

1993

CHAPTER P-6.2

An Act respecting Security Interests in Personal Property and making Consequential and Related Amendments to Certain Other Acts

(Assented to May 21, 1993)

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

PART I

Short Title, Interpretation, Application and Conflict of Laws

Short title

1 This Act may be cited as *The Personal Property Security Act, 1993*.

Interpretation

2(1) In this Act:

- (a) **“accessions”** means goods that are installed in or affixed to other goods;
- (b) **“account”** means a monetary obligation that is not evidenced by chattel paper, an instrument or a security, whether or not it has been earned by performance;
- (c) **“advance”** means the payment of money, the provision of credit or the giving of value, and includes any liability of the debtor to pay interest, credit costs and other charges or costs payable by the debtor in connection with an advance or the enforcement of a security interest securing the advance;
- (d) **“building”** means a structure, erection, mine or work that is built or constructed on or opened in land;
- (e) **“building materials”** means materials that are incorporated into a building, and includes goods attached to a building so that their removal:
 - (i) 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
 - (ii) would result in weakening the structure of the building or exposing the building to weather damage or deterioration;

but does not include:

- (iii) heating, air conditioning or conveyancing devices; or
- (iv) machinery installed in a building or on land for use in carrying on an activity in the building or on the land;

- (f) **“chattel paper”** means one or more writings that evidence both a monetary obligation and:
- (i) a security interest in, or lease of, specific goods; or
 - (ii) a security interest in specific goods and accessions;
- (g) **“collateral”** means personal property that is subject to a security interest;
- (h) **“commercial consignment”** means a consignment, pursuant to which goods are delivered for sale, lease, or other disposition to a consignee who, in the ordinary course of the consignee's business, deals in goods of that description, by a consignor who:
- (i) in the ordinary course of the consignor's business deals in goods of that description; and
 - (ii) reserves an interest in the goods after they have been delivered;
- but does not include an agreement pursuant to which goods are delivered:
- (iii) to an auctioneer for sale; or
 - (iv) to a consignee for sale, lease or other disposition if the consignee is generally known to the creditors of the consignee to be selling or leasing goods of others;
- (i) **“consumer goods”** means goods that are used or acquired for use primarily for personal, family or household purposes;
- (j) **“court”** means Her Majesty's Court of Queen's Bench for Saskatchewan;
- (k) **“creditor”** includes an assignee for the benefit of creditors, an executor, an administrator, a committee or a property guardian of a creditor;
- (l) **“crops”** means crops, whether matured or otherwise, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, and includes trees only if they:
- (i) are being grown as nursery stock;
 - (ii) are being grown for uses other than the production of lumber and wood products; or
 - (iii) are intended to be replanted in another location for the purpose of reforestation;
- (m) **“debtor”** means:
- (i) a person who owes payment or performance of an obligation secured, whether or not that person owns or has rights in the collateral;

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- (ii) a person who receives goods from another person pursuant to a commercial consignment;
 - (iii) a lessee pursuant to a lease for a term of more than one year;
 - (iv) a transferor of an account or chattel paper;
 - (v) in sections 17, 24, 26 and 58, subsections 57(3), 59(14), 61(7) and 64(3) and section 65, the transferee of a debtor's interest in the collateral; or
 - (vi) if the person mentioned in subclause (i) and the person who has rights in the collateral are not the same person:
 - (A) where the term is used in a provision dealing with the collateral, the person who has an interest in the collateral;
 - (B) where the term is used in a provision dealing with the obligation, the obligor; and
 - (C) where the context permits, the persons mentioned in both paragraphs (A) and (B);
- (n) **“default”** means:
- (i) the failure to pay or otherwise perform the obligation secured when due; or
 - (ii) the occurrence of any event or set of circumstances on which, pursuant to the terms of the security agreement, the security becomes enforceable;
- (o) **“document of title”** means a writing issued by or addressed to a bailee:
- (i) that covers goods in the bailee's possession that are identified or are fungible portions of an identified mass; and
 - (ii) in which it is stated that the goods identified in it will be delivered to a named person, or to the transferee of that person, or to bearer or to the order of a named person;
- (p) **“equipment”** means goods that are held by a debtor other than as inventory or consumer goods;
- (q) **“financing change statement”** means:
- (i) a printed financing change statement in the prescribed form; or
 - (ii) where the context permits, data that is authorized by the regulations to be transmitted to the registry to amend or discharge a registration;
- (r) **“financing statement”** means:
- (i) a printed financing statement in the prescribed form that is required or permitted to be registered pursuant to this Act; or
 - (ii) where the context permits:
 - (A) data that is authorized by the regulations to be transmitted to an office of the registry to effect a registration;
 - (B) a financing change statement; or
 - (C) a security agreement registered prior to the day on which *The Personal Property Security Act* came into force;
- (s) **“fixture”** does not include building materials;
- (t) **“future advance”** means an advance, whether or not made pursuant to an obligation, and includes advances, reasonable costs incurred and expenditures made for the protection, maintenance, preservation or repair of the collateral;
- (u) **“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 or trees, other than trees that are crops, until they are severed or minerals until they are extracted;
- (v) **“instrument”** means:
- (i) a bill of exchange, note or cheque within the meaning of the *Bills of Exchange Act* (Canada);
 - (ii) any other writing that evidences a right to payment of money and that is of a type that, in the ordinary course of business, is transferred by delivery with any necessary endorsement or assignment; or

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

but does not include:

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

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

(w) **“intangible”** means personal property that is not goods, chattel paper, a document of title, an instrument, money or a security, and includes a licence;

(x) **“inventory”** means goods that are:

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

(ii) to be furnished or have been furnished pursuant to a contract of service;

(iii) raw materials or work in progress; or

(iv) materials used or consumed in a business;

(y) **“lease for a term of more than one year”** includes:

(i) a lease for an indefinite term, including a lease for an indefinite term that is determinable by one or both of the parties not later than one year after the day of its execution;

(ii) a lease initially for a term of one year or less than one year, where the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for a period of more than one year after the day on which the lessee, with the consent of the lessor, first acquired possession of them, but the lease does not become a lease for a term of more than one year until the lessee's possession extends for more than one year; and

(iii) a lease for a term of one year or less where:

(A) the lease provides that it is automatically renewable or that it is renewable at the option of one of the parties or by agreement of the parties for one or more terms; and

(B) the total of the terms, including the original term, may exceed one year;

but does not include:

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

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

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

(z) **“licence”** means a right, whether or not exclusive:

(i) to manufacture, produce, sell, transport, or otherwise deal with personal property; or

(ii) to provide services;

that is transferrable by the grantee with or without restriction or the consent of the grantor;

(aa) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

(bb) **“money”** means a medium of exchange that is:

(i) authorized by the Parliament of Canada as part of the currency of Canada; or

(ii) authorized or adopted by a foreign government as part of its currency;

(cc) **“new value”** means value other than antecedent debt or liability;

(dd) **“obligation secured”** means, when determining the amount payable pursuant to a lease that secures payment or performance of an obligation:

(i) the amount originally contracted to be paid pursuant to the lease;

(ii) any other amount payable pursuant to the terms of the lease; and

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

- collateral;
less any amount paid before the determination;
- (ee) **“pawnbroker”** means a person who engages in the business of granting credit to individuals for personal, family or household purposes and who:
- (i) takes and perfects security interests in consumer goods by taking possession of those consumer goods; or
 - (ii) purchases consumer goods pursuant to agreements or undertakings, express or implied, that the goods may be repurchased by the sellers;
- (ff) **“personal property”** includes goods, chattel paper, documents of title, instruments, money, securities and intangibles;
- (gg) **“prescribed”** means prescribed in the regulations;
- (hh) **“proceeds”** means:
- (i) identifiable or traceable personal property, fixtures or crops:
 - (A) that are derived directly or indirectly from any dealing with collateral or the proceeds of collateral; and
 - (B) in which the debtor acquires an interest;
 - (ii) 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; or
 - (iii) a payment made in total or partial discharge or redemption of an intangible, chattel paper, an instrument or a security;
- but does not include animals merely because they are the offspring of animals that are collateral;
- (ii) **“purchase”** means taking by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, gift or any other consensual transaction that creates an interest in personal property;
- (jj) **“purchase-money security interest”** means:
- (i) a security interest taken in collateral to the extent that it secures all or part of its purchase price;
 - (ii) a security interest taken in collateral by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights;
 - (iii) the interest of a lessor of goods pursuant to a lease for a term of more than one year; or
 - (iv) the interest of a consignor who delivers goods to a consignee pursuant to a commercial consignment;
- but does not include a transaction of sale and the lease back to the seller and, for the purposes of this clause, **“purchase price”** and **“value”** include credit charges and interest payable for the purchase or loan credit;
- (kk) **“receiver”** includes a receiver-manager;
- (ll) **“registrar”** means the Registrar of Personal Property Security appointed pursuant to section 42;
- (mm) **“registry”** means the Personal Property Registry continued pursuant to section 42;
- (nn) **“secured party”** means:
- (i) a person who has a security interest;
 - (ii) a person who holds a security interest for the benefit of another person; or
 - (iii) a trustee, where a security interest is embodied in a trust indenture;
- (oo) **“security”** means a document that is:
- (i) issued in bearer or registered form;
 - (ii) of a type commonly dealt with on securities exchanges or markets or commonly recognized in the area in which it is issued or dealt in as a medium of investment;
 - (iii) one of a class or series of documents or that, by its terms, is divisible into

classes or series of documents; and

(iv) evidence of a share, participation or other interest in property or in an enterprise, or is evidence of an obligation of the issuer;

and includes an uncertificated security pursuant to *The Business Corporations Act* or pursuant to other law relating to securities, but does not include a writing that provides for or creates a mortgage or charge with respect to an interest in land that is specifically identified in the writing;

(pp) **“security agreement”** means an agreement that creates or provides for a security interest and, where the context permits, includes a document that evidences a security agreement;

(qq) **“security interest”** means:

(i) an interest in personal property that secures payment or performance of an obligation, but does not include the interest of a seller who has shipped goods to a buyer pursuant to 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
(ii) the interest of:

(A) a transferee pursuant to a transfer of an account or a transfer of chattel paper;

(B) a consignor who delivers goods to a consignee pursuant to a commercial consignment; or

(C) a lessor pursuant to a lease for a term of more than one year;

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

(rr) **“specific goods”** means goods identified and agreed on at the time when a security agreement with respect to those goods is made;

(ss) **“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 a person is appointed as trustee for the holders of the debt obligations issued, guaranteed or provided for pursuant to the deed, indenture or document;

(tt) **“value”** means any consideration that is sufficient to support a simple contract and includes an antecedent debt or liability.

(2) For the purposes of this Act:

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

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

(c) a corporation knows or has knowledge:

(i) when information comes to the attention of:

(A) a managing director or officer of the corporation; or

- (B) a senior employee of the corporation with responsibility for matters to which the information relates;
 - under circumstances in which a reasonable person would take cognizance of it; or
 - (ii) when information in writing is delivered to the corporation's registered office or attorney for service;
 - (d) the members of an association know or have knowledge when information comes to the attention of:
 - (i) a managing director or officer of the association;
 - (ii) a senior employee of the association with responsibility for matters to which the information relates; or
 - (iii) all members;
 - under circumstances in which a reasonable person would take cognizance of it; and
 - (e) a government knows or has knowledge when information comes to the attention of a senior employee of the government with responsibility for matters to which the information relates, under circumstances in which a reasonable person would take cognizance of it.
- (3) 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.
- (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 section 28, and the person who has rights in or has dealt with the proceeds.
- (5) Where collateral is a security the transfer of which may be effected by an entry in the records of a clearing agency as provided in *The Business Corporations Act* or other law relating to the transfer of an interest in a security, the transferee or secured party, as the case may be, is deemed to have taken possession of the security when the appropriate entries have been made in the records of the clearing agency.

