financing statements in the registry office.
- (3) The registrar must not register a financing statement or issue a search result under this Part until any prescribed fees have been paid or arrangements satisfactory to the registrar for their payment have been made.
- (4) A financing statement may be registered before a security agreement is made and before a security interest attaches.
- (5) A registration may relate to one or more than one security agreement.
- (6) The validity of the registration of a financing statement is not affected by a defect, irregularity, omission or error in the financing statement or in the registration of it unless the defect, irregularity, omission or error is seriously misleading.
- (7) Subject to subsection (9), if
  - (a) one or more debtors are required to be disclosed in a financing statement, or
  - (b) collateral is consumer goods that are defined in the regulations as serial numbered

goods,

and there is a seriously misleading defect, irregularity, omission or error in

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

(ii) the serial number of the collateral,

the registration is invalid.

- (8) If it is alleged that a defect, irregularity, omission or error is seriously misleading, it is not necessary to prove that anyone was actually misled by it.
- (9) Failure to provide a description in a financing statement in relation to any item or kind of collateral does not affect the validity of the registration with respect to other collateral contained in the financing statement.
- (10) Failure to indicate the prior registration law on a financing statement (transition) providing for the continuation of a registration under prior law 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 statement (transition) that provided for the continuation of the registration under prior law fails to discharge an obligation within the meaning of section 71 to any person who has suffered damages as a result of reliance on the financing statement (transition).
- (12) Despite anything in this Part, the registrar may reject a financing statement if, in the opinion of the registrar, it does not comply with this Act or the regulations or with any other Act or regulations under which registration of a financing statement is authorized.
- (13) The registrar must give written reasons for the rejection of a financing statement under subsection (12).
- (14) For the purposes of subsection (15), "**verification statement**" has the meaning prescribed in the Regulations.
- (15) The secured party or person named as a secured party in a financing statement that is not a financing statement (transition) must give to each person named as debtor in the statement, no later than 20 days after it is registered,
- (a) a copy of the statement reproduced on paper, or
- (b) a copy of a verification statement issued by the registry that relates to the financing statement,

but a copy need not be given to a person who has agreed in writing to waive the right to a copy.

## **SECTION 50 DURATION OF AND AMENDMENTS TO REGISTRATIONS**

- (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.
- (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 period of time for

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

- (3) An amendment to a registration, whether the registration is valid or invalid, 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.

### **SECTION 51 REGISTRATION OF TRANSFERS OF SECURITY INTERESTS**

- (1) If a secured party with a registered security interest transfers the interest or a part of it, a financing change statement that discloses the transfer may be registered.
- (2) If a financing change statement is registered under subsection (1) and an interest in part, but not all, of the collateral is transferred, the financing change statement must contain a description of the collateral in which the interest is transferred.
- (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 or her 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.

### **SECTION 52 REGISTRATION DOCUMENTS**

- (1) If a document is registered in the registry, the registrar may have the document photographed or otherwise reproduced and the reproduction is for all purposes deemed to be the document 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 56; or
  - (d) on receipt of a court order compelling the discharge or partial discharge of a registration.

### **SECTION 53 REGISTRATION NOT NOTICE**

Registration of a financing statement in the registry does not by itself constitute express, constructive or implied notice to any person of, or express, constructive or implied

knowledge on the part of, any person of

- (a) the financing statement or its contents, or
- (b) the security interest perfected by the financing statement or the contents of any security agreement.

#### **SECTION 54 REGISTRY SEARCHES**

- (1) A person may request one or more of the following:
  - (a) a search of 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 are defined in the regulations as serial numbered goods and the issue of a search result;
  - (c) a search according to a registration number and the issue of a search result;
  - (d) a copy or a certified copy of any registered, printed document.
- (2) A printed search result that purports to be issued by the registry is receivable in evidence as proof, in the absence of evidence to the contrary, of its contents including
  - (a) the date of registration of a financing statement to which the search result refers, and
  - (b) the order of registration of the financing statement as indicated by the registration number.
- (3) A copy of a registered, printed financing statement or other registered, printed 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.

#### **SECTION 55 REGISTRATION IN LAND TITLES OFFICE**

- (1) In this section:
  - “**fee**” means the prescribed fee payable under the legislation relating to the registration and transfer of interests in land for the registration of notices;
  - “**register**” has the same meaning as in the legislation relating to the registration and transfer of interests in land;
  - “**registrar**” means the registrar of land titles;
  - “**secured party**” includes an assignee referred to in subsection (6);
  - “**security interest**” means a security interest in a fixture under section 41 or growing crops under section 42.
- (2) A secured party may, on application and on payment of the fee, register in the proper land title office a notice of a security interest signed by the secured party or the secured party's agent setting out
  - (a) a description of the land affected by the notice that is sufficient for the registrar to identify it in his or her records,

- (b) the name and address of the debtor and the secured party,
- (c) the expiry date of the notice, if any,
- (d) a description of the collateral by which it may be readily identified, and
- (e) other prescribed information,

and the registrar must file the notice and make an entry of it in the register.

(3) The filing of a notice under subsection (2) is notice, from the date and time the application was received by the registrar, of the security interest, to every person dealing with the land.

(4) After its expiry date, if any, a notice of a security interest is of no effect and the registrar

- (a) on the application of any person interested in the land and on payment of the fee, or
- (b) on his or her own initiative,

may cancel the entry of the notice on the register.

