



Province of Alberta

PERSONAL PROPERTY SECURITY ACT

Revised Statutes of Alberta 2000
Chapter P-7

Current as of June 13, 2016

Office Consolidation

© Published by Alberta Queen's Printer

Alberta Queen's Printer
7th Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Copyright and Permission Statement

Alberta Queen's Printer holds copyright on behalf of the Government of Alberta in right of Her Majesty the Queen for all Government of Alberta legislation. Alberta Queen's Printer permits any person to reproduce Alberta's statutes and regulations without seeking permission and without charge, provided due diligence is exercised to ensure the accuracy of the materials produced, and Crown copyright is acknowledged in the following format:

© Alberta Queen's Printer, 20__.*

*The year of first publication of the legal materials is to be completed.

Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Regulations

The following is a list of the regulations made under the *Personal Property Security Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	<i>Amendments</i>
Personal Property Security Act		
Personal Property Security	95/2001	251/2001, 109/2003, 237/2004, 80/2006, 130/2007, 229/2007, 164/2010, 107/2012, 158/2015
Personal Property Security Forms	231/2002	35/2007, 230/2007, 108/2012, 159/2015

PERSONAL PROPERTY SECURITY ACT

Chapter P-7

Table of Contents

- 1 Interpretation
- Part 1**
General
- 2 Crown bound
- 3 Application of Act
- 4 Non-application of Act
- 5 Applicable law - general rules
- 6 Applicable law - goods to be removed from jurisdiction
- 7 Applicable law - mobile goods, intangibles, etc.
- 7.1 Applicable law - investment property
- 8 Applicable law - substance and procedure
- 8.1 Law of jurisdiction
- Part 2**
**Validity of Security Agreements
and Rights of Parties**
- 9 Effectiveness of security agreement
- 10 Enforceability of security interest
- 11 Delivery of copy of security agreement
- 12 Attachment of security interests
- 12.1 Securities intermediary
- 13 After-acquired collateral
- 14 Future advances
- 15 Seller's warranties
- 16 Acceleration of payment or performance
- 17 Preservation of collateral
- 17.1 Rights of secured party - investment
property as collateral
- 18 Request for statement from secured party

Part 3
Perfection and Priorities

- 19 Perfection of security interest
- 19.1 Perfection of security interest - securities
or futures account
- 19.2 Perfection on attachment
- 20 Priority of unperfected and certain perfected security interests
- 21 Measure of damages suffered
- 22 Priority of purchase-money security interest
- 23 Continuity of perfection
- 24 Perfection by possession
- 24.1 Perfection of security interest in investment property
- 25 Perfection by registration
- 26 Temporary perfection
- 27 Perfection where goods in possession of bailee
- 28 Perfection re proceeds
- 29 Goods returned or repossessed
- 30 Buyer or lessee takes free of security interest
- 31 Protection of transferees of negotiable collateral
- 31.1 Rights under Securities Transfer Act
- 32 Priority of liens
- 33 Alienation of rights of debtor
- 34 Priority of purchase-money security interests
- 35 Residual priority rules
- 35.1 Priority among conflicting security interests
- 36 Fixtures
- 37 Security interests in crops
- 38 Security interests re accessions
- 39 Security interests in processed or commingled goods
- 40 Subordination of interest
- 41 Rights of assignee

Part 4
Registration

- 42 Personal Property Registry
- 43 Registration of financing statements
- 44 Duration of and amendments to registrations
- 45 Registration of transfers and subordinations
- 46 Registry records
- 47 Registration not constructive notice
- 48 Registry searches
- 49 Registration in land titles office
- 50 Amendment or discharge of registrations

- 51 Transfer of debtors' interests in collateral or change of debtors' names
- 52 Recovery of loss caused by error in Registry
- 53 Recovery of loss where trust deeds involved
- 54 Payment of claim for loss

Part 5 Rights and Remedies on Default

- 55 Application of Part
- 56 Rights and remedies
- 57 Collection rights of secured party
- 58 Right of secured party to enforce, etc., on default
- 59 Seizure of mobile homes
- 60 Disposal of collateral on default
- 61 Surplus or deficiency
- 62 Retention of collateral
- 63 Redemption of collateral
- 64 Application to Court
- 65 Receiver

Part 6 Miscellaneous

- 66 Proper exercise of rights, duties and obligations
- 67 Deemed damages
- 68 Unauthorized discharge or amendment
- 69 Order of the Court
- 70 Application to Court
- 71 Extension of time
- 72 Service of notices and demands
- 73 Regulations
- 74 Conflict with other legislation
- 75 References
- 76 Transitional application of Act
- 77 Security interest prior to commencement of Act
- 78 Transitional provisions