Application

- 3(1) Subject to section 4, 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 clause (a), to a chattel mortgage, conditional sale, floating charge, pledge, trust indenture, trust receipt, or to an assignment, consignment, lease, trust or transfer of chattel paper that secures payment or performance of an obligation.

- (2) Subject to section 4 and section 55, this Act applies to a transfer of an account or chattel paper, to a lease for a term of more than one year and to a commercial consignment, that does not secure payment or performance of an obligation.
- (3) The Crown is bound by this Act.

Exceptions

- 4 Except as otherwise provided in this Act or the regulations, this Act does not apply to:
- (a) a lien, charge or other interest given by statute or rule of law;
 - (b) the creation or transfer of an interest or claim in or pursuant to a contract of annuity or policy of insurance except the transfer of a right to money or other value that is payable pursuant to 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;
 - (d) a transfer of an unearned right to payment pursuant to a contract to a transferee who is to perform the transferor's obligations pursuant to the contract;
 - (e) the creation or transfer of an interest in land, including a lease;
 - (f) the creation or transfer of a right to payment that arises in connection with an interest in or a lease of land, other than a right to payment that is evidenced by a security or instrument;
 - (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 that is made solely to facilitate the collection of accounts for the transferor;
 - (i) the creation or transfer of a right to damages in tort;
 - (j) an assignment for the general benefit of creditors made pursuant to an Act of the Parliament of Canada relating to insolvency;
 - (k) a security agreement governed by an Act of the Parliament of Canada that deals with the rights of parties to the agreement or the rights of third parties affected by a security interest created by the agreement, including an agreement governed by sections 425 to 436 of the *Bank Act* (Canada).

General rules

- 5(1) Subject to this Act, the validity, the perfection and the effect of perfection or non-perfection of:
- (a) a security interest in goods; or
 - (b) a possessory security interest in a security, an instrument, a negotiable document of title, money or chattel paper;
- is governed by the law of the jurisdiction where the collateral is situated when the security interest attaches.
- (2) For the purposes of subsection (1), an uncertificated security is situated where the records of the clearing agency are kept.
- (3) A security interest in goods that is perfected pursuant to the law of the jurisdiction in which the goods are situated when the security interest attaches and before the goods are brought into Saskatchewan continues perfected in Saskatchewan if it is perfected in Saskatchewan:
- (a) not later than 60 days after the day on which the goods are brought into Saskatchewan;
 - (b) not later than 15 days after the day on which the secured party has knowledge that the goods have been brought into Saskatchewan; or
 - (c) before perfection ceases pursuant to the law of the jurisdiction in which the goods were situated when the security interest attached;
- whichever is earliest, but the security interest is subordinate to the interest of a buyer or lessee

of the goods who acquires the interest without knowledge of the security interest and before it is perfected in Saskatchewan pursuant to section 24 or 25.

(4) A security interest that is not perfected as provided in subsection (3) may be otherwise perfected in Saskatchewan pursuant to this Act.

(5) Where a security interest mentioned in subsection (1) is not perfected pursuant to the law of the jurisdiction in which the collateral was situated when the security interest attached and before the collateral was brought into Saskatchewan, it may be perfected pursuant to this Act.

Goods removed from jurisdiction

6(1) Subject to section 7, 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.

(2) Where the jurisdiction to which the goods are removed is not Saskatchewan and the goods are later brought into Saskatchewan, the security interest in the goods is deemed to be a security interest to which subsection 5(3) applies if it was perfected pursuant to the law of the jurisdiction to which the goods were removed.

Intangibles, mobile goods, etc.

7(1) For the purposes of this section, a debtor is located at:

- (a) the place of business, if any, of the debtor;
 - (b) the chief executive office of the debtor, if the debtor has more than one place of business; and
 - (c) the principal residence of the debtor, if the debtor has no place of business.
- (2) The validity, the perfection and the effect of perfection or non-perfection of:
- (a) a security interest in:
 - (i) an intangible; or
 - (ii) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others; and
 - (b) a non-possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper;

are governed by the law, including the conflict of law rules, of the jurisdiction where the debtor is located when the security interest attaches.

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

- (a) not later than 60 days after the day on which the debtor relocates or transfers an interest in the collateral to a person located in the other jurisdiction;
- (b) not later than 15 days after the day on which the secured party has knowledge that the debtor has relocated or transferred an interest in the collateral to a person located in the other jurisdiction; or
- (c) prior to the day on which perfection ceases pursuant to the law of the first jurisdiction;

whichever is the earliest.

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

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

unless it is perfected pursuant to this Act before the interest mentioned in clause (a) or (b) arises.

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

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

- (a) is provided for in a security agreement executed before the minerals are extracted; and
- (b) attaches to the minerals on extraction or attaches to an account on the sale of the minerals;

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

(7) For the purposes of subsection (6), “**minerals**” includes petroleum and gas and “**minehead**” includes wellhead.

Enforcement of rights of secured party

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

- (a) procedural issues involved in the enforcement of the rights of a secured party against collateral other than intangibles are governed by the law of the jurisdiction in which the collateral is located when the rights are exercised;
 - (b) subject to clause (c), procedural issues involved in the enforcement of the rights of a secured party against intangibles are governed by the law of the forum; and
 - (c) substantive issues involved in the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.
- (2) For the purposes of sections 5, 6 and 7, a security interest is perfected pursuant to the law of a jurisdiction if the secured party has complied with the law of the jurisdiction with respect to the creation and continuance of a security interest with the result that the security interest has a status in relation to other secured parties, buyers and judgment creditors and a trustee in bankruptcy of the debtor similar to that of an equivalent security interest created and perfected pursuant to this Act.

PART II

Validity of Security Agreements and Rights of Parties

Effectiveness of security agreement

- 9(1) Except as otherwise provided in this or any other Act, a security agreement is effective according to its terms.
- (2) A security interest in collateral is void to the extent that it secures payment or performance of an obligation that is also secured by a security interest in the same collateral arising pursuant to an agreement, whenever executed, to which any of sections 425 to 436 of the *Bank Act* (Canada) applies.
- (3) Nothing in subsection (2) affects:
- (a) a security interest that secures payment or performance of an obligation owing by a person who is not a party to an agreement between the debtor and the secured party to which any of sections 425 to 436 of the *Bank Act* (Canada) applies; or
 - (b) a security interest that is created or provided for in a security agreement executed before this section comes into force.
- (4) An account debtor as defined in clause 41(1)(a) may take a security interest in the account or chattel paper under which the account debtor is obligated.

Enforceability against third parties

- 10(1) Subject to subsection (2), a security agreement 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:
 - (A) goods;
 - (B) chattel paper;
 - (C) securities;
 - (D) documents of title;
 - (E) instruments;
 - (F) money;
 - (G) intangibles;
 - (H) crops;

- (ii) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property; or
- (iii) a statement that a security interest is taken in all of the debtor's present and after-acquired property except specified items or kinds of personal property or except one or more of the following:
 - (A) goods;
 - (B) chattel paper;
 - (C) securities;
 - (D) documents of title;
 - (E) instruments;
 - (F) money;
 - (G) intangibles;
 - (H) crops.

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

(3) A description is inadequate for the purposes of clause (1)(b) if it describes the collateral as consumer goods or equipment without further reference to the item or kind of collateral.

(4) A description of collateral as inventory is adequate for the purposes of clause (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 description of the proceeds.

Copy of security agreement

11 Where a security agreement is in writing, the secured party shall deliver a copy of the security agreement to the debtor not later than 10 days after the execution of the security agreement and, if the secured party fails to do so after a request by the debtor, the court may, on application by the debtor, make an order for the delivery of a copy to the debtor.

Attachment of security interests

12(1) A security interest attaches when:

- (a) value is given;
- (b) the debtor has rights in the collateral; and

(c) except for the purpose of enforcing rights between the parties to the security agreement, the security interest becomes enforceable within the meaning of section 10; unless the parties have specifically agreed to postpone the time of attachment, in which case it attaches at the time specified in the agreement.

(2) For the purposes of clause (1)(b) and without limiting other rights, if any, that the debtor may have in the collateral, a lessee pursuant to a lease for a term of more than one year or a consignee pursuant to a commercial consignment has rights in the goods when the lessee or consignee obtains possession of them pursuant to the lease or consignment.

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

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

After-acquired property

13(1) Subject to section 12 and subsection (2), where a security agreement provides for a security interest in after-acquired property, the security interest attaches in accordance with section 12 without specific appropriation by the debtor.

(2) A security interest does not attach to after-acquired property that is a crop that becomes a growing crop more than one year after the security agreement has been entered into, except that a security interest in crops that is given in conjunction with a lease, agreement for sale or mortgage of land may, if the parties so agree, attach to crops to be grown on the land concerned during the term of the lease, agreement for sale or mortgage.

Future advances

14(1) A security agreement or a related agreement may provide for future advances.

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

Seller's obligations

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

Acceleration of payment or performance

16 Where a security agreement provides that the secured party may accelerate payment or performance by the debtor when:

- (a) the secured party considers that the collateral is in jeopardy; or
- (b) the secured party is insecure or believes himself or herself to be insecure;

the provision is to be construed to mean that the secured party has the right to do so only if the secured party believes, and has commercially reasonable grounds to believe, that the collateral is or is about to be placed in jeopardy or that the prospect of payment or performance is or is about to be impaired.

Preservation of collateral

17(1) In this section, “**secured party**” includes a receiver.

(2) A secured party shall use reasonable care in the custody and preservation of collateral in the possession of the secured party and, unless the parties agree otherwise, 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 the parties agree otherwise, where collateral is in the secured party's possession:

- (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral, are chargeable to the debtor and are secured by the collateral;
- (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;
- (c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and shall apply any money so received, unless remitted to the debtor, immediately on its receipt in reduction of the obligation secured; and
- (d) the secured party shall 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 purpose of preserving the collateral or its value; or
- (c) pursuant to an order of the court.

Demand for information from secured party

18(1) The debtor, a creditor, a sheriff, a person with an interest in personal property of the debtor or an authorized representative of any of them may, by a demand in writing containing an address for reply and delivered to the secured party:

- (a) at the secured party's most recent address set out in a registered financing statement containing a description of personal property of the debtor; or
- (b) at the current address of the secured party, if known by the person who makes the demand;

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 pursuant to subsection (1) may be one or more of the following:

- (a) a copy of a 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 the indebtedness, as of the day specified in the demand;
- (c) a written approval or correction of an itemized list of personal property attached to the demand indicating which items are collateral as of the day specified in the demand;
- (d) a written approval or correction of the amount of indebtedness and of the terms of payment of the indebtedness as of the day specified in the demand;
- (e) sufficient information as to the location of the security agreement or a copy of it to enable a person entitled to receive a copy of the security agreement to inspect it.

(3) A person with an interest in personal property of the debtor is entitled to make a demand pursuant to subsection (1) only with respect to a security agreement that provides for a security interest in the property in which the person has an interest.

(4) On the demand of a person entitled to receive a copy of the security agreement pursuant to subsection (1), the secured party shall permit the person to inspect the security agreement or a copy of it during normal business hours at the location mentioned in clause (2)(e).