(5) If a secured party wishes to extend an expiry date specified in a notice filed under subsection (2), the secured party may, on application and on payment of the fee, file a notice of extension signed by the secured party setting out

- (a) a description of the land affected by the notice that is sufficient for the registrar to identify it in his or her records,
- (b) the extended expiry date,
- (c) the filing number of the notice under subsection (2), and
- (d) other prescribed information,

and the registrar must file the notice and make an entry of it in the register.

(6) If a secured party has assigned a security interest in respect of which a notice has been filed under this section, the assignee may, on application and on payment of the fee, file a notice of the assignment signed by the assignee setting out

- (a) the name and address of the assignee,
- (b) a description of the land affected by the notice that is sufficient for the registrar to identify it in his or her records,
- (c) the filing number of the notice under subsection (2), and
- (d) other prescribed information,

and the registrar must file the notice and make an entry of it in the register.

(7) The registrar,

- (a) on receipt of a notice of cancellation signed by the secured party or the secured party's agent setting out

- (i) a description of the land affected by the notice that is sufficient for the registrar to identify it in his or her records, and
    - (ii) the filing number of the notice under subsection (2), and
  - (b) on application and payment of the fee
- must, subject to subsection (8), cancel the entry of the notice filed under subsection (2) in the register.
- (8) If a notice of cancellation under subsection (7)
- (a) is expressed to be a partial cancellation, and
  - (b) contains a description of the collateral that has been released from the security interest,
- the registrar must file the notice and make an entry of it in the register.
- (9) The registrar is not under any duty to inquire into or verify whether or not the signature of a person on a notice filed under subsection (7) or (8) is the signature of the secured party.
- (10) If in respect of a notice registered under this section
- (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,
  - (d) the security agreement to which the notice relates no longer exists between the secured party and the debtor, or
  - (e) the item or kind of property described in the notice is not affixed to the land to which the notice relates,
- the debtor named in the notice or any person having a registered interest in the land may give a written demand in accordance with subsection (12) to the secured party.
- (11) A demand referred to in subsection (10) must require that the secured party, not later than 40 days after the demand is given, deliver to the person making the demand a signed notice of amendment, extension or cancellation, whichever the demand specifies.
- (12) The demand referred to in subsection (10) may be given
- (a) in accordance with section 74, or
  - (b) by registered mail to,
    - (i) if a notice of assignment under subsection (6) has not been filed, the address of the secured party set out in a notice filed under subsection (2), or

- (ii) if a notice of assignment under subsection (6) has been filed, the address of the secured party set out in that notice.
- (13) The registrar, on receipt of
- (a) a true copy of the demand,
  - (b) an affidavit of the person who gave the demand verifying that
    - (i) the demand was given in accordance with subsection (12),
    - (ii) the copy referred to in paragraph (a) is a true copy,
    - (iii) the person is not aware of any proceeding of the secured party to enforce the security interest or to oppose or refute the demand, and
    - (iv) 40 days have elapsed since the notice was given under subsection (12),
  - (c) the application of the person who gave the demand, and
  - (d) the fee,

must make the appropriate entry in the register to effect the filing or cancellation requested in the demand unless the registrar has received a court order not to make the entry.

- (14) A secured party must not charge an expense or accept a fee for compliance with a demand made under subsection (10) unless the expense or fee has been agreed to by the parties before the demand was given.

## **SECTION 56 AMENDMENT OR DISCHARGE OF REGISTRATIONS**

- (1) For the purposes of this section:

“**debtor**” includes any person identified on a registered financing statement as a debtor;

“**secured party**” includes any person identified on a registered financing statement as a secured party.

- (2) If a registration relates exclusively to a security interest in consumer goods, the secured party must discharge the registration not later than one month after all obligations under the security agreement creating the security interest are performed, unless before the expiry of that one month period the registration lapses.
- (3) If 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 does not distinguish between original collateral and proceeds, 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, 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 or to identify items and kinds of property as original collateral or proceeds,

and the secured party must 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, 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 gives to the registrar an order of a court maintaining the registration.
- (6) The demand referred to in subsection (3) and the notice referred to in subsection (5) may be given in accordance with section 74 or by registered mail addressed to the address of the secured party as it appears on the financing statement.
- (7) If the secured party who has been given a notice referred to 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) give to the registrar a court order referred to in subsection (8),

before the expiry of 40 days after the notice has been given to the secured party, 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 50(1), for any period of time, or
  - (b) be discharged or amended.
- (9) No fee or expense may be charged and no amount may be accepted by a secured party for compliance with a demand made under subsection (3), unless the charge has been agreed to by the parties before the making of the demand.

## **SECTION 57 TRANSFER OF DEBTORS' INTERESTS IN COLLATERAL OR CHANGE OF DEBTORS**

- (1) If 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 in the transferred collateral is subordinate to