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

Interpretation

1(1) In this Act,

- (a) “accessions” means goods that are installed in or affixed to other goods;
- (b) “account” means a monetary obligation not evidenced by chattel paper, an instrument or a security, whether or not it has been earned by performance, but does not include investment property;
- (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 or other charges or costs, in connection with an advance or the enforcement of the security interest securing an advance;
- (c.1) “broker” means a broker as defined in the *Securities Transfer Act*;
- (d) “building” includes a structure, erection, mine or work built, erected, constructed or opened on or 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 heating, air conditioning or conveyancing devices or machinery installed in a building or on land for use in carrying on an activity inside the building or on the land;
- (e.1) “certificated security” means a certificated security as defined in the *Securities Transfer Act*;
- (f) “chattel paper” means one or more writings that evidence both a monetary obligation and a security interest in or lease of specific goods or specific goods and accessions, but does not include a security agreement providing for a security interest in specific goods and after-acquired goods other than accessions;

- (f.1) “clearing house” means an organization through which trades in options or standardized futures are cleared or settled;
- (f.2) “clearing house option” means an option, other than an option on futures, issued by a clearing house to its participants;
- (g) “collateral” means personal property that is subject to a security interest;
- (h) “commercial consignment” means a consignment under which goods are delivered for sale, lease or other disposition to a consignee who, in the ordinary course of the consignee’s business, deals in goods of that description, by a consignor who,
 - (i) in the ordinary course of the consignor’s business, deals in goods of that description, and
 - (ii) reserves an interest in the goods after they have been delivered,

but does not include an agreement under which goods are delivered to an auctioneer for sale or to a consignee for sale, lease or other disposition if it is generally known to the creditors of the consignee that the consignee is in the business of 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 the Court of Queen’s Bench;
- (k) “creditor” includes an assignee for the benefit of creditors, an executor, an administrator or a committee 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, but includes trees only if they are
 - (i) nursery stock,
 - (ii) trees being grown for uses other than the production of lumber or wood products, or
 - (iii) trees being grown for use in reforestation of land other than the land on which the trees are growing;

- (m) “debtor” means, subject to subsection (4), a person who owes payment or other performance of the obligation secured, whether or not that person owns or has rights in the collateral, and includes any one or more of the following:
 - (i) a person who receives goods from another person under a commercial consignment;
 - (ii) a lessee under a lease for a term of more than one year;
 - (iii) a transferor of an account or chattel paper;
 - (iv) in sections 17, 24, 26, 58, 59, 60(12), 62(7), 65(2)(b), 65(3) and 67, a transferee of or a successor to a debtor’s interest in collateral;
- (n) “default” means the failure to pay or otherwise perform the obligation secured when due, or the occurrence of any event or set of circumstances on which under the terms of the security agreement the security interest becomes enforceable;
- (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 the person, to bearer or to the order of a named person;
- (o.1) “entitlement holder” means an entitlement holder as defined in the *Securities Transfer Act*;
- (o.2) “entitlement order” means an entitlement order as defined in the *Securities Transfer Act*;
- (p) “equipment” means goods that are held by a debtor other than as inventory or consumer goods;
- (p.1) “financial asset” means a financial asset as defined in the *Securities Transfer Act*;
- (q) “financial institution” means a bank, a trust company, a credit union and a treasury branch;
- (r) “financing change statement” means a financing change statement in the form authorized under the regulations and,

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

- (s) “financing statement” means
 - (i) a printed financing statement in the form authorized under the regulations and required or permitted to be registered under this Act, and
 - (ii) where the context permits,
 - (A) data authorized under the regulations to be transmitted to an office of the Registry to effect a registration,
 - (B) a financing change statement,
 - (C) a security agreement registered before October 1, 1990, and
 - (D) a financial interest statement or amending financial interest statement under the *Chattel Security Registries Act*, SA 1983 cC-7.1, accompanying a security agreement registered before October 1, 1990, if there is a conflict between the financial interest statement or amending financial interest statement and the security agreement;
- (t) “fixture” does not include building materials;
- (u) “future advance” means an advance whether or not made pursuant to an obligation and includes reasonable costs incurred and expenditures made for the protection, maintenance, preservation or repair of collateral;
- (u.1) “futures account” means an account maintained by a futures intermediary in which a futures contract is carried for a futures customer;
- (u.2) “futures contract” means a standardized future or an option on futures, other than a clearing house option, that is
 - (i) traded on or subject to the rules of a futures exchange recognized or otherwise regulated by the Alberta Securities Commission or by a securities regulatory authority of another province or territory of Canada, or
 - (ii) traded on a foreign futures exchange and carried on the books of a futures intermediary for a futures customer;