(5) Where a demand is made in accordance with clause (2)(c) and the secured party claims a security interest in:

- (a) all of the personal property of the debtor;
- (b) all the property of the debtor other than a specified kind or item of property; or

- (c) all of a specified kind of property of the debtor;
the secured party may indicate this in lieu of approving or correcting the itemized list of the property.
- (6) A secured party, other than a trustee pursuant to a trust indenture, shall reply to a demand pursuant to subsection (1) or (4) not later than 10 days after the demand is made.
- (7) A secured party who is a trustee pursuant to a trust indenture shall reply to a demand pursuant to subsection (1) or (4) not later than 25 days after the demand is made.
- (8) Where, without reasonable excuse:
- (a) a secured party fails to comply with a demand within the time specified in subsection (6) or (7); or
 - (b) in the case of a demand pursuant to subsection (1), the reply is incomplete or incorrect;
- the person who makes the demand, in addition to any other remedy provided by this Act, may apply to the court for an order requiring the secured party to comply with the demand.
- (9) Where a person who receives a demand pursuant to subsection (1) or (4) no longer has an interest in the obligation or property of the debtor that is the subject of the demand, the person shall, not later than 10 days after receiving the demand, disclose the name and address of the immediate successor in interest and, if known to the person, the current successor in interest.
- (10) Where, without reasonable excuse, the person who receives a demand fails to comply with subsection (9), the person who makes the demand, in addition to any other remedy provided in this Act, may apply to the court for an order requiring the person who receives the demand to comply with subsection (9).
- (11) On application pursuant to subsection (8) or (10), the court may make an order requiring:
- (a) the secured party mentioned in subsection (8) to comply with the demand mentioned in that subsection; or
 - (b) the person mentioned in subsection (9) to disclose the information mentioned in that subsection.
- (12) In an application pursuant to subsection (8) or (10) or in a separate application, the court may:
- (a) make any order that it considers necessary to ensure compliance with the demand; and
 - (b) in the case of an application pursuant to subsection (8), make an order declaring that, in the event of non-compliance with the order of the court to respond to the demand:

- (i) the security interest of the secured party with respect to which the demand was made is unperfected or extinguished; and
 - (ii) any related registration is discharged.
- (13) Subject to subsection 65(5), on an application pursuant to subsection (8) or (10), or on an application of the secured party mentioned in subsection (8) or the person mentioned in subsection (9), the court may:
- (a) unless the demand is made by the debtor, exempt the secured party or person who receives the demand in whole or in part from complying with subsection (1) or (9); or
 - (b) extend the time for compliance.
- (14) A secured party who replies to a demand mentioned in subsection (1) is estopped for the purposes of this Act as against:
- (a) the person who makes the demand; or
 - (b) 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:
- (c) the accuracy of the information contained in the reply to the demand pursuant to clause (2)(b), (c) or (d); or
 - (d) that the copy of the security agreement provided in response to a demand pursuant to clause (2)(a) is a true copy of the security agreement required to be provided by clause (2)(a).
- (15) A successor in interest mentioned in subsection (9) is estopped for the purposes of this Act as against:
- (a) the person who makes the demand mentioned in subsection (1); and
 - (b) any other person who can reasonably be expected to rely on the reply to the demand;
- to the extent that the person relies on the reply, from denying:
- (c) the accuracy of the information contained in the reply to the demand pursuant to clauses (2)(b), (c) and (d); or
 - (d) that the copy of the security agreement that was provided in response to a demand pursuant to clause (2)(a) is a true copy of the security agreement required to be provided by subsection (2)(a).
- (16) A successor in interest mentioned in subsection (9) is not estopped pursuant to subsection (15) where:
- (a) the person who makes the demand knows the identity and address of the successor in interest; or
 - (b) prior to the demand, a financing change statement is registered as provided in section 45 disclosing the successor in interest as the secured party.
- (17) The person to whom a demand is made pursuant to this section may require payment in advance of a fee in the amount prescribed for each demand, but the debtor is entitled to a reply without charge once every six months.
- (18) A secured party who receives a demand that purports to be made by a person entitled to make it pursuant to 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 III

Perfection and Priorities

Perfection of security interest

19 A security interest is perfected when it has attached and all steps required for perfection pursuant to this Act have been completed, regardless of the order of occurrence.

Priority re unperfected and certain perfected security interests

20(1) A security interest in collateral is subordinate to the interest of:

- (a) 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 equitable execution that affects or relates to the collateral;

- (b) a sheriff who has seized or has obtained a right to the collateral pursuant to *The Creditors' Relief Act*;
 - (c) where collateral has been seized under legal process, a judgment creditor entitled by law to participate in a distribution of money realized from the disposition of collateral pursuant to *The Creditors' Relief Act*; and
 - (d) a representative of creditors, but only for the purposes of enforcing the rights of persons mentioned in clause (a);
- if that security interest is unperfected at the time when the interest of the person mentioned in clause (a), (b) or (d) arises or the judgment creditor mentioned in clause (c) delivers a writ of execution or certificate to the sheriff pursuant to *The Creditors' Relief Act*.
- (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 bankruptcy; or
 - (b) a liquidator appointed pursuant to the *Winding-up Act* (Canada) if the security interest is unperfected on the day that the winding-up order is made.

(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.

(4) For the purposes of subsection (3), a purchaser of an instrument or a security or a holder of a negotiable document of title who acquired the instrument, security or document of title in a transaction that was entered into in the ordinary course of the transferor's business has knowledge of the security interest only if the purchaser or holder acquired the security interest with knowledge that the transaction violates the terms of the security agreement that creates or provides for the security interest.

Measure of damages

21 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 subsection 20(1) or a trustee or liquidator pursuant to subsection 20(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 order, damages in an amount equal to:

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

Priority re purchase-money security interests

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

- (a) collateral, other than an intangible, that is perfected not later than 15 days after the 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 earlier; or

- (b) an intangible that is perfected not later than 15 days from the day on which the security interest attaches;

has priority over the interest of a person mentioned in subsection 20(1) or (2).

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

Continuity of perfection

23(1) If a security interest is originally perfected pursuant 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 perfection of the security interest as the transferor had at the time of the transfer.

Perfection by possession

24(1) Subject to section 19, 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;
- (e) a negotiable document of title; or
- (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.

Perfection by registration

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

Temporary perfection

26(1) A security interest perfected pursuant to section 24 in:

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

- (i) ultimate sale or exchange;
- (ii) presentation, collection or renewal; or
- (iii) registration of 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 goods in a manner preliminary to their sale or exchange;

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

(2) After the expiration of the period of time mentioned in subsection (1), a security interest mentioned in this section is subject to the provisions of this Act relating to the perfection of a security interest.

Perfection re goods held by bailee

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

- (a) the issuance of a document of title by the bailee in the name of the secured party;

- (b) the perfection of a security interest in a negotiable document of title to the goods where the bailee has issued one;
 - (c) a holding on behalf of the secured party pursuant to section 24; 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 from arising during the period that the negotiable document of title is outstanding.
- (3) A perfected security interest in a negotiable document of title covering goods takes priority over a security interest in the goods otherwise perfected after the goods become covered by the negotiable document of title.

Perfection re proceeds

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

- (a) continues in the collateral unless the secured party expressly or impliedly authorizes the dealing; and

- (b) extends to the proceeds;
but where the secured party enforces a security interest against both the collateral and the proceeds, the amount secured by the security interest in the collateral and the proceeds is limited to the market value of the collateral at the date of the dealing.
- (2) A security interest in proceeds is a continuously perfected security interest if the interest in the original collateral is perfected by 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 banks or similar institutions.
- (3) Where the security interest in the original collateral is perfected in a manner other than a manner described 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 specified in this Act for original collateral of the same kind.

Goods returned or repossessed

- 29(1) Where a debtor sells or leases goods that are subject to a security interest under circumstances in which the buyer or lessee takes free of the security interest pursuant to clause 28(1)(a) or section 30, the security interest reattaches to the goods if:
 - (a) the goods are returned to, seized or repossessed by the debtor or by 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 pursuant to 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 by the transferee of the chattel paper;
- the transferee of the account or chattel paper has a security interest in the goods that attaches when the goods are returned, seized or repossessed.
- (4) A security interest in goods that arises pursuant to subsection (3) is perfected if the security interest in the account or chattel paper was perfected at the time of the return, seizure or repossession, but becomes unperfected on the expiry of 15 days after the return, seizure or repossession unless the transferee registers a financing statement relating to the security interest or takes possession of the goods by seizure, repossession or otherwise before the expiration of that period.
- (5) A security interest in goods that a transferee of an account has pursuant to 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 pursuant to subsection (3) has priority over:
- (a) a security interest in goods that reattaches pursuant to subsection (1); and
 - (b) a security interest in 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 pursuant to subsection 31(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 mentioned 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 pursuant to this section.

Buyer or lessee takes free of security interest

30(1) For the purposes of this section:

- (a) **“buyer of goods”** includes a person who obtains vested rights in goods pursuant to a contract to which the person is a party, as a consequence of the goods becoming a fixture or an accession to property in which the person has an interest;
- (b) **“ordinary course of business of the seller”** includes the supply of goods in the ordinary course of business as part of a contract for services and materials;
- (c) **“seller”** includes a person who supplies goods that become a fixture or an accession pursuant to a contract with a buyer of goods or with a person who is party to a contract with a buyer of goods.

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- (2) A buyer or lessee of goods sold or leased in the ordinary course of business of the seller of lessor takes free of any perfected or unperfected security interest that is given by the seller or lessor or that arises pursuant to section 28 or 29, whether or not the buyer or lessee knows of it, unless the buyer or lessee also knows that the sale or lease constitutes a breach of the security agreement pursuant to which the security interest was created.
- (3) A buyer or lessee of goods that are acquired as consumer goods or goods bought for farming uses 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) goods the purchase price of which exceeds \$1,000 or, in the case of a lease, the market value of which exceeds \$1,000.
- (5) A buyer or lessee of goods takes free of a security interest that is temporarily perfected pursuant to subsection 26(1), 28(3) or 29(4) or a security interest the perfection of which is continued pursuant to section 51 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) Where goods are sold or leased, the buyer or lessee takes free from any security interest in the goods that is perfected pursuant to section 25 if:
- (a) the buyer or lessee bought or leased the goods without knowledge of the security interest; and
 - (b) the goods were not described by serial number in the registration relating to the security interest.
- (7) Subsection (6) applies only to goods that are equipment and are of a kind prescribed as serial numbered goods.
- (8) A sale or lease mentioned 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 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.

Protection of transferees of negotiable collateral

- 31(1) A holder of money has priority over a security interest in it perfected pursuant to section 25 or temporarily perfected pursuant to subsection 28(3) if the holder:
- (a) acquires the money without knowledge that it is subject to a security interest; or
 - (b) is a holder for value, whether or not the holder acquires the money without knowledge that it is 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 authorization 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 any security interest in the

instrument or security perfected pursuant to section 25 or temporarily perfected pursuant to section 26 or subsection 28(3) if the purchaser:

- (a) gave value for the instrument or security;
 - (b) acquired the instrument or security without knowledge that it is subject to a security interest; and
 - (c) took possession of the instrument or security.
- (5) A holder to whom a negotiable document of title is negotiated has priority over a security interest in the document of title that is perfected pursuant to section 25 or temporarily perfected pursuant to section 26 or subsection 28(3) if the holder:
- (a) gave value for the document of title; and
 - (b) acquired the document of title without knowledge that it is 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 the purchaser's business and for new value has priority over any security interest in the chattel paper that:

- (a) was perfected pursuant to section 25, if the purchaser does not have knowledge at the time of taking possession that the chattel paper is subject to a security interest; or
- (b) has attached to proceeds of inventory pursuant to section 28, whatever the extent of the purchaser's knowledge.

Priority re liens

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

Alienation of rights of debtor

33(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 an act of default.