- (a) an interest, other than a security interest in the transferred collateral, arising in the period from the expiry of the 15th day after the transfer to, but not including, the day the secured party amends the registration to name the transferee of the collateral as the new debtor or takes possession of the collateral,
  - (b) a perfected security interest in the transferred collateral registered or perfected in the period referred to in paragraph (a), and
  - (c) a perfected security interest in the transferred collateral registered or perfected after the transfer and before the expiry of the 15th day after the transfer if, before the expiry of the 15 days,
    - (i) the registration of the security interest first referred to in this subsection is not amended to disclose the transferee of the interest in the collateral as the new debtor, or
    - (ii) the secured party does not take possession of the collateral.
- (2) If 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 all or part of the debtor's interest in the collateral has been transferred, or
  - (b) the new name of the debtor, where there has been a change in the debtor's name,
  - (c) the security interest in the collateral transferred, where paragraph (a) applies, and in the collateral, where paragraph (b) applies, is subordinate to an interest, other than a security interest, in the collateral, arising in the period from the expiry of the 15th day after the secured party has knowledge of information referred to in paragraph (a) or the new name of the debtor, 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, 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 referred to in paragraph (a) or of the new name of the debtor, and before the expiry of the 15th day referred to in paragraph (c), if before the expiry of the 15 days
    - (i) the registration of the security interest first mentioned in this subsection is not amended to disclose the transferee of the collateral as the new debtor or to disclose the new name of the debtor, or
    - (ii) the secured party does not take possession of the collateral.
- (3) This section does not have the effect of subordinating a prior security interest under prior registration law deemed under section 77 to be registered under this Act.
- (4) If the debtor's interest in part or all of the collateral is transferred 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 acquires knowledge of the name of the transferee who has possession of the collateral, the secured party is deemed to have complied with subsection (2) if the secured party registers a financing change statement not later than 15 days after acquiring knowledge of

- (a) the name of the transferee who has possession of the collateral, and
- (b) the information required to register a financing change statement,

or the secured party need not register financing change statements with respect to any intermediate transferee.

- (5) Nothing in this section applies to a filing in a land title office under section 55.

### **SECTION 58 RECOVERY OF LOSS CAUSED BY ERROR IN REGISTRY**

- (1) Despite section 71, the government is not liable either directly or vicariously for loss or damage suffered by a person because of
- (a) verbal advice given by an agent or employee of the government respecting this Act, regulations made under this Act or the operation of the registry unless the person who brings the action proves that the agent or employee was not acting in good faith, or
  - (b) failure to register or to register correctly data authorized under the regulations to be transmitted electronically, directly to the computer data base of the registry by a person defined in the regulations as a registering party, to effect a registration.
- (2) If an action is brought against the government for the recovery of loss or damage that results from the failure of the registrar to register a financing statement submitted for registration under section 49 (1), it is a defence to the action that the failure to register was because
- (a) the applicant did not pay the fee if it was prescribed under section 49 (3),
  - (b) the registrar had refused to register due to circumstances referred to in section 48 (4), or
  - (c) the registrar had refused to register under section 49(12).
- (3) Nothing in this section limits any defences that would be available to the government in the absence of this section.

### **SECTION 59 GENERAL**

- (1) If a claim is paid to a claimant under the Crown Proceedings Act, the government 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.
- (2) If the claimant recovers an amount less than the value of the interest the claimant would have had if the loss or damage had not occurred, the right of subrogation under subsection (1) does not prejudice the ability of the claimant to recover in priority to the government 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 loss or damage had not occurred.

- (3) No action for damages may be brought against the government unless it is commenced not later than one year after the person entitled to bring the action became aware of the loss or damage.
- (4) No action may be brought against the government to recover loss or damage caused by
  - (a) reliance on a printed search result, or
  - (b) the failure of the registrar to register a financing statement submitted for registration,after the first to occur of
  - (c) the limitation period referred to in subsection (3), and
  - (d) the expiry of 6 years from the date that the search result was issued or the financing statement was submitted for registration.
- (5) Despite section 71, agents and employees of the government are not liable in their personal or official capacities for loss or damage suffered by a person because of anything done or omitted to be done in the exercise or purported exercise of a power or duty under this Act or regulations made under this Act unless the plaintiff proves that the agent or employee was not acting in good faith.
- (6) Subsection (5) does not absolve the government from vicarious liability arising out of an act or omission of an agent or employee of the government for which act or omission the government would be liable if this section were not in force.

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

### **SECTION 60 APPLICATION AND INTERPRETATION**

- (1) In this section, “secured party” includes a receiver.
- (2) This Part does not apply
  - (a) a transaction referred to in section 9; or
  - (b) a transaction between a pledgor and a pawnbroker.
- (3) The rights and remedies set out in this Part are cumulative.
- (4) Subject to any other Act or rule of law to the contrary, where the same obligation is secured by an interest in land and a security interest to which this Act applies, the secured party may:
  - (a) without limiting the secured party’s rights, remedies, and duties with respect to the land, proceed pursuant to this Part as to the personal property; or
  - (b) proceed as to both the land and the personal property, in which case:
    - (i) the secured party’s rights, remedies, and duties with respect to the land apply to the personal property, with any necessary modification, as if the personal property were land; and
    - (ii) this Part does not apply.

- (5) Paragraph 4(b) does not limit the rights of another secured party who has a security interest in the personal property that is taken before or after the security interest referred to in subsection 4, and that other secured party:
- (a) has standing in proceedings taken in accordance with paragraph 4(b); and
  - (b) may apply to the court for the conduct of a judicially supervised sale pursuant to paragraph 4(b).
- (6) For the purpose of distributing the amount received from the sale of the land and personal property, where the purchase price is not allocated to the land and the personal property separately, the amount of the total price that is attributable to the sale of the personal property is the proportion of the total price that the market value of the personal property at the time of sale bears to the market value of the land and the personal property at the time of the sale.
- (7) A security interest does not merge merely because a secured party has reduced the claim to judgment.