- (u.3) “futures customer” means a person for which a futures intermediary carries a futures contract on its books;
- (u.4) “futures exchange” means an association or organization operated to provide the facilities necessary for the trading of standardized futures or options on futures;
- (u.5) “futures intermediary” means a person that
 - (i) is registered as a dealer permitted to trade in futures contracts, whether as principal or agent, under the securities laws or commodity futures laws of a province or territory of Canada, or
 - (ii) is a clearing house recognized or otherwise regulated by the Alberta Securities Commission or by a securities regulatory authority of another province or territory of Canada;
- (v) “goods” means tangible personal property other than chattel paper, a document of title, an instrument, investment property and money, and includes fixtures, growing crops and the unborn young of animals, but does not include trees that are not crops until they are severed or minerals until they are extracted;
- (w) “instrument” means
 - (i) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada),
 - (ii) any other writing that evidences a right to the payment of money and is of a kind that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or
 - (iii) a letter of credit or an advice of credit if the letter or advice states that it must be surrendered on claiming payment under it,

but does not include
 - (iv) chattel paper, a document of title or investment property, or
 - (v) a writing that provides for or creates a mortgage or charge in respect of an interest in land that is specifically identified in the writing;

- (x) “intangible” means personal property other than goods, chattel paper, investment property, a document of title, an instrument and money;
- (y) “inventory” means goods
 - (i) that are held by a person for sale or lease, or that have been leased by that person,
 - (ii) that are to be furnished by a person or have been furnished by that person under a contract of service,
 - (iii) that are raw materials or work in progress, or
 - (iv) that are materials used or consumed in a business;
- (y.1) “investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, futures contract or futures account;
- (z) “lease for a term of more than one year” includes
 - (i) a lease for an indefinite term even though the lease is determinable by one or both parties within one year after its execution,
 - (ii) subject to subsection (3), a lease initially for one year or less than one year if the lessee, with the consent of the lessor, retains uninterrupted, or substantially uninterrupted, possession of the leased goods for a period in excess of one year after the date the lessee first acquired possession of the goods, and
 - (iii) a lease for a term of one year or less that is automatically renewable or that is renewable at the option of one of the parties, or by agreement, for one or more terms, the total of which, 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 any prescribed goods, regardless of the length of the term of the lease;

- (aa) “minerals” means minerals as defined in the *Mines and Minerals Act*;
- (bb) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (cc) “money” means a medium of exchange authorized by the Parliament of Canada or authorized or adopted by a foreign government as part of its currency;
- (dd) “new value” means value other than an antecedent debt or antecedent liability;
- (ee) “obligation secured” means, when determining the amount payable under a lease that secures payment or performance of an obligation,
 - (i) the amount originally contracted to be paid under the lease,
 - (ii) any other amounts payable pursuant to the terms of the lease, and
 - (iii) any other amount required to be paid by the lessee to obtain full ownership of the collateral,less any amount paid prior to the determination;
- (ee.1) “option” means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement at or by a time established by the agreement:
 - (i) receive an amount of cash determinable by reference to a specified quantity of the underlying interest of the option;
 - (ii) purchase a specified quantity of the underlying interest of the option;
 - (iii) sell a specified quantity of the underlying interest of the option;
- (ee.2) “option on futures” means an option the underlying interest of which is a standardized future;
- (ff) “pawnbroker” means a person who engages in the business of granting credit to individuals for personal, family or

household purposes and who takes and perfects security interests in consumer goods by taking possession of them, or who purchases consumer goods under agreements or undertakings, express or implied, that the goods may be repurchased by the sellers;

- (gg) “personal property” means goods, chattel paper, investment property, a document of title, an instrument, money or an intangible;
- (hh) “prescribed” means prescribed by the regulations;
- (ii) “prior security interest” means an interest created, reserved or provided for under a valid agreement or other transaction entered into before October 1, 1990, that is a security interest within the meaning of this Act and to which this Act would have applied if it had been in force at the time the agreement or other transaction was entered into;
- (jj) “proceeds” means identifiable or traceable personal property, including fixtures and crops,
 - (i) derived directly or indirectly from any dealing with collateral or the proceeds of the collateral, and
 - (ii) in which the debtor acquires an interest,
and includes
 - (iii) a right to an insurance payment or any other payment as indemnity or compensation for loss of or damage to the collateral or proceeds of the collateral, and
 - (iv) a payment made in total or partial discharge or redemption of an intangible, chattel paper, an instrument or investment property, and
 - (v) rights arising out of, or property collected on, or distributed on account of, collateral that is investment property;
- (kk) “purchase” includes taking by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, gift or any other consensual transaction creating an interest in property;
- (ll) “purchase-money security interest” means