Priority re purchase-money security interests

34(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 original collateral.

(2) Subject to subsection (6) and section 28, a purchase-money security interest in:

- (a) collateral or its proceeds, other than intangibles or inventory, that is perfected not later than 15 days after the day on which 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 on which 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 28, a purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor if:

- (a) the purchase-money security interest in the inventory is perfected at the time when 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 registration of the purchase-money security interest, registered a financing statement containing a description that includes the same item or kind of collateral; and

- (c) the notice mentioned in clause (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 mentioned in subsection (3) may be given in accordance with section 68 or by registered mail addressed to the address of the person to be notified as it appears in the financing statement mentioned in clause (3)(b).
- (5) Subject to section 28, 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 a debtor, or another person at the request of a 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 that is given for new value has priority over a purchase-money security interest in the accounts as proceeds of inventory if a financing statement relating to the security interest in the accounts is registered before the purchase-money security interest is perfected or a financing statement relating to it is registered.
- (7) 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 or 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 a 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 a debtor, or another person at the request of a 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 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 purposes 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 the crops and that is given:
- (a) while the crops are growing crops; or
 - (b) during a period of six months immediately prior to 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 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 fowl, cattle 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.

Residual priority rules

35(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 security interest;
 - (ii) possession of the collateral pursuant to section 24 without regard to the date of attachment of the security interest; or
 - (iii) perfection pursuant to sections 5, 7, 26, 29 or 74, whichever is 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 is to be treated at all times as perfected by the method by which it was originally perfected.
- (3) Subject to section 28, for the purposes of subsection (1), the time of registration, possession or perfection of a security interest in original collateral is also the time of registration, possession or perfection of its proceeds.
- (4) A security interest in goods that are equipment and are of a kind prescribed as serial numbered goods is not registered or perfected by registration for the purposes of subsection (1), (7) or (8) or subsection 34(2) unless a financing statement relating to the security interest and containing a description of the goods by serial number is registered.
- (5) Subject to subsection (6), the priority that a security interest has pursuant to subsection (1) applies to all advances, including future advances.
- (6) A perfected security interest has priority over the interests of persons mentioned in subsection 20(1) only to the extent of:
 - (a) advances made before the interests of the persons arise or made before the sheriff seizes the collateral or obtains a right to it pursuant to *The Creditors' Relief Act*;
 - (b) advances made before the secured party acquires knowledge of:
 - (i) the interests of the persons;
 - (ii) seizure of the collateral by the sheriff; or
 - (iii) an order giving the sheriff a right to 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 acquiring the knowledge mentioned in clause (b); and
 - (d) reasonable costs and expenses incurred by the secured party for the protection, preservation, maintenance or repair of the collateral.
- (7) Where:
 - (a) registration of a security interest:
 - (i) lapses as a result of a failure to renew the registration; or
 - (ii) is discharged without authorization or in error; and

- (b) the secured party registers the security interest not later than 30 days after the lapse or discharge;
- the lapse or discharge does not affect the priority status of the security interest in relation to a competing perfected security interest that, immediately prior to the lapse or discharge, had a subordinate priority position, except to the extent that the competing security interest secures advances made or contracted for after the lapse or discharge and prior to the re-registration.
- (8) Where a debtor transfers an interest in collateral that, 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 on which the secured party who holds the security interest in the transferred collateral has knowledge of the information required to register a financing change statement showing the transferee as the new debtor; and
 - (b) before the secured party mentioned in clause (a) amends the registration to disclose the name of the transferee as the new debtor or takes possession of the collateral.
- (9) Subsection (8) does not apply where the transferee acquires the debtor's interest free from the security interest granted by the debtor.

Priority re fixtures

- 36(1) In this section, “**secured party**” includes a receiver.
- (2) Subject to the regulations, this section applies only with respect to land for which a certificate of title has been issued pursuant to *The Land Titles Act*.
- (3) Except as provided in this section and in section 30, 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 mentioned 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 a person with an interest in the land at the time when the goods become fixtures;
 - (b) a 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 nisi for sale or foreclosure ;without fraud and before the security interest is registered in accordance with section 49; and
 - (c) a person who obtains a vesting order with respect to the land after the goods become fixtures, without fraud and before the security interest is registered in accordance with section 49.
- (5) Where:
- (a) a search is made of a certificate of title or a condominium plan in a land titles office;
 - (b) at the time of the search there is no memorandum pursuant to section 49 on the certificate of title or condominium plan; 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 or condominium plan;
- the advance is deemed to have been made before registration of a notice pursuant to section 49 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 when 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 security interest in the goods is registered in accordance with section 49.

(7) A security interest mentioned in subsection (3) or (6) is subordinate to:

(a) the interest of a creditor of the debtor who causes a writ of execution affecting the real property to be transmitted to the appropriate land titles office; and

(b) a sheriff who submits for registration in the appropriate land titles office a certificate affecting the land issued pursuant to *The Creditors' Relief Act*;

before the security interest is registered in accordance with section 49.

(8) The interest of a creditor or a sheriff mentioned in subsection (7) does not take priority over a purchase-money security interest in goods with respect to which a notice is filed in accordance with section 49 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 shall exercise this right of removal in a manner that causes no greater damage or injury to the land and to other property situated on it or that puts the occupier of the land to 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 when the goods subject to the security interest are affixed to the land is entitled to reimbursement for any damages to the interest of the person 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 or replacement.
- (11) The person entitled to reimbursement pursuant to 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 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 (11).
- (13) A person who has 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 that 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 land shall give to each person who appears by the records of the land titles office to have an interest in the land a notice of the intention of the secured party to remove the goods, unless the amount mentioned 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) The 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 mentioned in subsection (14) is to be given at least 15 days before removal of the goods, and may be given in accordance with section 68 or by registered mail addressed to the post office 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 pursuant to subsection (14) may apply to a court for an order postponing the 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 Land Titles Act*.

Priority re crops

- 37(1) In this section, “**secured party**” includes a receiver.
- (2) Subject to the regulations, this section applies only with respect to land for which a certificate of title has been issued pursuant to *The Land Titles Act*.
- (3) Except as provided in this section, a security interest in growing crops has priority with respect to the crops claimed by a person with an interest in the land.
- (4) A security interest mentioned 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 a person with an interest in the land where the

- assignee acquires the interest for value and while the crops are growing crops;
- (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 nisi for sale or foreclosure;
- without fraud and before the security interest is registered in accordance with section 49; and
- (c) a person who obtains a vesting order with respect to the land after the crops become growing crops without fraud and before the security interest is registered in accordance with section 49.
- (5) A security interest mentioned in subsection (3) is subordinate to:
- (a) the interest of a creditor of the debtor who causes a writ of execution affecting the land to be transmitted to the appropriate land titles office; and

- (b) a sheriff who submits for registration in the appropriate land titles office a certificate affecting the land issued pursuant to *The Creditors' Relief Act*; before the security interest is registered in accordance with section 49.
- (6) The interest of a creditor or a sheriff mentioned 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 mentioned in subsection 34(11);
- that is registered in accordance with section 49 not later than 15 days after the time when the security interest in the crops attaches.
- (7) Subsections 36(9) to (17) apply, with any necessary modification, to seizure and removal of growing crops from the land.

Priority re accessions

- 38(1) In this section:
- (a) **“other goods”** means goods to which an accession is installed or affixed;
 - (b) **“the whole”** means an accession and the goods to which the accession is installed or affixed;
 - (c) **“secured party”** includes a receiver.
- (2) Except as provided in this section and in section 30, 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 mentioned in subsection (2) is subordinate to the interest of:
- (a) a person who acquires for value an interest in the whole after the goods become an accession, including an assignee for value of a person with an interest in the whole at the time when 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 that 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 becomes an accession is subordinate to the interest of a person who:
- (a) has an interest in the other goods at the time when 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 subsection (2) or (4) is subordinate to the interest of a creditor or a sheriff who has seized or caused the whole to be seized pursuant to legal process to enforce a judgment if:
- (a) the seizure occurs under circumstances mentioned in section 20; and
 - (b) the security interest is not perfected at the time of seizure.
- (6) The interest of a creditor or a sheriff mentioned in subsection (5) does not take priority over a purchase-money security interest in goods that is perfected not later than 15 days after the goods become an accession.
- (7) A secured party who, pursuant to this Act, has the right to remove an accession from the

whole shall exercise this right of removal in a manner that:

- (a) causes no greater damage or injury to the whole or to the other goods; or
 - (b) puts the person in possession of the whole to 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 when 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 reduction in the value of the whole that is caused by the absence of the accession or by the necessity of replacement.
- (9) The person entitled to reimbursement pursuant to subsection (8) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.
- (10) The secured party may apply to a court for one or more of the following:
- (a) an order determining the person who is 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 who has 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 shall 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:
 - (i) using the name of the debtor and mentioning the other goods; or
 - (ii) according to the serial number of the other goods if they are goods prescribed as serial numbered goods.
- (13) The notice mentioned 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 intention to remove the accession unless the amount mentioned in subsection (11) is paid on or before a specified day that is not less than 15 days after the notice is given in accordance with subsection (14).
- (14) A notice mentioned in subsection (12) is to be given in accordance with section 68 or by registered mail addressed to the address of the person to be notified as it appears on the financing statement.
- (15) A person who is entitled to receive a notice pursuant to subsection (12) may apply to the court for an order postponing removal of the accession.

Priority re processed or commingled goods

- 39(1) A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass.
- (2) Subject to subsections (4) and (6), where more than one perfected security interest continues

in the same product or mass pursuant to 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 35, perfection of a security interest in goods that subsequently become part of a product or mass shall also be treated as perfection of the interest in the product or mass.

(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 day on which 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 day on which 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 the secured party with the 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 mentioned in subclause (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 mentioned in subclause (i) is given before the identity of the goods is lost in the product or mass.

(7) A notice mentioned in subclause (6)(c)(i) may be given in accordance with section 68 or by registered mail addressed to the person to be notified as it appears in the financing statement mentioned in subclause (6)(c)(i).

(8) This section does not apply to a security interest in an accession to which section 38 applies.

Voluntary subordination

40(1) A secured party may, in a security agreement or otherwise, subordinate the secured party's 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 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 of 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 postponement or subordination alone, create a security interest.

Rights of assignees

41(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 from 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 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) notwithstanding that 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 mentioned 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 proof within 15 days after the day of the request.
- (8) Payment by an account debtor to an assignee pursuant to a notice mentioned in clause (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.

PART IV Registration

Registry

- 42(1) The Personal Property Registry is continued for the purposes of registrations pursuant to this Act, *The Personal Property Security Act* and any other Act that requires or permits a registration to be made in the registry.
- (2) The minister may appoint:
- (a) a person as Registrar of Personal Property Security; and
 - (b) one or more persons as deputy registrars.
- (3) The registrar may designate one or more persons to act on the registrar's behalf.
- (4) The registrar shall supervise the operation of the registry under the direction of the

minister.

(5) Notwithstanding any regulation made pursuant to this Act or any other Act providing for registration in the registry, where, in the opinion of the registrar, the circumstances are such that it is not practical 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.

Registration of financing statements

43(1) A financing statement may be submitted in a prescribed manner for registration at an office of the registry.

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

(3) The registrar shall not register a financing statement or issue a search result pursuant to this Part until the prescribed fees are paid or arrangements for their payment are made.

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

(5) A registration may relate to one or more security agreements.

(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), where one or more debtors are required to be disclosed in a financing statement or where collateral is consumer goods of a kind that are prescribed as serial numbered goods, and there is a seriously misleading defect, irregularity, omission or error in:

- (a) 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
- (b) the serial number of the collateral;

the registration is invalid.