## **SECTION 61 RIGHTS AND REMEDIES**

- (1) In this section, “secured party” includes a receiver.
- (2) Where the debtor is in default under a security agreement:
- (a) except as provided in subsection (3), the secured party has against the debtor only:
    - (i) the rights and remedies provided in the security agreement;
    - (ii) the rights and remedies and obligations provided in this Part and in sections 41, 42, 43 and 44; and
    - (iii) where the secured party is in possession of the collateral, the rights, remedies, and obligations provided in section 21; and
  - (b) the debtor has against the secured party the rights and remedies provided:
    - (i) in the security agreement;
    - (ii) by the Consumer Credit Code, if applicable;
    - (iii) by any other Act or rule of law that is not inconsistent with this Act; and
    - (iv) in this Part and in section 21.
- (3) Except as provided in sections 21, 64, 65 and 67, no provision of this section, section 21 or sections 63, 64, 65, 66, 67, 68, 69, 70 and 71, 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.

## **SECTION 62 COLLECTION OF PAYMENTS UNDER INTANGIBLES OR CHATTEL PAPER**

- (1) In this section, “secured party” includes a receiver.
- (2) In the event of default, a secured party is entitled:

- (a) to notify a debtor on an intangible or chattel paper or an obligor on an instrument or security to make payment to the secured party whether or not the assignor was making collections on the collateral before the notification;
  - (b) subject to section 64, to take control of any proceeds which to which the secured party is entitled pursuant to section 33;
  - (c) to apply any money, account, instrument or security in the form of a debt obligation taken as collateral to the satisfaction of the obligations secured by the security interest;
  - (d) if it holds a security interest in a deposit account perfected under subsection 47(a), may apply the balance of the deposit account to the obligations secured by the deposit account; and
  - (e) if it holds a security interest in a deposit account perfected under subsection 47(b) and (c), may instruct the ADI to pay the balance of the deposit account to or for the benefit of the secured party.
- (3) Where the collateral is a licence, the secured party may seize the collateral by giving notice to:
- (a) the debtor; and
  - (b) the grantor or successor to the grantor of the licence.
- (4) A secured party may deduct reasonable expenses of collection from:
- (a) amounts collected from a debtor on an intangible or chattel paper or from an obligor pursuant to an instrument for security; or
  - (b) money held as collateral.
- (5) A secured party who enforces a security interest in an intangible, security, chattel paper or instrument pursuant to paragraph (2)(a) or (2)(b) shall give notice to the debtor not later than 15 days after doing so.

### **SECTION 63 RIGHT OF SEIZURE OR OF REPOSSESSION**

- (1) In this section, “secured party” includes a receiver.
- (2) Subject to sections 41, 42, 43, 44 and 62 and to any rule of law requiring prior notice, on default under a security agreement:
- (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral or otherwise enforce the security agreement by any method permitted by law;
  - (b) where the collateral consists of goods that can not be readily moved from the debtor’s premises or of a kind for which adequate 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 acting pursuant to a writ of execution 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 must not cause the person in possession of the premises any greater inconvenience or 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 a method of enforcement that is available with respect to the document of title is also available, with any necessary modification, with respect to the goods covered by it.

## **SECTION 64 DISPOSITION OF COLLATERAL**

- (1) In subsections (2), (5), (6), (10) and (12), "secured party" includes a receiver.
- (2) After seizing or repossessing the collateral, a secured party may dispose of it in its existing condition or after repair, processing or preparation for disposition, and the proceeds of the disposition must be applied shall be applied in the following order to:
  - (a) the reasonable expenses of seizing, repossessing, holding, repairing, processing or preparation for disposition 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;

and any surplus must be dealt with in accordance with section 65.

- (3) Collateral may be disposed of:
  - (a) by private sale;
  - (b) by public sale, including public auction or closed tender;
  - (c) as a whole or in commercial units or parts; or
  - (d) if the security agreement so provides, by lease.
- (4) Where the security agreement so provides, the payment for the collateral being disposed of may be deferred.
- (5) The secured party may delay disposition of the collateral in whole or in part.
- (6) Within a reasonable period before disposition of the collateral, the secured party must give notice 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 where:
    - (i) before the day on which notice of disposition is given to the debtor, the creditor or person with a security interest in the collateral has registered a financing statement according to the name of the debtor; or
    - (ii) the security interest of the creditor or person with a security interest in the collateral perfected by possession at the time when the secured party seized or repossessed the collateral; and

- (c) any other person with an interest in the collateral who has given a written notice to the secured party of that person's interest before the day on which the notice of disposition is given to the debtor.
- (7) A notice referred to in subsection (6) must contain;
- (a) a description of the collateral;
  - (b) a statement that, unless the collateral is redeemed, it will be disposed of; and
  - (c) the day, time, and place of any sale by public auction, the place to which tenders may be delivered and the day after which closed tenders will not be accepted, or the day after which any private disposition of the collateral is to be made.
- (8) A notice required by subsection (6) may be given in accordance with section 74 or where it is to be given to a person who has registered a financing statement, by registered mail addressed to the person to whom it is to be given as it appears on the financing statement.
- (9) The secured party may purchase the collateral or any part of it only at a public sale as referred to in paragraph (3)(b), and only for a price that bears a reasonable relationship to the market value of the collateral.
- (10) Where a secured party disposes of collateral to a purchaser who acquires an 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 to be performed for the purposes of sections 55(10)(a) and 56(3)(a).
- (11) A person who is liable to a secured party pursuant to 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 thereafter the rights and duties of the secured party, and the transfer of the collateral is not a disposition of the collateral.
- (12) The notice referred to in subsection 6 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 it is not disposed of immediately after default;
  - (c) the cost of care and storage of the collateral is disproportionately large in relation to its value;
  - (d) the collateral is of a type that is to be disposed of by sale on an organized market that handles large volumes of transactions between many different sellers and many different buyers;