- (i) a security interest taken or reserved in collateral, other than investment property, to secure payment of all or part of its purchase price,
- (ii) a security interest taken in collateral, other than investment property, by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights,
- (iii) the interest of a lessor of goods under a lease for a term of more than one year, or
- (iv) the interest of a person who delivers goods to another person under a commercial consignment,

but does not include a transaction of sale by and lease back to the seller, and, for the purposes of this definition, “purchase price” and “value” include credit charges or interest payable in respect of the purchase or loan;
- (mm) “purchaser” means a person who takes by purchase;
- (nn) “receiver” includes a receiver-manager;
- (oo) “Registrar” means the Registrar of Personal Property designated under section 42;
- (pp) “Registry” means the Personal Property Registry continued under Part 4;
- (qq) “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, and
 - (iii) the trustee, if a security agreement is embodied or evidenced by a trust indenture,

and, for the purposes of sections 17, 36, 38, 55, 56, 57, 58(1), 60(1), (3), (12) and (14), 61, 63(1)(a), 64 and 67, includes a receiver;
- (qq.1) “securities account” means a securities account as defined in the *Securities Transfer Act*;
- (qq.2) “securities intermediary” means a securities intermediary as defined in the *Securities Transfer Act*;

- (rr) “security” means a security as defined in the *Securities Transfer Act*;
- (ss) “security agreement” means an agreement that creates or provides for a security interest, and, if the context permits, includes
 - (i) an agreement that creates or provides for a prior security interest, and
 - (ii) a writing that evidences a security agreement;
- (ss.1) “security certificate” means a security certificate as defined in the *Securities Transfer Act*;
- (ss.2) “security entitlement” means a security entitlement as defined in the *Securities Transfer Act*;
- (tt) “security interest” means
 - (i) an interest in goods, chattel paper, investment property, a document of title, an instrument, money or an intangible that secures payment or performance of an obligation, other than the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of the agent of the seller unless the parties have otherwise evidenced an intention to create or provide for investment property interest in the goods, and
 - (ii) the interest of
 - (A) a transferee arising from the transfer of an account or a transfer of chattel paper,
 - (B) a person who delivers goods to another person under a commercial consignment, and
 - (C) a lessor under a lease for a term of more than one year,

whether or not the interest secures payment or performance of the obligation;
- (uu) “specific goods” means goods identified and agreed on at the time a security agreement in respect of those goods is made;
- (uu.1) “standardized future” means an agreement traded on a futures exchange pursuant to standardized conditions

contained in the bylaws, rules or regulations of the futures exchange, and cleared and settled by a clearing house, to do one or more of the following at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

- (i) make or take delivery of the underlying interest of the agreement;
- (ii) settle the obligation in cash instead of delivery of the underlying interest;
- (vv) “trust indenture” means any deed, indenture or document, however designated, including any supplement or amendment to it, by the terms of which a person issues or guarantees, or provides for the issue or guarantee of debt obligations secured by a security interest and in which a person is appointed as trustee for the holder of the debt obligations issued, guaranteed or provided for under it;
- (vv.1) “uncertificated security” means an uncertificated security as defined in the *Securities Transfer Act*;
- (ww) “value” means any consideration sufficient to support a simple contract, and includes an antecedent debt or antecedent liability.

(1.1) For the purposes of this Act,

- (a) a secured party has control of a certificated security if the secured party has control in the manner provided for in section 23 of the *Securities Transfer Act*;
- (b) a secured party has control of an uncertificated security if the secured party has control in the manner provided for in section 24 of the *Securities Transfer Act*;
- (c) a secured party has control of a security entitlement if the secured party has control in the manner provided for in section 25 or 26 of the *Securities Transfer Act*;
- (d) a secured party has control of a futures contract if
 - (i) the secured party is the futures intermediary with which the futures contract is carried, or
 - (ii) the futures customer, the secured party and the futures intermediary have agreed that the futures intermediary will apply any value distributed on account of the futures

contract as directed by the secured party without further consent by the futures customer;

- (e) a secured party having control of all security entitlements or futures contracts carried in a securities account or futures account has control over the securities account or futures account.

(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 has come to the attention of one of the general partners or a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;
- (c) a corporation knows or has knowledge when information has come to the attention of
 - (i) a managing director or officer of the corporation, or
 - (ii) a senior employee of the corporation with responsibility for matters to which the information relates,

under circumstances in which a reasonable person would take cognizance of it, or when the information in writing has been delivered to the registered office of the corporation or attorney for service for the corporation;
- (d) the members of an association know or have knowledge when information has come to the attention of
 - (i) a managing director or officer of the association,
 - (ii) a senior employee of the association with responsibility for matters to which the information relates, or
 - (iii) all the members

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

information relates under circumstances in which a reasonable person would take cognizance of it.

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

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

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

or both where the context permits.

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

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

RSA 2000 cP-7 s1;2006 cS-4.5 s108(2)

Part 1 General

The Crown is bound

2 The Crown is bound by this Act.

1988 cP-4.05 s2

Application of Act

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

- (a) every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral, and
- (b) without limiting the generality of clause (a), a chattel mortgage, conditional sale, floating charge, pledge, trust indenture, trust receipt, assignment, consignment, lease, trust and transfer of chattel paper where they secure payment or performance of an obligation.

(2) Subject to sections 4 and 55, this Act applies to

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

that does not secure payment or performance of an obligation.