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

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

(10) Notwithstanding anything in this Part, the registrar may reject a financing statement where, in the opinion of the registrar, it does not comply with this Act or the regulations or any other Act or regulation pursuant to which registration of a financing statement is authorized.

(11) The registrar shall give the reason for the rejection of a financing statement pursuant to subsection (10).

(12) Unless a person entitled to a copy has waived in writing the right pursuant to this section to receive the copy, the secured party or person named as secured party in a financing statement shall give to each person named as debtor in the financing statement:

(a) a copy of the financing statement reproduced on paper; or

(b) a copy of a verification statement issued by the registry that relates to the financing statement;

not later than 30 days after the financing statement is registered or the verification statement is issued, as the case may be.

Duration of and amendments to registrations

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

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

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

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

Registration of transfers and subordinations

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

- (2) Where a financing change statement is registered pursuant to subsection (1) and an interest in part of the collateral is transferred, the financing change statement is to contain a description of the collateral in which the interest is transferred.
- (3) Where a secured party transfers an interest in collateral and the security interest of the secured party is not perfected by registration, a financing statement may be registered in which the transferee is disclosed as the secured party.
- (4) A financing statement disclosing a transfer of a security interest may be registered before or after the transfer.
- (5) After registration of a financing change statement disclosing a transfer of a security interest, the transferee is the secured party for the purposes of this Part.
- (6) Where a security interest has been subordinated by the secured party 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.

Registry records

- 46(1) Where a financing statement is registered in the registry, the registrar may have the statement photographed or otherwise reproduced, and the reproduction is for all purposes deemed to be the statement that is 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 an order of the court maintaining the registration pursuant to section 50; or
 - (d) on receipt of an order of the court compelling the discharge or partial discharge of a registration.

Constructive notice

- 47 Registration of a financing statement in the registry is not constructive notice or knowledge of its existence or contents to any person.

Registry searches

- 48(1) A person may, in the prescribed manner, request one or more of the following:
 - (a) a search according to the name of a debtor and the issue of a search result;
 - (b) a search according to the serial number of goods of a kind prescribed 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 certified copy of any printed registered document; or
 - (e) if authorized by the minister, a search according to criteria other than those referred to in clauses (a) to (c).
- (2) A printed search result that purports to be issued by the registry is receivable as evidence as prima facie proof 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 printed registered financing statement or other registered document bearing the certification of the registrar is receivable in evidence as a true copy of the statement or document without proof of the signature or official position of the registrar.

Registration in land titles office

- 49(1) In this section:
 - (a) **“debtor”** includes any person named in a notice pursuant to this section as a debtor;
 - (b) **“secured party”** includes any person named in a notice pursuant to this section as a

- secured party.
- (2) A security interest in a fixture pursuant to section 36 and a security interest in a growing crop pursuant to section 37 may be registered by tendering a notice in the prescribed form and manner to the land titles office for the appropriate land registration district.
- (3) The registrar of a land titles office to which a notice mentioned in subsection (2) is tendered shall make a memorandum of the notice on the certificate of title or the condominium plan, as the case may be, with respect to the parcel of land to which the notice relates.
- (4) If a notice has been registered in a land titles office pursuant to subsection (2) and the registration of the notice has not expired, a notice of renewal or amendment of the registration or a notice of transfer, subordination or discharge of the security interest may be registered in the land titles office in the prescribed form and manner, and on its being registered, the registrar of the land titles office shall make a memorandum of it on the proper certificate of title or condominium plan, as the case may be.
- (5) Subsections 43(4), (5), (6), (8) and (9) and sections 44 and 45 apply, with any necessary modification, to a notice registered pursuant to this section, and subsection 43(12) applies, with any necessary modification, to a notice mentioned in subsection (2).
- (6) If a notice registered pursuant to this section expires or is discharged, the registrar of the land titles office in which it has been registered may remove the registration of the notice and any other notice that relates to the same security interest.
- (7) Where a notice is registered pursuant to this section, and:
- (a) all of the obligations pursuant to 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 of property that is not collateral pursuant to a security agreement between the secured party and the debtor; or
 - (d) no security agreement exists between the secured party and the debtor;
- the debtor named in the notice and any person who has a registered interest in the land may give a written demand to the secured party.
- (8) A demand mentioned in subsection (7) may require:
- (a) in a case described in clause (7)(a) or (d), that the registration of the notice be discharged;
 - (b) in a case described in clause (7)(b), that the registration be amended or discharged, as the case may be, to reflect the terms of the agreement;
 - (c) in a case described in clause (7)(c), that the collateral description on the notice be amended to exclude items of property that are not collateral pursuant to a security agreement between the secured party and the debtor;
- and the secured party shall amend or discharge the registration of the notice accordingly not later than 15 days after the demand is given.
- (9) Where a secured party fails to amend or discharge the registration of a notice in accordance with a demand given pursuant to subsection (7):
- (a) the person who gives the demand may submit the demand for registration; and
 - (b) the registrar of the land titles office shall amend or discharge the registration in accordance with the demand on receiving proof satisfactory to the registrar that the demand has been given to the secured party.
- (10) A demand mentioned in subsection (7) may be given in accordance with section 68 or by registered mail addressed to the secured party as it appears on the notice registered pursuant to this section.
- (11) Subsections 50(7) to (9) apply, with any necessary modification, to a notice registered pursuant to this section.
- (12) No fee or expense shall be charged and no amount shall be accepted by a secured party for compliance with a demand made pursuant to subsection (7) unless the charge has been agreed

to by the parties before the making of the demand.

Compulsory discharge or amendment of registrations

50(1) In this section:

- (a) **“debtor”** includes any person named in a registered financing statement as a debtor;
- (b) **“secured party”** includes any person named in a registered financing statement as a secured party.

(2) Where a registration relates exclusively to a security interest in consumer goods, the secured party shall discharge the registration not later than 30 days after all obligations pursuant to the security agreement that creates the security interest are performed, unless the registration lapses prior to the expiry of that period.

(3) Where a financing statement is registered and:

- (a) all of the obligations pursuant to 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:
 - (i) includes an item or kind of property that is not collateral pursuant to a security agreement between the secured party and the debtor; or
 - (ii) 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) A demand mentioned in subsection (3) may require the secured party to register a financing change statement:

- (a) in a case described in clause (3)(a) or (d), discharging the registration;
- (b) in a case described in clause (3)(b), amending or discharging the registration, as the case may be, so as to reflect the terms of the agreement; and
- (c) in a case described in clause (3)(c), amending the collateral description to:
 - (i) exclude items or kinds of property that are not collateral pursuant to a security agreement between the secured party and the debtor; or
 - (ii) identify items and kinds of property as original collateral or proceeds;

and the secured party shall comply with the demand not later than 15 days after the demand is given.

- (5) Where a secured party:
- (a) fails to comply with a demand mentioned in subsection (3); or
 - (b) does not give to the registrar an order of the court confirming that the registration need not be amended or discharged;
- the person giving the demand may register the financing change statement mentioned in subsection (4) on providing the registrar with proof satisfactory to the registrar that the demand has been given to the secured party.
- (6) The demand mentioned in subsection (3) may be given in accordance with section 68 or by registered mail addressed to the address of the secured party as it appears on the financing statement.
- (7) On application to the court by a secured party, the court may order that the registration:
- (a) be maintained on any condition and, subject to section 44, for any period of time that the court considers appropriate; or
 - (b) be discharged or amended.
- (8) Subsection (5) does not apply to a registration of a security interest provided for in:
- (a) a security agreement registered pursuant to *The Corporation Securities Registration Act* and continued pursuant to *The Personal Property Security Act* and this Act; or
 - (b) a trust indenture, if the financing statement through which the security interest was registered indicates that the security agreement providing for the security interest is a trust indenture.
- (9) Where registration relates to a security interest mentioned in subsection (8) and the secured party fails to register a financing change statement as required by subsection (4), the person making the demand may apply to the court for an order directing that the registration be amended or discharged.
- (10) No fee or expense shall be charged, and no amount shall be accepted, by a secured party for compliance with a demand made pursuant to subsection (3), unless the charge has been agreed to by the parties before the making of the demand.

Transfers of debtors' interests in collateral

- 51(1) Where a security interest has been perfected by registration and all or part of the debtor's interest in the collateral is transferred by the debtor 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 collateral, that arises during the period from the expiry of the fifteenth day after the transfer to the time when the secured party:

-
- (i) amends the registration to disclose the name of the transferee of the interest in the collateral as the new debtor; or
 - (ii) takes possession of the collateral;
 - (b) a perfected security interest in the transferred collateral that is registered or perfected in the period mentioned in clause (a); and
 - (c) a perfected security interest in the transferred collateral that is registered or perfected after the transfer and before the expiry of 15 days after the transfer if, before the expiry of the 15 days:
 - (i) the registration of the security interest first mentioned in this subsection is not amended to disclose the transferee of the interest in the collateral as the new debtor; or
 - (ii) the secured party does not take possession of the collateral.
- (2) Where a security interest is perfected by registration and the secured party has knowledge of:
- (a) information required to register a financing change statement disclosing the transferee as the new debtor, and all or part of the debtor's interest in the collateral is transferred by the debtor; or
 - (b) the new name of the debtor, where there is a change in the debtor's name;
- the security interest in the transferred collateral where clause (a) applies, and in the collateral where clause (b) applies, is subordinate to:
- (c) an interest, other than a security interest in the transferred collateral, that arises during the period from the expiry of the fifteenth day after the secured party has knowledge of the information mentioned in clause (a) or the new name of the debtor, as the case may be, to the time when the secured party:
 - (i) amends the registration to disclose the name of the transferee as the debtor or to indicate the new name of the debtor, as the case may be; or
 - (ii) takes possession of the collateral;
 - (d) a perfected security interest in the transferred collateral that is registered or perfected in the period mentioned in clause (c); or
 - (e) a perfected security interest in the transferred collateral that is registered or perfected after the secured party has knowledge of the information mentioned in clause (a) or the new name of the debtor, as the case may be, and before the expiry of the fifteenth day mentioned in clause (c), if, before the expiry of the 15 days:
 - (i) the registration of the security interest first mentioned in this subsection is not amended to disclose the transferee of the collateral as the new debtor or disclose the new name of the debtor, as the case may be; or
 - (ii) the secured party does not take possession of the collateral.
- (3) This section does not have the effect of subordinating a prior security interest that was registered pursuant to *The Corporations Securities Registration Act* and is deemed by subsection 74(2) to be registered pursuant to this Act.
- (4) Where the debtor's interest in part or all of the collateral is transferred by the debtor without the consent of the secured party and there are one or more subsequent transfers of the collateral without the consent of the secured party before the secured party acquires knowledge of the name of the most recent transferee, 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 most recent transferee who has possession of the collateral; and
 - (b) the information that is required to register a financing change statement;
- and the secured party need not register a financing change statement with respect to an intermediate transferee.
- (5) This section does not apply to a registration made in a land titles office pursuant to section 49.

Action against Crown

52(1) A person may bring an action against the Crown in right of Saskatchewan to recover loss or damage suffered by that person because of an error or omission in the operation of the registry where the loss or damage resulted:

- (a) from reliance on a printed search result issued by the registry; or
- (b) except as provided in subsections 42(5), 43(3) and 43(10), from the failure of the registrar to register a printed financing statement submitted for registration pursuant to section 43.

(2) The Crown in right of Saskatchewan is not liable, directly or vicariously, for loss or damage suffered by a person because of:

- (a) oral advice given by an agent or employee of the Government of Saskatchewan with respect to this Act, the regulations 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) a failure to register, or to register correctly, a financing statement in the form of electronic data that is transmitted to the registry for the purpose of effecting a registration.