- (e) the collateral is money authorized or adopted by a foreign government as part of its currency;
  - (f) after default, each person entitled to receive a notice of disposition consents in writing to the disposition of the collateral without compliance with subsection (6); or
  - (g) for any other reason, a court on ex parte application is satisfied that a notice is not required.
- (13) The notice referred to in subsection (6) need not be delivered to a debtor where the security agreement is a mortgage or consumer lease to which the Consumer Credit Code applies.
- (14) Notwithstanding any other provision of this Part, where the collateral is a licence, the collateral may be disposed of only in accordance with the terms and conditions under which the licence was granted or which otherwise pertain to it.

### **SECTION 65 DISTRIBUTION OF AMOUNTS REALIZED FROM DISPOSITION OF COLLATERAL**

- (1) In this section, “secured party” includes a receiver.
- (2) Where a security agreement secures an indebtedness and the secured party has dealt with the collateral pursuant to section 62 or has disposed of it in accordance with section 64 or otherwise, any surplus must, 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 and;
    - (i) who, before the distribution of the surplus, registers a financing statement using the name of the debtor; or
    - (ii) whose interest was perfected by possession at the time when the collateral was seized;
  - (b) any other person with an interest in the surplus, if the person has given a written notice of the 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 any person mentioned in paragraphs (a), (b) or (c) is not prejudiced by payment to anyone pursuant to this section.
- (3) Within thirty days after receipt of a written request, the secured party must give to a person referred to in subsection (2) a written accounting of:
- (a) the amount received from the disposition of collateral or the amount collected pursuant to section 62;
  - (b) the manner in which the collateral was disposed of;
  - (c) the amount applied to expenses as provided in sections 21, 62(4) and 64;
  - (d) the distribution of the amount received from the disposition or collection; and

- (e) the amount of any surplus.
- (4) Where there is a question as to who is entitled to receive payment pursuant to subsection (2), the secured party may pay the surplus into court, and the surplus must not be paid out except on an application pursuant to section 72 by a person claiming an entitlement to it.
- (5) Except as otherwise agreed or as otherwise provided in this Act or any other Act, the debtor is liable to pay the amount of the deficiency to the secured party.

## **SECTION 66 VOLUNTARY FORECLOSURE**

- (1) After default, a secured party may propose to take the collateral in satisfaction of the obligation secured by it and must 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, and
    - (i) who, before the date that the notice is given to the debtor, 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
    - (iii) any other person with an interest in the collateral who has given a written notice to the secured party of an interest in the collateral before 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 must dispose of the collateral pursuant to section 64.
- (3) If no notice of objection is given, the secured party is, at the expiry of the 15 day period or periods referred to 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 interests of the debtor, and from any person entitled to receive a notice pursuant to:
  - (a) subsection (1)(b); or
  - (b) subsection (1)(c), if that person's interest is subordinate to that of the secured party;who has been given the notice, and all obligations secured by those interests are deemed performed for the purposes of sections 55 and 56.
- (4) The notice required by subsection (1) may be given in accordance with section 74 or, if it is to be given to a person who has registered a financing statement, by registered mail addressed to the address of the person to whom it is to be given as it appears on the financing statement.

- (5) The secured party may request that a person referred to in subsection (1), other than the debtor, furnish the secured party 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) If a secured party disposes of the collateral to a purchaser who acquires his or her 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) any interest subordinate to that of the debtor, and
  - (c) 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 the subordinate interests are deemed performed for the purposes of sections 55 and 56.

## **SECTION 67 RIGHTS OF REDEMPTION AND REINSTATEMENT**

At any time before the secured party or a receiver has disposed of the collateral or contracted for disposition pursuant to section 64 or before the secured party is deemed to have irrevocably elected to retain the collateral pursuant to section 66, a person who is entitled to receive a notice of disposition pursuant to section 64(10) may, unless that person otherwise agrees in writing after default, redeem the collateral by:

- (a) tendering fulfilment of the obligations secured by the collateral; and
- (b) paying a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing, and preparing the collateral for disposition, if those expenses have actually been incurred by the secured party in enforcing the security agreement.

## **SECTION 68 SUPERVISORY JURISDICTION OF THE COURT**

- (1) In this section "secured party" includes a receiver.
- (2) On application by a debtor, a creditor of a debtor, a secured party, or a person with an interest in the collateral, the court may make one or more of the following orders:
  - (a) an order, including a binding declaration of right and an order for injunctive relief, that is necessary to ensure compliance with this Part or with sections 21, 41, 42, 43 and 44;
  - (b) an order giving directions to any person regarding the exercise of rights or the discharge of obligations pursuant to this Part or sections 21, 41, 42, 43 and 44;

- (c) an order relieving a person from compliance with the requirements of this Part or sections 21, 41, 42, 43 or 44;
- (d) an order staying enforcement of rights provided in this Part or sections 21, 41, 42, 43 or 44;
- (e) any order that is necessary to ensure protection of the interest of any person in the collateral.