1988 cP-4.05 s3;1991 c21 s29(3)

Non-application of Act

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

- (a) a lien, charge or other interest given by an Act or rule of law in force in Alberta;
- (b) a security agreement governed by an Act of the Parliament of Canada that deals with rights of parties to the agreement or the rights of third parties affected by a security interest created by the agreement, and any agreement governed by sections 425 to 436 of the *Bank Act* (Canada);
- (c) the creation or transfer of an interest or claim in or under any policy of insurance, except the transfer of a right to money or other value payable under a policy of insurance as indemnity or compensation for loss of or damage to collateral;
- (c.1) a transfer of an interest in or claim in or under a contract of annuity, other than a contract of annuity held by a securities intermediary for another person in a securities account;
- (d) the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for labour or personal services, other than fees for professional services;
- (e) the transfer of an interest in an unearned right to payment under a contract to a transferee who is to perform the transferor's obligations under the contract;
- (f) the creation or transfer of an interest in land, including a lease;
- (g) the creation or transfer of an interest in a right to payment that arises in connection with an interest in land, including an interest in rental payments payable under a lease of land, but not including a right to payment evidenced by investment property or an instrument;

- (h) a sale of accounts or chattel paper as part of a sale of the business out of which they arose, unless the vendor remains in apparent control of the business after the sale;
- (i) a transfer of accounts made solely to facilitate the collection of accounts for the transferor;
- (j) the creation or transfer of an interest in a right to damages in tort;
- (k) an assignment for the general benefit of creditors made pursuant to an Act of the Parliament of Canada relating to insolvency.

RSA 2000 cP-7 s4;2006 cS-4.5 s108(3)

Applicable law - general rules

5(1) Subject to this Act, the validity, perfection and effect of perfection or non-perfection of

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

is governed by the law of the jurisdiction where the collateral is situated at the time the security interest attaches.

(2) A security interest in goods perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into the Province continues perfected in the Province if it is perfected in the Province

- (a) not later than 60 days after the goods are brought into the Province,
- (b) not later than 15 days after the day the secured party has knowledge that the goods have been brought into the Province, or
- (c) prior to the date that perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached,

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

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

(4) If a security interest referred to in subsection (1) is not perfected under the law of the jurisdiction in which the collateral was situated at the time the security interest attached and before the collateral was brought into the Province, it may be perfected under this Act.

RSA 2000 cP-7 s5;2006 cS-4.5 s108(4)

Applicable law - goods to be removed from jurisdiction

6(1) Subject to section 7,

- (a) if the parties to a security agreement that creates a security interest in goods in one jurisdiction understand at the time the security interest attaches that the goods will be kept in another jurisdiction, and
- (b) if the goods are removed to the other jurisdiction, for purposes other than transportation through the other jurisdiction, not later than 30 days after the security interest attaches,

the validity, perfection and effect of perfection or non-perfection of the security interest shall be governed by the law of the other jurisdiction.

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

1988 cP-4.05 s6

Applicable law - mobile goods, intangibles, etc.

7(1) For the purposes of this section and section 7.1, a debtor is deemed to be located

- (a) at the debtor's place of business, if the debtor has a place of business,
- (b) at the debtor's chief executive office, if the debtor has more than one place of business, and
- (c) at the debtor's principal residence, if the debtor has no place of business.

(2) The validity, perfection and effect of perfection or non-perfection of

- (a) a security interest in
 - (i) an intangible, or
 - (ii) goods that are of a kind that are normally used in more than one jurisdiction, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and
- (b) a non-possessory security interest in chattel paper, a negotiable document of title, an instrument or money,

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

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

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

whichever is the earliest.

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

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

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

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

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

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

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

RSA 2000 cP-7 s7;2006 cS-4.5 s108(5)

Applicable law - investment property

7.1(1) The validity of a security interest in investment property is governed by the law, at the time the security interest attaches,

- (a) of the jurisdiction where the certificate is located if the collateral is a certificated security,
- (b) of the issuer's jurisdiction if the collateral is an uncertificated security,
- (c) of the securities intermediary's jurisdiction if the collateral is a security entitlement or a securities account, or
- (d) of the futures intermediary's jurisdiction if the collateral is a futures contract or a futures account.

(2) Except as otherwise provided in subsection (5), perfection, the effect of perfection or non-perfection and the priority of a security interest in investment property is governed by the law

- (a) of the jurisdiction in which the certificate is located if the collateral is a certificated security,
- (b) of the issuer's jurisdiction if the collateral is an uncertificated security,
- (c) of the securities intermediary's jurisdiction if the collateral is a security entitlement or a securities account, or
- (d) of the futures intermediary's jurisdiction if the collateral is a futures contract or a futures account.