(3) No action for damages pursuant to this section or section 53 lies against the Crown in right of Saskatchewan unless it is commenced not later than the earlier of:

- (a) two years after the person entitled to bring the action first knew of the loss or damage;
- (b) 10 years after the day on which:
 - (i) the search result was issued, in the case of an action brought pursuant to clause (1)(a); or
 - (ii) the financing statement was submitted for registration, in the case of an action brought pursuant to clause (1)(b).

(4) Notwithstanding *The Proceedings Against the Crown Act*, no action may be brought against the Crown in right of Saskatchewan, the registrar or an officer or employee of the registry for any error or omission of the registrar, officer or employee with respect to the discharge or purported discharge of any duty or function pursuant to this Act, the regulations or any other Act, except as provided in this section and in section 53.

Action where trust indentures involved

53(1) An action for recovery of damages pursuant to section 52 brought by a trustee pursuant to a trust indenture or by a person with an interest in a trust indenture shall be brought on behalf of all persons with interests in the same trust indenture, and the judgment in the action, except to the extent that it provides for a subsequent determination of the amount of damages suffered by each person, constitutes a judgment between each person and the Crown in right of Saskatchewan with respect to each error or omission.

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

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

(4) Subject to subsection 54(1), the court may order payment of all or a portion of the damages awarded to identified persons with interests in the same trust indenture at any time after judgment, and the obligation of the Crown in right of Saskatchewan to satisfy the judgment is discharged to the extent that payment is made.

Payment of claim for loss

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

prescribed amount.

(2) Where damages are paid to a claimant pursuant to section 52 or 53, the Crown in right of Saskatchewan 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 with respect to which the claim was paid.

- (3) Where a claimant recovers pursuant to section 52 or 53 an amount that is less than the value of the interest the claimant would have had if the error or omission had not occurred, the right of subrogation pursuant to subsection (2) does not prejudice the right of the claimant to recover in priority to the Crown an amount equal to the difference between the amount paid to the claimant and the value of the interest the claimant would have had if the error or omission had not occurred.
- (4) The Minister of Finance may, without action being brought, pay the amount of a claim against the Crown in right of Saskatchewan when authorized to do so by the minister on the report of the registrar setting out the facts and the opinion of the registrar that the claim is just and reasonable.
- (5) Subject to subsection (1), where an award of damages has been made in favour of a claimant and the time for appeal has expired, or where an appeal is taken and it is disposed of in whole or in part in favour of the claimant, the Minister of Finance shall authorize payment out of the consolidated fund the amount specified in the judgment in a manner specified in the judgment, including the costs of the claimant if the judgment so provides.

PART V

Rights and Remedies on Default

Application of Part

- 55(1) In this section, “**secured party**” includes a receiver.
- (2) This Part does not apply to:
- (a) a transaction mentioned in subsection 3(2); 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) Clause (4)(b) does not limit the rights of a secured party who has a security interest in the personal property that is taken before or after the security interest mentioned in subsection (4), and the secured party:
- (a) has standing in proceedings taken in accordance with clause (4)(b); and
 - (b) may apply to the court for the conduct of a judicially supervised sale pursuant to clause (4)(b), and the court may grant the application.
- (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.

Rights and remedies

- 56(1) In this section, “**secured party**” includes a receiver.
- (2) Where the debtor is in default pursuant to 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, remedies and obligations provided in this Part and sections 36, 37

and 38; and

(iii) where the secured party is in possession of the collateral, the rights, remedies and obligations provided in section 17; and

(b) the debtor has as against the secured party:

(i) the rights and remedies provided in the security agreement;

(ii) the rights and remedies provided by any other Act or rule of law that are not inconsistent with this Act; and

(iii) the rights and remedies provided in this Part and in section 17.

(3) Except as provided in sections 17, 59, 60 and 62, no provision of this section, section 17 or sections 58 to 63, to the extent that it gives rights to the debtor or imposes obligations on the secured party, can be waived or varied by agreement or otherwise.

Collection rights of secured party

57(1) 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 59, to take control of any proceeds to which the secured party is entitled pursuant to section 28; and
 - (c) to apply any money, account, instrument or security in the form of a debt obligation taken as collateral to the satisfaction of the obligation secured by the security interest.
- (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 or 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 clause (2)(a) or (2)(b) shall give notice to the debtor not later than 15 days after doing so.

Rights of secured party on default

58(1) In this section, “**secured party**” includes a receiver.

(2) Subject to sections 36 to 38 and 56 and 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 is goods of a kind that cannot 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 clause (b) applies, the secured party may dispose of collateral on the debtor's premises, but shall not cause the person in possession of the premises any greater inconvenience and cost than is necessarily incidental to the disposal; and

(d) if the collateral is a document of title, the secured party may proceed either as to the document of title or as to the goods covered by it, and 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.

Disposal of collateral

59(1) In subsections (2), (5), (14) and (16), “**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 shall be applied consecutively to:

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

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

and any surplus shall be dealt with in accordance with section 60.

(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) Not less than 20 days prior to disposition of the collateral, the secured party shall give a 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) prior to the day on which the 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 according to the serial number of the collateral if the goods are prescribed as serial numbered goods; or

- (ii) the security interest of the creditor or person with a security interest in the collateral is 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 in the collateral prior to the day on which the notice of disposition is given to the debtor.
- (7) The notice mentioned in subsection (6) shall contain:
- (a) a description of the collateral;
 - (b) the amount required to satisfy the obligations secured by the security interest;
 - (c) the sums actually in arrears, exclusive of the operation of an acceleration clause in the security agreement, and a brief description of any default other than non-payment and of the provision of the security agreement the breach of which resulted in the default;
 - (d) the amount of the applicable expenses mentioned in clause (2)(a) or, where the amount of the expenses has not been determined, a reasonable estimate;
 - (e) a statement that, on payment of the amount due pursuant to clauses (b) and (d), a person who is entitled to receive the notice may redeem the collateral;
 - (f) a statement that, on payment of the sums in arrears, exclusive of the operation of any acceleration clause in the security agreement, or on the curing of any other default, as the case may be, together with payment of the amounts due pursuant to clause (2)(a), the debtor may reinstate the security agreement;
 - (g) a statement that, unless the collateral is redeemed or the security agreement is reinstated, the collateral will be disposed of and the debtor may be liable for any deficiency; and
 - (h) the day, time and place of any sale by public auction, the place to which closed 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) Where the notice required by subsection (6) is given to a person other than the debtor, it need not contain the information required by clauses (7)(c), (f) and (g) and, where the debtor is not entitled to reinstate the security agreement, the notice to the debtor need not contain the information required by clauses (7)(c) and (f).
- (9) A statement mentioned in clause (7)(g) must not contain a reference to any liability on the part of the debtor to pay a deficiency if the secured party does not have the right to collect the deficiency from the debtor.
- (10) Not less than 20 days prior to the disposition of the collateral, a receiver shall give a notice to:
- (a) the debtor and, where the debtor is a corporation, to a director of the corporation;

- (b) any other person who is known by the secured party to be an owner of the collateral;
 - (c) a person mentioned in clause (6)(b); and
 - (d) any other person with an interest in the collateral who has given a notice in writing to the receiver of that interest before the day on which notice of disposition is given to the debtor.
- (11) A notice mentioned in subsection (10) shall 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 closed 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.
- (12) A notice required by subsection (6) or (10) may be given in accordance with section 68 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.
- (13) The secured party may purchase the collateral or any part of it only at a public sale as mentioned in clause (3)(b), and only for a price that bears a reasonable relationship to the market value of the collateral.
- (14) Where a secured party disposes of collateral to a purchaser who acquires the 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 49 and 50.
- (15) 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 collateral is not a disposition of the collateral.
- (16) The notices mentioned in subsections (6) and (10) are 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 the notice requirements of subsection (6) or (10); or
 - (g) for any other reason, a court on *ex parte* application is satisfied that a notice is not required.
- (17) The notices mentioned in subsections (6) and (10) need not be delivered to a farmer, where the security agreement is one to which sections 47 to 61 of *The Saskatchewan Farm Security Act* apply.
- (18) 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.

Surplus or deficiency

- 60(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 57 or has disposed of it in accordance with section 59 or otherwise, any surplus shall, unless otherwise provided by law or by the agreement of all interested parties, be accounted for and paid in the following order to:
- (a) a person who has a subordinate security interest in the collateral and:
 - (i) who, before the distribution of the surplus, registers a financing statement using the name of the debtor or according to the serial number of the collateral if the goods are of a kind that is prescribed as serial numbered goods; 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 that 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 clauses (a), (b) or (c) is not prejudiced by payment to anyone pursuant to this section.

(3) The secured party shall give a written accounting of:

(a) the amount received from the disposition of collateral or the amount collected pursuant to section 57;

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

(c) the amount applied to expenses as provided in sections 17, 57 and 59;

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

(e) the amount of any surplus;

to a person mentioned in subsection (2) within 30 days after receipt of a written request for an accounting.

(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 shall not be paid out except on an application pursuant to section 66 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.

Retention of collateral

61(1) After default, the secured party may propose to take the collateral in satisfaction of the obligation secured by it, and shall give 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, prior to the day on which 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 in the case of goods of a kind that is prescribed as serial numbered goods; and

(ii) whose security interest is perfected by possession 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 interest prior to the day on which the notice is given to the debtor.

(2) If any person who is entitled to a notice pursuant to 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 giving the notice pursuant to subsection (1), the secured party shall dispose of the collateral pursuant to section 59.

(3) If no notice of objection is given, the secured party is, at the expiration of the 15-day period or periods mentioned in subsection (2), deemed to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it, and is entitled to hold or dispose of the collateral free from all rights and interests of the debtor and from the rights and interests of any person entitled to receive notice pursuant to:

(a) clause (1)(b); or

(b) clause (1)(c) if the person's interest is subordinate to that of the secured party;

who has been given that notice, and all obligations secured by those interests are deemed to have been performed for the purposes of sections 49 and 50.

(4) The notice required pursuant to subsection (1) may be given in accordance with section 68 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 any person mentioned in subsection (1), other than the

debtor, furnish proof of that person's interest and, unless the person furnishes proof not later than 10 days after the secured party's request, the secured party may proceed as if no objection were received from the person.

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

- (a) the person made the objection for a purpose other than the protection of an interest in the collateral or proceeds of a disposition of the collateral; or
- (b) the market value of the collateral is less than the total amount owing to the secured party and the costs of disposition.

(7) Where a secured party disposes of the collateral to a purchaser 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 interest are deemed to be performed for the purposes of sections 49 and 50.

Redemption and reinstatement

62(1) At any time before the secured party or a receiver has disposed of the collateral or contracted for disposition pursuant to section 58 or 59 or before the secured party is deemed to have irrevocably elected to retain the collateral pursuant to section 61:

- (a) a person who is entitled to receive a notice of disposition pursuant to subsection 59(6) or (10) may, unless that person otherwise agrees in writing after default, redeem the collateral by:
 - (i) tendering fulfilment of the obligations secured by the collateral; and
 - (ii) 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, and any other reasonable expenses incurred by the secured party in enforcing the security agreement; and
 - (b) the debtor, other than a guarantor or indemnitor, may, unless the debtor has otherwise agreed in writing after default, reinstate the security agreement by:
 - (i) paying the sums actually in arrears, exclusive of the operation of an acceleration clause in the security agreement;
 - (ii) curing any other default by reason of which the secured party intends to dispose of the collateral; and
 - (iii) 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, and any other reasonable expenses incurred by the secured party in enforcing the security agreement.
- (2) Unless otherwise agreed, the debtor is not entitled to reinstate a security agreement:
- (a) more than twice, if the security agreement provides for payment in full by the debtor not later than 12 months after the day on which value was given by the secured party; or
 - (b) more than twice in each year, if the security agreement provides for payment by the debtor during a period greater than one year after the day on which value was given by the secured party.