## **SECTION 69 APPOINTMENT AND QUALIFICATIONS OF RECEIVERS**

- (1) A security agreement may provide for the appointment of a receiver.
- (2) Subject to this Act and any other Act, the security agreement may provide for the rights, powers, and duties of a receiver appointed by the secured party and, to the extent that it does not do so, the general law governing receiverships applies.
- (3) A receiver must, not later than 10 days after being appointed, file a notice in the filing-office in accordance with the regulations disclosing the appointment and, on termination of the receivership, must discharge the filing.
- (4) On application by an interested person, the court may:
  - (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 a receiver is appointed to make good a default in connexion with the receiver's custody, management, or disposition of the collateral of the debtor, or to relieve the person from any default 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
- (5) The powers mentioned in subsection (4) and in section 71 are in addition to any other powers the court may exercise in its jurisdiction over receivers.
- (6) Unless the court orders otherwise, a receiver is require to comply with sections 65 and 66 only where the receiver disposes of collateral otherwise than in the course of operating the business of the debtor.

## **PART 6 - MISCELLANEOUS**

### **SECTION 70 SUPPLEMENTARY LAW**

- (1) The principles of common law, equity, and the law merchant, except to the extent that they are inconsistent with this Act, supplement this Act and continue to apply.

- (2) All rights, duties, or obligations that arise pursuant to a security agreement, this Act, or any other applicable law are to be exercised or discharged in good faith and in a commercially reasonable manner.
- (3) A person does not Act in bad faith merely because the person acts with knowledge of the interest of some other person.

### **SECTION 71 CONSEQUENCES OF NON-COMPLIANCE WITH THE ACT**

- (1) In this section, “secured party” includes a receiver.
- (2) If a person, without reasonable excuse, fails to discharge any duties or obligations imposed on the person 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 likely to result from the failure.
- (3) In an action for a deficiency, the debtor may raise as a defence the failure of the secured party to comply with an obligation set out in sections 65 or 66, but the non-compliance of the secured party limits the secured party’s right to the deficiency only to the extent that the non-compliance affects the ability of the debtor to protect the debtor’s interest in the collateral or makes the accurate determination of the deficiency impracticable.
- (4) Except as otherwise provided in this Act, a provision in a security agreement that purports to exclude any 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 any duty or obligation imposed by this Act, is void.

### **SECTION 72 SUMMARY PROCEEDINGS**

On an application of an interested person, the 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.

### **SECTION 73 EXTENSION OF TIME FOR COMPLIANCE**

Where, in sections 16 and 41(16) and 49(15), a time limit is prescribed for the doing of an act or thing, the court, on an application made before or after the time has expired, may extend or abridge, conditionally or otherwise, the time for compliance.

### **SECTION 74 SERVICE OF STATEMENTS, NOTICES, AND DEMANDS**

- (1) A notice or demand, other than a demand pursuant to section 22 or a copy of a financing statement or verification statement referred to in section 49(15) may be given:
  - (a) to an individual by leaving it with the individual or by sending it by registered mail addressed to:
    - (i) the individual at the individual’s residence; or
    - (ii) where the individual is the sole proprietor of a business, the name of the individual at the address of the business;
  - (b) to a partnership:
    - (i) by leaving it with:

- (A) one or more of the general partners; or
    - (B) a person who, at the time of the delivery, has control or management of the partnership business; or
  - (ii) by registered mail addressed to:
    - (A) the partnership;
    - (B) one or more of the general partners; or
    - (C) a person who, at the time of the delivery, has control or management of the partnership business;at the address of the partnership business.
  - (c) to a corporation, other than a municipality:
    - (i) by leaving it with an officer or director of the corporation or with a person who is in charge of any office or place of business of the corporation;
    - (ii) by leaving it with or by sending it by registered mail addressed to the registered office or head office of the corporation; or
    - (iii) in the case of a foreign company, by leaving it with or by sending it by registered mail addressed to a local agent of the foreign company;
  - (d) to a municipal corporation by :
    - (i) leaving it with the mayor, clerk, or secretary of the municipality or a deputy of any of those persons; or
    - (ii) sending it by registered mail addressed to the principal office of the corporation or to the chief administrative officer of the corporation;
  - (e) to an association:
    - (i) by leaving it with an officer of the association; or
    - (ii) by sending it by registered mail addressed to an officer of the association at the address of the officer; and
  - (f) the Crown by leaving it with or sending it by registered mail addressed to the Solicitor-General or an officer of the Crown authorised to act on the Solicitor-General's behalf.
- (2) The giving of a document mentioned in subsection(1) by registered mail occurs:
- (a) when the addressee actually receives the document; or
  - (b) except in cases where the postal services are not functioning, on the expiration of 10 days after the day of registration;
- whichever is earlier.

**SECTION 75 CONFLICTS WITH, AND TITLES OR CONSUMER PROTECTION LEGISLATION**

- (1) Where there is a conflict between a provision of this Act and a provision of the Land Titles Act or the Consumer Credit Code or a provision for the protection of consumers in any other Act, the provision of the Land Titles Act or the Consumer Credit Code or other Act prevails.
- (2) 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 Act other than the Land Titles Act or an Act for the protection of consumers, the provision of this Act prevails.