- (3)** For the purposes of this section,
- (a) the location of a debtor is determined by section 7(1);
 - (b) the issuer's jurisdiction is determined by section 44(5) of the *Securities Transfer Act*;
 - (c) the securities intermediary's jurisdiction is determined by section 45(2) of the *Securities Transfer Act*.
- (4)** For the purposes of this section, the following rules determine a futures intermediary's jurisdiction:
- (a) if an agreement between the futures intermediary and futures customer governing the futures account expressly provides that a particular jurisdiction is the futures intermediary's jurisdiction for the purposes of the law of that jurisdiction, this Act or any provision of this Act, the jurisdiction expressly provided for is the futures intermediary's jurisdiction;
 - (b) if clause (a) does not apply and an agreement between the futures intermediary and futures customer governing the futures account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the futures intermediary's jurisdiction;
 - (c) if neither clause (a) nor (b) applies and an agreement between the futures intermediary and futures customer governing the futures account expressly provides that the futures account is maintained at an office in a particular jurisdiction, that jurisdiction is the futures intermediary's jurisdiction;
 - (d) if none of the preceding clauses applies, the futures intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the futures customer's account is located;
 - (e) if none of the preceding clauses applies, the futures intermediary's jurisdiction is the jurisdiction in which the chief executive office of the futures intermediary is located.
- (5)** The law of the jurisdiction in which the debtor is located governs
- (a) perfection of a security interest in investment property by registration,

- (b) perfection of a security interest in investment property granted by a broker or securities intermediary where the secured party relies on attachment of the security interest as perfection, and
 - (c) perfection of a security interest in a futures contract or futures account granted by a futures intermediary where the secured party relies on attachment of the security interest as perfection.
- (6) A security interest perfected pursuant to the law of the jurisdiction designated in subsection (5) remains perfected until the earliest of
- (a) 60 days after the day the debtor relocates to another jurisdiction,
 - (b) 15 days after the day the secured party knows the debtor has relocated to another jurisdiction, and
 - (c) the day that perfection ceases under the previously applicable law.
- (7) A security interest in investment property that is perfected under the law of the issuer's jurisdiction, the securities intermediary's jurisdiction or the futures intermediary's jurisdiction, as applicable, remains perfected until the earliest of
- (a) 60 days after a change of the applicable jurisdiction to another jurisdiction,
 - (b) 15 days after the day the secured party knows of the change of the applicable jurisdiction to another jurisdiction, and
 - (c) the day that perfection ceases under the previously applicable law.

2006 cS-4.5 s108(6)

Applicable law - substance and procedure**8(1)** Notwithstanding sections 5, 6, 7 and 7.1,

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

- (c) substantive issues involved in the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.

(2) For the purposes of sections 5, 6, 7 and 7.1, a security interest is perfected under the law of a jurisdiction when the secured party has complied with the law of the jurisdiction with respect to the creation and continuance of a security interest, and the security interest has a status in relation to the interests of other secured parties, buyers, judgment creditors or a trustee in bankruptcy of the debtor, similar to that of an equivalent security interest created and perfected under this Act.

RSA 2000 cP-7 s8;2006 cS-4.5 s108(7)

Law of a jurisdiction

8.1 For the purposes of section 7.1, a reference to the law of a jurisdiction means the internal law of that jurisdiction excluding its conflict of law rules.

2006 cS-4.5 s108(8)

Part 2 Validity of Security Agreements and Rights of Parties

Effectiveness of security agreement

9 Subject to this Act or any other Act, a security agreement is effective according to its terms.

1988 cP-4.05 s9

Enforceability of security interest

10(1) Subject to subsection (2) and section 12.1, a security interest is enforceable against a third party only where

- (a) the collateral is not a certificated security and is in the possession of the secured party,
- (b) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 68 of the *Securities Transfer Act* pursuant to the debtor's security agreement,
- (c) the collateral is investment property and the secured party has control under section 1(1.1) pursuant to the debtor's security agreement, or
- (d) the debtor has signed a security agreement that contains

- (i) a description of the collateral by item or kind or as “goods”, “chattel paper”, “investment property”, “documents of title”, “instruments”, “money” or “intangibles”,
- (ii) a description of collateral that is a security entitlement, securities account, or futures account if it describes the collateral by those terms or as “investment property” or if it describes the underlying financial asset or futures contract,
- (iii) a statement that a security interest is taken in all of the debtor’s present and after-acquired personal property, or
- (iv) a statement that a security interest is taken in all of the debtor’s present and after-acquired personal property except specified items or kinds of personal property or except personal property described as “goods”, “chattel paper”, “investment property”, “documents of title”, “instruments”, “money” or “intangibles”.

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

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

(4) A description of collateral as inventory is adequate for the purposes of subsection (1)(d) only while it is held by the debtor as inventory.

(5) A security interest in proceeds is not unenforceable against a third party by reason only that the security agreement does not contain a description of the proceeds.

RSA 2000 cP-7 s10;2006 cS-4.5 s108(9);2016 c18 s14

Delivery of 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.