Applications to court

- 63(1) In this section, “**secured party**” includes a receiver.
- (2) On application by a debtor, a creditor of a debtor, a secured party, a sheriff 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 a right and an order for injunctive relief, that is necessary to ensure compliance with this Part or section 17, 36, 37 or 38;
 - (b) an order giving directions to any person regarding the exercise of rights or the discharge of obligations pursuant to this Part or section 17, 36, 37 or 38;
 - (c) an order relieving a person from compliance with the requirements of this Part or section 17, 36, 37 or 38;
 - (d) an order staying enforcement of rights provided in this Part or section 17, 36, 37 or 38; or
 - (e) any order that is necessary to ensure protection of the interest of any person in the collateral.

Receivers

- 64(1) In this section, “**Director**” means the Director appointed pursuant to *The Business Corporations Act*.
- (2) A security agreement may provide for the appointment of a receiver and, except as provided in this or any other Act, for the rights and duties of a receiver.
- (3) Subject to any other Act or an Act of the Parliament of Canada, a receiver shall:

- (a) take custody and control of the collateral in accordance with the security agreement or order pursuant to which the receiver is appointed, but unless appointed as a receiver-manager or unless the court orders otherwise, shall not carry on the business of the debtor;
 - (b) where the debtor is a corporation, immediately notify the Director of the appointment or discharge;
 - (c) open and maintain, in the receiver's name as receiver, one or more accounts at a bank, credit union or other institution licensed to accept deposits in Saskatchewan for the deposit of all money that comes under the receiver's control as receiver;
 - (d) keep records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions that involve collateral or other property of the debtor;
 - (e) prepare, at least once in every six-month period after the date of the appointment, financial statements of the receivership in the prescribed form;
 - (f) indicate on every business letter, invoice, contract or similar document used or executed in connection with the receivership that the receiver is acting as a receiver; and
 - (g) on completion of the receiver's duties, prepare a final account of the administration in the prescribed form and, where the debtor is a corporation, send a copy of the final account to the debtor, to a director of the debtor and to the Director.
- (4) The debtor and, where the debtor is a corporation, a director of the debtor, or the authorized representative of any of them, may, by a demand in writing delivered to the receiver, require the receiver to make available for inspection the records mentioned in clause (3)(d) during regular business hours at the place of business of the receiver in Saskatchewan.
- (5) The debtor and, where the debtor is a corporation, a director of the debtor, a sheriff, a person with an interest in the collateral in the custody or control of the receiver, or the authorized representative of any of them, may, by a demand in writing delivered to the receiver, require the receiver to provide copies of the financial statements mentioned in clause (3)(e) or the final accounts mentioned in clause (3)(g) or to make them available for inspection during regular business hours at the place of business of the receiver in Saskatchewan.
- (6) The receiver shall comply with the demand mentioned in subsection (4) or (5) not later than 10 days after the day of receipt of the demand.
- (7) The receiver may require the payment in advance of a fee in the prescribed amount for each demand, but the sheriff and the debtor or, in the case of an incorporated debtor, a director of the debtor, are entitled to inspect or to receive a copy of the financial statements and final account without charge.
- (8) 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 the receiver is appointed, to make good a default in connection 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.
- (9) The powers mentioned in subsection (8) and in section 63 are in addition to any other powers the court may exercise in its jurisdiction over receivers.
- (10) Unless the court orders otherwise, a receiver is required to comply with sections 59 and 60 only where the receiver disposes of collateral other than in the course of operating the business of a debtor.

PART VI

General

Exercise of rights, discharge of duties

65(1) In this section, **“secured party”** includes a receiver.

- (2) The principles of the 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.
- (3) 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.
- (4) A person does not act in bad faith merely because the person acts with knowledge of the interest of some other person.
- (5) 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 liable to result from the failure.
- (6) Where a secured party, without reasonable excuse:
- (a) fails to comply with obligations set out in subsection 43(12) or section 49 or 50; or
 - (b) fails to comply with obligations set out in section 17 or 18, subsection 58(2) or section 59, 60 or 61, and the collateral is consumer goods;
- the debtor or, in a case of non-compliance with subsection 43(12) or section 49 or 50, the person named as debtor in a financing statement or registration, is deemed to have suffered damages that are not less than the prescribed amount.
- (7) Where a debtor or other person with an interest in land or collateral mentioned in section 49 or 50, without reasonable excuse, causes the registrar of the land titles office or the registrar to act pursuant to subsection 49(9) or 50(5), the secured party mentioned in those subsections is deemed to have suffered damages not less than the prescribed amount.
- (8) 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 section 17, 18, 59 or 60, 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.
- (9) Where a secured party fails to comply with an obligation in section 17, 18, 59 or 60, the onus is on the secured party to show that the failure:
- (a) where the collateral is consumer goods, did not affect the debtor's ability to protect the debtor's interest in the collateral by redemption or reinstatement of the security agreement or otherwise; and
 - (b) did not make the accurate determination of the deficiency impracticable.
- (10) Except as otherwise provided in this Act, a provision in a security agreement or any other 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.

Application to court

- 66(1) 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.
- (2) An appeal lies to the Court of Appeal from an order, judgment or direction of a court made pursuant to this Act.

Extension of time

- 67 Where, in section 11 and in subsections 36(14), 38(13) and 43(12), 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.

Service of documents

- 68(1) A notice or demand, other than a demand pursuant to section 18 or a copy of a financing statement or verification statement mentioned in subsection 43(12), 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) where the corporation has its registered office or head office outside Saskatchewan, by leaving it with or by sending it by registered mail addressed to the attorney for the corporation appointed pursuant to *The Business Corporations Act* or *The Non-profit Corporations Act*, as the case may be;
- (d) to a municipal corporation by:
- (i) leaving it with the mayor, reeve, 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) to Her Majesty in right of Saskatchewan as provided in *The Proceedings Against the Crown Act*.
- (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.

Conflict between Act and other legislation

69(1) Where there is a conflict between a provision of this Act and a provision of *The Agricultural Implements Act* or *The Saskatchewan Farm Security Act* or a provision for the protection of consumers in any other Act, the provision of that 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 those mentioned in subsection (1), the provision of this Act prevails.

References

70(1) A reference in any Act, regulation or writing to *The Assignment of Book Debts Act*, *The Bills of Sale Act*, *The Conditional Sales Act* or *The Corporation Securities Registration Act*, or to a provision of one of those Acts, is deemed to be a reference to this Act or to the corresponding provision of this Act if the reference relates to a security interest in personal property.

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

Regulations

71 For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act, including words or expressions defined in this Act;
- (b) for the purposes of subclause 2(1)(y)(vi), prescribing the kinds of goods the leases of which are not within the scope of the Act;
- (c) prescribing the duties of the registrar;
- (d) prescribing the location and hours for the offices of the registrar or any of them;
- (e) respecting the registry, including the transition from any prior registry system to the system established by this Act;
- (f) requiring the payment of fees and prescribing the amount of the fees and the manner of payment of them;
- (g) prescribing the time, place and all other matters pertaining to the registration of documents and electronic data that may or are required to be registered pursuant to this Act or any other Act or regulation and requiring the use of forms obtained from the registrar or the Queen's Printer;
- (h) making Part IV or any provision of Part IV applicable to registrations permitted or required to be registered in the registry;
- (i) permitting the registration in the registry of any interest, right or claim relating to property;
- (j) respecting the application of all or part of sections 36 and 37 to any land for which a certificate of title has not been issued under *The Land Titles Act*, and the manner and place of the registration of the interests affected;
- (k) prescribing:

- (i) the form, content and manner of use of financing statements and financing change statements to be used to register security interests pursuant to this Act;
 - (ii) the form, content and manner of use of notices mentioned in this Act, including notices registered pursuant to section 49 in a land titles office;
 - (iii) the manner in which collateral, including proceeds collateral, is to be described in financing statements and prescribing the kinds of goods that may be described in part by serial number and the kinds of goods that must be described in part by serial number;
- (l) prescribing the time, place and all other matters pertaining to searches of the registry and the method of disclosure of registered information, including the form of a search result;
 - (m) requiring or permitting the use of printed or electronic verification statements to confirm the registration of information on financing statements and financing change statements;
 - (n) permitting the registrar to amend a registration that contains an error caused by the act of the registrar or registry employees and prescribing the limits of the amendments;
 - (o) prescribing abbreviations, expansions or symbols that may be used in a financing statement, financing change statement or other form, notice or document used in connection with the registration of security interests or the disclosure of information in the registry;
 - (p) prescribing the length of time during which a registration is to be effective and the manner in which the period of time is to be indicated;
 - (q) prescribing the maximum amounts of compensation payable or recoverable pursuant to sections 52 to 54;
 - (r) authorizing the registrar to make arrangements providing for the deferred payment of fees and charges and prescribing conditions that must be met if the arrangements are to be made available or continue to be made available to particular persons;
 - (s) prescribing the amount of any charge to which a secured party or person named as a secured party in a financing statement is entitled pursuant to sections 18 and 64;
 - (t) prescribing the amount of damages payable pursuant to subsections 65(6) and 65(7);
 - (u) prescribing any matter or thing that is required or authorized by this Act to be prescribed in the regulations;
 - (v) respecting any other matter that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

PART VII

Repeal, Transitional, Consequential and Related Amendments and Coming into Force

S.S. 1979-80, c.P-6.1 repealed

72 *The Personal Property Security Act* is repealed.

Transitional application of Act

73(1) In this section and section 74:

- (a) **“prereform law”** means the law in force on April 30, 1981;
- (b) **“prior law”** means the law in force on the day before the day on which this Act comes into force;
- (c) **“prior security interest”** means:
 - (i) a security interest as defined in *The Personal Property Security Act* and to which that Act applied; or
 - (ii) an interest created, reserved or provided for by a valid security agreement or other transaction made before this Act comes into force that is a security interest within the meaning of this Act and to which this Act would have applied if it had been in force at the time when the security agreement or other transaction was entered into.

- (2) Subject to subsections (9) and (10), nothing in this Act affects the continued validity and enforceability pursuant to prior law of a prior security interest that is not a security interest pursuant to this Act.
- (3) Except as otherwise provided in this section, this Act applies:
- (a) to every security agreement made after this Act comes into force, including an agreement that renews, extends, or consolidates an agreement made before this Act comes into force;
 - (b) to every security agreement made before this Act comes into force that has not been validly terminated in accordance with prereform law or prior law before this Act comes into force;
 - (c) subject to subsection (5), to every prior security interest that is not enforced or otherwise validly terminated in accordance with prereform law or prior law before this Act comes into force; and
 - (d) to a receiver appointed before or after this section comes into force.
- (4) Sections 10 and 11 do not apply to a security agreement mentioned in clause (3)(b).
- (5) Except as provided in subsections (6), (7), (8) and (10), this Act does not apply to a prior security interest that is not a security interest pursuant to this Act.
- (6) The validity of a prior security interest is governed by the law in force when the security interest was created.
- (7) The order of priorities:
- (a) between prior security interests is determined by prereform law if all the competing security interest arose pursuant to security agreements entered into before prior law came into force or this Act comes into force; and
 - (b) between a prior security interest and the interest of a third party is determined by prereform law, if the third party interest arose before this Act comes into force and the security interest arose pursuant to a security agreement entered into before prior law came into force.
- (8) Subject to subsection (7), the order of priorities:
- (a) between prior security interests is determined by prior law; and
 - (b) between a prior security interest and the interest of a third party is determined by prior law, if the third party interest arose before this Act comes into force.
- (9) The order of priorities:
- (a) between an interest arising after this Act comes into force and a prior security interest that is a security interest pursuant to this Act is determined by this Act; and
 - (b) between an interest arising after this Act comes into force and the interest of a third party arising before this Act comes into force is determined by this Act.
- (10) The order of priorities between an interest arising after this Act comes into force and a prior security interest that is not a security interest pursuant to this Act is determined by this Act as if the prior security interest were within the scope of this Act.
- (11) Subsections (9) and (10) do not apply where the prior security interest is:
- (a) a lease for a term of more than one year of household furnishings or appliances as part of a lease of land where the goods are incidental to the use and enjoyment of the land; or
 - (b) an assignment of rental payments payable pursuant to a lease of real property.
- (12) Notwithstanding the repeal of prereform law and prior law, this law continues in force to the extent necessary to give effect to this section and section 74 and to govern priority disputes falling within subsection 124.3(5) of *The Land Titles Act*.