**SECTION 76 POWER TO MAKE REGULATIONS**

- (1) The Governor in Council may make regulations as follows:
  - (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 registry or for any of the offices;
  - (c) respecting the registry and the duties of the registrar, including the transition from a prior registry system to the system established by this Act;
  - (d) respecting the registration of financing statements;
  - (e) respecting:
    - (i) the form, content and manner of use of financing statements and other writings,
    - (ii) the form, content and manner of use of notices and certificates referred to in this Act, including notices referred to in section 55, and
    - (iii) the manner in which collateral, including proceeds collateral, is described in financing statements and prescribing what kinds of goods may be or must be described in part by serial number;
  - (f) respecting the manner in which a registration may be made under this Act;
  - (g) respect searches of the registry, the meaning of “search result” and the method of disclosure of registered information, including the form of a search result;
  - (h) requiring or permitting the use of statements to confirm the registration of information on financing statements and other writings;
  - (i) respect the registrar’s power to amend a registration, whether the registration is valid or invalid, 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;
  - (l) respecting any matter required or authorised by this Act to be prescribed;
  - (m) respecting the registration of a financing statement in the registry under the authority of another enactment and the disclosure, by the registrar, of information relating to the financing statement;
  - (n) respecting the retention and disposition of registry records;
  - (o) respecting the period of time during which a registration is effective;
  - (p) authorising the registrar to enter into agreements under which fees may be charged on account;
  - (q) authorising the registrar to enter into agreements respecting access to the data base of the registry;
  - (r) respecting agreements under paragraph (p);
  - (s) respecting fees that may be charged in connection with the activities contemplated by this Act.
- (2) A regulation under this section may be made in respect of different classes of persons or transactions.
- (3) A power to make a regulation under this section includes the power to make it in respect of an interest that is permitted or required to be registered in the registry by an enactment other than this Act and the provisions of this section must be read with the necessary changes to achieve this purpose.
- (4) A regulation made under this section is not invalid merely because it is made in respect of an interest that is permitted or required to be registered in the registry by an enactment other than the Personal Property Security Act.

## **PART 7 - TRANSITION**

### **SECTION 77 TRANSITION PROVISIONS**

*[To be inserted]*

## SCHEDULE 1 - DEFINITIONS

### Definitions and 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 the obligation has been earned by performance;

"**ADI**" means an authorised deposit-taking institution as that term is defined in the Banking Act (Cwth);

"**advance**" means the payment of money, the provision of credit or the giving of value and includes any liability of the debtor to pay any interest, credit costs or other charges or costs payable by the debtor in connection with an advance or the enforcement of a security interest securing an advance;

"**building**" means a structure, erection, mine or works built, constructed or opened on or in land;

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

(a) would necessarily involve the dislocation 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 the weakening of the structure of the building or the exposure of the building to weather damage or deterioration,

but does not include:

(c) heating, air conditioning or conveyancing devices, or

(d) 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;

"**collateral**" means personal property that is subject to a security interest;

"**commercial consignment**" means a consignment 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

- (c) to an auctioneer for sale, or
- (d) to a consignee other than an auctioneer for sale, lease or other disposition if it is generally known to the creditors of the consignee that the consignee 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, domestic or household purposes;

**"court"** means the Supreme Court;

**"creditor"** includes an assignee for the benefit of a creditor, 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 parts of trees or plants attached to land, and includes only trees that

- (a) are being grown as nursery stock,
- (b) are being grown for uses other than the production of lumber and wood products, or
- (c) are intended to be replanted in another location for the purpose of reforestation;

**"debtor"** means

- (a) a person who owes payment or performance of an obligation secured, whether or not that person owns or has rights in the collateral,
- (b) a person who receives goods from another person under a commercial consignment,
- (c) a lessee under a lease for a term of more than one year,
- (d) a transferor of an account or chattel paper,
- (e) in sections 21, 27, 31, 63, 64(10), 66(7) and 71, a transferee of or successor to the interest of a person referred to in paragraph (a), or
- (f) if the person referred to in paragraph (a) and the owner of the collateral are not the same person,
  - (i) if the term debtor is used in a provision dealing with the collateral, an owner of the collateral,
  - (ii) if the term debtor is used in a provision dealing with the obligation, the obligor, and
  - (iii) if the context permits, both the owner and the obligor;

**"default"** means

- (a) the failure to pay or otherwise perform the obligation secured when due, or
- (b) the occurrence of an event or set of circumstances that, under the terms of the security agreement, causes the security interest to become enforceable;

**"deposit account"** means a demand, term, savings, passbook or similar account maintained with an ADI. The term does not include property or accounts evidenced by a security, an instrument or chattel paper;

**"document of title"** means a writing issued by or addressed to a bailee

- (a) that covers goods in the bailee's possession that are identified or are fungible portions of an identified mass, and
- (b) in which it is stated that the goods identified in it will be delivered to a named person, or to a transferee of the person, to bearer or to 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"** has the meaning prescribed;

**"financing statement"** means, if the context requires,

- (a) a printed financing statement in a prescribed form including, if the context requires, a printed financing change statement and a printed financing statement (transition); and
- (b) data authorized under the regulations to be transmitted electronically, directly to the computer data base of the registry by a person defined in the regulations as a registering party, to effect a registration;

**"financing statement (transition)"** has the meaning prescribed;

**"fixture"** does not include building materials;

**"foreign registered ship"** means a self propelled, sea going vessel used in international seaborne trade for the transport of goods, passengers or both, that is 20 or more gross registered tons and is registered, other than as a bareboat charter, in the name of the owner, but does not include a vessel registered under the Shipping Registration Act (Cwth);

**"future advance"** means an advance whether or not the advance is made in accordance with an obligation and includes reasonable costs incurred and expenditures made for the protection, maintenance, preservation or repair of collateral;

**"goods"** means tangible personal property, fixtures, crops and the unborn young of animals, but does not include chattel paper, a document of title, an instrument, a security, money, trees other than crops until the trees are severed, or minerals or hydrocarbons until they are extracted;