1988 cP-4.05 s11

Attachment of security interests

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

- (a) value is given,
- (b) the debtor has rights in the collateral or power to transfer rights in the collateral to a secured party, 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 specifically agree in writing to postpone the time for attachment, in which case the security interest attaches at the time specified in the agreement.

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

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

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

(4) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(5) The attachment of a security interest in a futures account is also attachment of a security interest in the futures contracts carried in the futures account.

RSA 2000 cP-7 s12;2006 cS-4.5 s108(10)

Securities intermediary

12.1(1) A security interest in favour of a securities intermediary attaches to a person's security entitlement if

- (a) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and

(b) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(2) The security interest described in subsection (1) secures the person's obligation to pay for the financial asset.

(3) A security interest in favour of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if

(a) the security or other financial asset is

(i) in the ordinary course of business transferred by delivery with any necessary endorsement or assignment, and

(ii) delivered under an agreement between persons in the business of dealing with such securities or financial assets,

and

(b) the agreement calls for delivery against payment.

(4) The security interest described in subsection (3) secures the obligation to make payment for the delivery.

2006 cS-4.5 s108(11)

After-acquired collateral

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

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

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

(b) consumer goods, other than an accession, unless the security interest is a purchase-money security interest or a security interest in collateral obtained by the debtor as replacement for collateral described in the security agreement.

1988 cP-4.05 s13;1990 c31 s9

Future advances

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

(2) Unless the parties otherwise agree, an obligation owing to a debtor to make future advances is not binding on a secured party if, pursuant to section 35(6), the security interest does not have priority over a writ of enforcement with respect to those future advances.

1988 cP-4.05 s14;1996 c28 s33

Seller's warranties

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

1988 cP-4.05 s15

Acceleration of payment or performance

16 Where a security agreement provides that the secured party may accelerate payment or performance if the secured party considers that the secured party is insecure or that the collateral is in jeopardy, the security agreement shall be construed to mean that the secured party has the right to do so only if the secured party, in good faith, believes and has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed in jeopardy.

1988 cP-4.05 s16

Preservation of collateral

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

(2) Unless the parties to the security agreement otherwise agree, if collateral is in the possession of a secured party or a civil enforcement agency,

- (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in the obtaining, maintaining possession of and preserving the collateral, are chargeable to the debtor and are secured by the collateral,
- (b) the risk of loss or damage, except if caused by the negligence of the secured party or civil enforcement agency,

is on the debtor to the extent of any deficiency in any insurance coverage,

- (c) the secured party may hold as additional security any increase or profits, except money, resulting from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith on its receipt in reduction of the obligation secured, and
- (d) the secured party or civil enforcement agency shall keep the collateral identifiable, but fungible collateral may be commingled.

(3) Subject to subsection (1), a secured party may use the collateral

- (a) in the manner and to the extent provided in the security agreement,
- (b) for the purpose of preserving the collateral or its value, or
- (c) pursuant to an order of the Court.

RSA 2000 cP-7 s17;2006 cS-4.5 s108(12)

Rights of secured party - investment property as collateral

17.1(1) Unless otherwise agreed by the parties and notwithstanding section 17, a secured party having control under section 1(1.1) of investment property as collateral

- (a) may hold as additional security any proceeds received from the collateral,
- (b) shall either apply money or funds received from the collateral to reduce the secured obligation or remit the money or funds to the debtor, and
- (c) may create a security interest in the collateral.

(2) Notwithstanding subsection (1) and section 17, a secured party having control under section 1(1.1) of investment property as collateral may sell, transfer, use or otherwise deal with the collateral in the manner and to the extent provided in the security agreement.

2006 cS-4.5 s108(13)

Request for statement from secured party

18(1) The debtor, a creditor, a civil enforcement agency, or a person with an interest in personal property of the debtor, or an authorized representative of any of them, may, by a demand in writing containing an address for reply and delivered to the secured party at the secured party's most recent address in a registered

financing statement relating to the property, or a more recent address if known by the person making the demand, require the secured party to send or make available to the person making the demand or, if the demand is made by the debtor, to any person at an address specified by the debtor, one or more of the following:

- (a) a copy of any security agreement providing for a security interest held by the secured party in the personal property of the debtor;
- (b) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness as of the date specified in the demand;
- (c) a written approval or correction of an itemized list of personal property attached to the demand indicating which items are collateral as of the date specified in the demand;
- (d) a written approval or correction of the amount of the indebtedness and of the terms of payment of the indebtedness as of the date specified in the demand;
- (e) sufficient information as to the location of the security agreement or a copy of it to enable a person entitled to receive a copy of the security agreement to inspect it.

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

(3) The secured party, on the demand of the person entitled to receive a copy of the security agreement under subsection (1), shall permit that person to inspect the security agreement or a copy of it during normal business hours at the location referred to in subsection (1)(e).