Transitional - prior registrations

- 74(1) In this section, “**prior registration law**” means:
- (a) *The Corporation Securities Registration Act* as it existed on April 30, 1981; or
 - (b) *The Personal Property Security Act*, as it existed on the day before the day on which this Act comes into force.

(2) Except as otherwise provided in this section, a prior security interest that, when this Act comes into force, is covered by an unexpired filing or registration pursuant to prior registration law is deemed to have been registered and perfected pursuant to this Act and, subject to this Act, the registered and perfected status of that interest continues for the unexpired portion of the filing or registration, as the case may be, and may be further continued by registration pursuant to this Act if:

- (a) the prior security interest could have been perfected by registration if it had arisen after this Act came into force; or
- (b) the prior security interest is a security interest to which subsection 73(10) would apply.

(3) A prior security interest is covered by an unexpired filing or registration pursuant to prior law within the meaning of subsection (2) where the requirements for perfection of the security interest pursuant to prior law have been met, whether or not the requirements for perfection of the security interest pursuant to this Act have been met.

(4) For the purposes of subsection (3), the requirements for perfection of a security interest are met where the security interest has the status in relation to the interest of other secured parties, buyers, judgment creditors or the trustee in bankruptcy of the debtor that is similar to that of an equivalent security interest created and perfected pursuant to this Act.

(5) A registration of a prior security interest that, when this Act comes into force, has not expired pursuant to prior registration law, is deemed to continue for the purposes of prior registration law for the unexpired portion of the registration period, and may be further continued by registration pursuant to this Act.

(6) A prior perfected security interest in crops is deemed to be registered in accordance with section 49 as of the day on which this Act comes into force, and the registration continues for six months after this Act comes into force and may thereafter be continued by registration in accordance with section 49.

(7) A prior security interest in an instrument in the form of a letter of credit or advice of credit that is perfected by registration that continues after this Act comes into force is deemed to be perfected by possession in accordance with section 24 for a period of six months from the day on which this Act comes into force, and thereafter the security interest is perfected by possession only when the secured party has taken actual possession of it in accordance with section 24.

(8) A prior security interest in accounts arising out of the provision of professional services or a security interest in a claim for damages or a judgment representing a right to damages, other than a right to damages in tort:

- (a) is deemed to be perfected for the purposes of clauses 20(1)(a) and (b); and
- (b) is deemed to be perfected for all other purposes as of the day on which the interest was perfected pursuant to the law applicable at the time of its creation, and the perfection continues for one year from the day on which this Act comes into force, and thereafter it becomes unperfected unless it is otherwise perfected pursuant to this Act.

(9) For the purposes of subsection (8), a security interest was perfected pursuant to the applicable law when:

- (a) the secured party complied with the applicable law with respect to the creation and continuance of the security interest; and
- (b) the security interest has the status in relation to the interests of other secured parties and buyers similar to that of an equivalent security interest created and perfected pursuant to this Act.

(10) A prior security interest that, when this Act comes into force, could have been, but was not:

- (a) filed or registered pursuant to prior registration law; or
- (b) perfected pursuant to prior law through possession of the collateral by the secured party;

may, if it is a security interest that could have been perfected by registration or possession pursuant to this Act if it had arisen after this Act comes into force, be perfected by registration

or possession in accordance with this Act.

(11) Subsection 7(3), to the extent that it requires registration in the jurisdiction where the transferee of the collateral is located, does not apply to a security interest created before this Act comes into force.

Consequential amendments

75 The Acts listed in column 1 of the Schedule are amended in the provisions listed in column 2 by striking out “*The Personal Property Security Act*” wherever it occurs and in each case substituting “*The Personal Property Security Act, 1993*”.

R.S.S. 1978, c.A-10, section 43.1 amended

76 Clause 43.1(5)(b) of *The Agricultural Implements Act* is repealed and the following substituted:

“(b) section 41 of *The Personal Property Security Act, 1993*”.

R.S.S. 1978, c.B-10 amended

77(1) *The Business Corporations Act* is amended in the manner set forth in this section.

(2) Sections 89 and 90 are repealed.

(3) Sections 92 to 96 are repealed.

R.S.S. 1978, c.E-12 amended

78(1) *The Executions Act* is amended in the manner set forth in this section.

(2) Subclause 2.1(b)(ii) is amended by adding “or *The Personal Property Security Act, 1993*” after “*The Personal Property Security Act*”.

(3) Section 2.2 is amended by adding “or *The Personal Property Security Act, 1993*” after “*The Personal Property Security Act*” wherever it occurs:

(a) in the portion that precedes clause (a); and

(b) in clause (c).

R.S.S. 1978, c.G-2, section 18.2 amended

79 Section 18.2 of *The Garage Keepers Act* is amended by striking out “subsections 50(4) to (6) of *The Personal Property Security Act*” and substituting “subsections 50(6) to (8) of *The Personal Property Security Act, 1993*”.

R.S.S. 1978, c.L-1, section 56 amended

80 Subclause 56(1.3)(a)(ii) of *The Labour Standards Act* is amended by striking out “section 21 of *The Personal Property Security Act*” and substituting “section 22 of *The Personal Property Security Act, 1993*”.

R.S.S. 1978, c.L-5 amended

81(1) *The Land Titles Act* is amended in the manner set forth in this section.

(2) Clause 57(i) is amended by striking out “section 54 of *The Personal Property Security Act*” and substituting “section 49 of *The Personal Property Security Act, 1993*”.

(3) The following section is added after section 124.2:

Assignment of rents

“124.3(1) In this section:

(a) ‘**assignee**’ includes a secured party;

(b) ‘**assignment**’ includes a security agreement;

(c) ‘**easement**’ includes an easement pursuant to *The Public Utilities Easements Act, The Pipe Lines Act* or the *National Energy Board Act* (Canada);

(d) ‘**lessee**’ includes a holder of an easement;

(e) ‘**rents**’ means:

(i) amounts payable or to be paid pursuant to a lease, including a lease mentioned in section 134; or

(ii) amounts payable for or to be paid pursuant to an easement.

(2) For the purposes of determining priority among successive holders of rights in rents, an interest that arises pursuant to an assignment of rents is deemed to be an interest in land.

(3) A caveat relating to an interest that arises pursuant to an assignment of rents may be filed.

(4) A caveat relating to an interest that arises pursuant to an assignment of rents that was filed before this section comes into force is deemed to have been filed pursuant to subsection (3).

(5) This section does not apply:

(a) where all of the competing interests arose prior to the coming into force of this section; or

(b) where the conflict is between:

(i) an interest that arose prior to the coming into force of this section; and

(ii) an interest that arose on or after the coming into force of this section and before the expiry of six months after the coming into force of this section.

(6) After an assignment of rents is made, a lessee may pay rents to the grantor of the lease or the easement:

(a) before the lessee receives a notice in writing that:

(i) states that the rents payable or to become payable by the lessee are to be made to an identified assignee of the rents; and

(ii) describes the lease or easement with sufficient particularity to identify the rents; or

(b) after the lessee requests the assignee to furnish proof of the assignment and the

- assignee fails to furnish that proof within 15 days after the date of the request.
- (7) Payment of rents by a lessee to an assignee in accordance with a notice described in clause (6)(a) discharges the obligation of the lessee to the extent of the payment”.
- (4) Subsection 145(2) is amended by striking out “By virtue of every such transfer” and substituting “Subject to section 124.3, by virtue of a transfer mentioned in subsection (1)”.**

S.S. 1979, c.N-4.1 amended

- 82(1) *The Non-profit Corporations Act* is amended in the manner set forth in this section.
- (2) Sections 78 and 79 are repealed.**
- (3) Sections 81 to 84 are repealed.**

R.S.S. 1978, c.Q-1 section 45 amended

- 83 Section 45 of *The Queen's Bench Act* is amended by adding the following paragraph after paragraph 26:**

Receivership of property

“27 Sections 64 and 66 and subsections 65(2) and 65(3) of *The Personal Property Security Act, 1993* apply, with any necessary modification, to:

- (a) a receiver or receiver-manager appointed pursuant to clause 234(3)(b) of *The Business Corporations Act* or clause 215(2)(b) of *The Non-profit Corporations Act*; or
- (b) a receivership of property that is collateral under a security agreement, charge or mortgage to which *The Personal Property Security Act, 1993* does not otherwise apply.

S.S. 1984-85-86, c.R-22.01, section 48 amended

- 84 Subclause 48(4)(a)(ii) of *The Revenue and Financial Services Act* is amended by striking out “section 21 of *The Personal Property Security Act*” and substituting “section 22 of *The Personal Property Security Act, 1993*”.**

Coming into force

- 85 This Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.

SCHEDULE
[Section 75]

<u>Column 1 (Act)</u>	<u>Column 2 (Provision amended)</u>
<i>The Crop Payments Act</i> , R.S.S. 1978, c.C-48	3 4 8
<i>The Credit Union Act, 1985</i> , S.S. 1984-85-86, c-45.1	29(3)
<i>The Distress Act</i> , R.S.S. 1978, c.D-31	6.2
<i>The Executions Act</i> , R.S.S. 1978, c.E-12	2(c) 2.1(b)(i) 2.1(c) 2.1(d) 31 31.2(2)
<i>The Factors Act</i> , R.S.S. 1978. c.F-1	6.1 9(2) 9(3) 10(2)
<i>The Farm Financial Stability Act</i> , S.S. 1989-90, c.F-8.001	16(5)(f)(i)(B)
<i>The Garage Keepers Act</i> , R.S.S. 1978, c.G-2	2(d) 6(5)
<i>The Labour Standards Act</i> , R.S.S. 1978, c.L-1	56(1.2)
<i>The Land Titles Act</i> , R.S.S. 1978, c.L-5	244.1(3) 244.1(5)
<i>The Limitation of Civil Rights Act</i> , R.S.S. 1978, c.L-16	18(2)(d)
<i>The Mortgage Protection Act</i> , S.S. 1986-87-88, c.M-21.11	2(i)
<i>The Revenue and Financial Services Act</i> , S.S. 1984-85-86, c.R-22.01	48(1)(d)
<i>The Sale of Goods Act</i> , R.S.S. 1978, c.S-1	25(3) 26(1.1) 26(1.2) 26(4)
<i>The Saskatchewan Farm Security Act</i> , S.S. 1988-89, c.S-17.1	46(3)(c) 70(2)(a) 70(2)(b)
<i>The Veterinarians Act, 1987</i> , S.S. 1986-87-88, c. V-5.1	36(1)(a) 36(1)(b) 36(3)