**"instrument"** means

- (a) a bill of exchange, note or cheque within the meaning of the Bills of Exchange Act (Cwth) and the Cheques and Payment Orders Act (Cwth),
- (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 under it,

but does not include

- (d) chattel paper, a document of title or a security, or
- (e) a bond, debenture or similar document evidencing an obligation secured, in whole or in part, by a mortgage of an interest in land unless the interest being mortgaged is, itself, a mortgage of land;

**"intangible"** means

- (a) personal property, but does not include goods, chattel paper, a document of title, an instrument, money or a security, and
- (b) a licence;

**"inventory"** means goods that are

- (a) held by a person for sale or lease, or that have been leased by that person as lessor,
- (b) to be furnished by a person or have been furnished by that person under a contract of service,
- (c) raw materials or work in progress, or
- (d) materials used or consumed in a business;

**"lease for a term of more than one year"** includes

- (a) a lease for an indefinite term including a lease that is determinable by one or both of the parties within one year from its execution,
- (b) subject to subsection (2), a lease initially for a term of one year or less if the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for a period in excess of one year after the day the lessee first acquired possession of the goods, and
- (c) a lease for a term of one year or less if
  - (i) the lease provides that it is renewable for one or more terms automatically, at the option of one of the parties or by agreement of all the parties, and
  - (ii) the total terms, including the original term, may exceed one year,

but does not include

- (d) a lease involving a lessor who is not regularly engaged in the business of leasing goods,
- (e) a lease of household furnishings or appliances as part of a lease of land if the goods are incidental to the use and enjoyment of the land, or
- (f) a lease of a prescribed kind of goods regardless of the length of the term of the lease;

**"money"** means a medium of exchange

- (a) authorized by the Parliament of the Commonwealth of Australia, or
- (b) authorized or adopted by a foreign government as part of its currency;

**"organisation"** means any body or organisation, whether incorporated or unincorporated

**"new value"** means value other than an antecedent debt or liability;

**"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 in accordance with the terms of the lease, and
- (c) any other amount required to be paid by the lessee to obtain ownership of the collateral,

less any amount paid before the determination;

**"pawnbroker"** means a person who engages in the business of granting credit to individuals for personal, family or household purposes and who

- (a) takes and perfects security interests in consumer goods by taking possession of them, or
- (b) purchases consumer goods under agreements or undertakings, express or implied, that the goods may be repurchased by the sellers;

**"prior security interest"** means an interest created, reserved or provided for by a valid security agreement or other transaction made 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 entered into;

**"proceeds"** means

- (a) identifiable or traceable personal property, fixtures and crops
  - (i) derived directly or indirectly from any dealing with collateral or the proceeds of collateral, and
  - (ii) in which the debtor acquires an interest,

- (b) a right to an insurance payment or any other payment as indemnity or compensation for loss of, or damage to, the collateral or proceeds of the collateral, and
- (c) a payment made in total or partial discharge or redemption of an intangible, an instrument, a security or chattel paper;

**"purchase"** means taking by sale, lease, discount, assignment, 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 48;

**"registry"** means the personal property registry established under section 48;

**"secured party"** means

- (a) a person who has a security interest,
- (b) a person who holds a security interest for the benefit of another person, and
- (c) the trustee, if a security interest is embodied in a trust indenture;

**"security"** means a share, stock, warrant, bond, debenture or similar record, whether or not in the form of a security certificate, that

- (a) is recognized in the jurisdiction in which it is issued or dealt with as evidencing a share, participation or other interest in property or an enterprise, or that evidences an obligation of the issuer, and
- (b) in the ordinary course of business is transferred
  - (i) by delivery with the necessary endorsement, assignment or registration in

the records of the issuer or of an agent of the issuer, or by compliance with restrictions on transfer, or

- (ii) by an entry in the records of a clearing agency,

but does not include a bond, debenture or similar record evidencing an obligation secured, in whole or in part, by a mortgage of an interest in land unless the interest being mortgaged is, itself, a mortgage of land;

**"security agreement"** means an agreement that creates or provides for a security interest and, if the context permits, includes

- (a) an agreement that provides for a prior security interest, and
- (b) writing that evidences a security agreement;

**"security interest"** means

- (a) an interest in goods, chattel paper, a security, a document of title, an instrument, money or an intangible that secures payment or performance of an obligation, but does not include the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to 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, and
- (b) the interest of
  - (i) a transferee arising from the transfer of an account or a transfer of chattel paper,
  - (ii) a person who delivers goods to another person under a commercial consignment, and
  - (iii) a lessor under a lease for a term of more than one year,whether or not the interest secures payment or performance of an obligation;

**"security with a clearing agency"** means a security

- (a) in the form of a security certificate
  - (i) in bearer form,
  - (ii) endorsed in blank by an appropriate person, or
  - (iii) registered in the name of the clearing agency or its nominee or custodian, that is in the custody of the clearing agency, or
- (b) not in the form of a security certificate and that is registered or recorded in the records maintained by or on behalf of the issuer in the name of a clearing agency or its nominee or custodian;

**"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.

- (2) A lease under paragraph (b) of the definition of "lease for a term of more than one year" does not become a lease for a term of more than one year until the lessee's possession extends for more than one year.
- (3) Unless otherwise provided in this Act, the determination whether goods are consumer goods, inventory or equipment must be made as of the time the security interest in the goods attaches.