(4) Where a demand is made in accordance with subsection (1)(c) and the secured party claims a security interest in all of the personal property of the debtor, in all of the property of the debtor other than a specified kind or item of property or in all of a specified kind of property of the debtor, the secured party may indicate this instead of approving or correcting the itemized list of the property.

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

- (a) 25 days after the secured party receives it, where the secured party is a trustee under a trust indenture, or
- (b) 10 days after the secured party receives it, in the case of any other secured party.

(6) If, without reasonable excuse, the secured party fails to comply with a demand under subsection (5) or, in the case of a demand under subsection (1), if the secured party's reply is incomplete or incorrect, the person making the demand, in addition to any other remedy provided by this Act, may apply to the Court for an order requiring the secured party to comply with the demand.

(7) If the secured party who received a demand under subsection (1) or (3) no longer has an interest in the obligation or property of the debtor that is the subject of the demand, the secured party shall, not later than 10 days after receiving the demand, disclose the name and address of the secured party's successor in interest and the latest successor in interest, if known to the secured party, and if, without reasonable excuse, this is not done, the person making the demand, in addition to any other remedy provided by this Act, may apply to the Court for an order requiring the person to whom the demand was made to comply with this section.

(8) On an application under subsection (6) or (7), the Court may make an order requiring

- (a) the secured party referred to in subsection (5) to comply with the demand referred to in that subsection, or
- (b) the person receiving the demand referred to in subsection (7) to disclose the information referred to in that subsection,

and if the order is not complied with, may order that the security interest of the secured party with respect to which the demand was made is unperfected or extinguished and that any related registration be discharged, and may make any other order it considers necessary to ensure compliance with the demand.

(9) On an application of the secured party referred to in subsection (6) or the person receiving the demand referred to in subsection (7), the Court, subject to section 67(1), may exempt the secured party or person receiving the demand in whole or in part from complying with subsection (5) or (7), other than a demand made by the debtor, or may extend the time for compliance.

(10) A secured party who has replied to a demand referred to in subsection (1) is estopped for the purposes of this Act, as against the person making the demand and any other person who can

reasonably be expected to rely on the reply, to the extent that the person making the demand or the other person, as the case may be, has relied on the reply, from denying

- (a) the accuracy of the information contained in the reply to the demand under subsection (1)(b), (c) or (d), and
- (b) that the copy of the security agreement that the secured party provided in response to a demand under subsection (1)(a) is a true copy of the security agreement required to be provided under subsection (1)(a).

(11) Subject to subsection (12), a successor in interest referred to in subsection (7) is estopped for the purposes of this Act, as against the person making the demand referred to in subsection (1) and any other person who can reasonably be expected to rely on the reply to the demand, to the extent that the person making the demand or the other person, as the case may be, has relied on the reply, from denying

- (a) the accuracy of the information contained in the reply to the demand under subsection (1)(b), (c) or (d), and
- (b) that the copy of the security agreement that was provided in response to a demand under subsection (1)(a) is a true copy of the security agreement required to be provided under subsection (1)(a).

(12) A successor in interest referred to in subsection (7) is not estopped under subsection (11) if

- (a) the person who relied on the reply knew that the interest had been transferred and knew the identity and address of the successor in interest, or
- (b) prior to the demand, a financing change statement was registered as provided in section 45 disclosing the successor in interest as the secured party.

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

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

1988 cP-4.05 s18;1990 c31 s11;1994 cC-10.5 s148

Part 3 Perfection and Priorities

Perfection of security interest

19 A security interest is perfected when

- (a) it has attached, and
- (b) all steps required for perfection under this Act have been completed,

regardless of the order of occurrence.

1988 cP-4.05 s19

Perfection of security interest - securities or futures account

19.1(1) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(2) Perfection of a security interest in a futures account also perfects a security interest in the futures contracts carried in the futures account.

2006 cS-4.5 s108(14)

Perfection on attachment

19.2(1) A security interest arising in the delivery of a financial asset under section 12.1(3) is perfected when it attaches.

(2) A security interest in investment property created by a broker or securities intermediary is perfected when it attaches.

(3) A security interest in a futures contract or a futures account created by a futures intermediary is perfected when it attaches.

2006 cS-4.5 s108(14)

Priority of unperfected and certain perfected security interests

20 A security interest

- (a) in collateral is not effective against
 - (i) a trustee in bankruptcy if the security interest is unperfected at the date of bankruptcy, or
 - (ii) a liquidator appointed under the *Winding-up and Restructuring Act* (Canada) if the security interest is unperfected at the date the winding-up order is made;
- (b) in goods, chattel paper, a negotiable document of title, an instrument, an intangible or money is subordinate to the interest of a transferee who

- (i) acquires the interest under a transaction that is not a security agreement,
 - (ii) gives value, and
 - (iii) acquires the interest without knowledge of the security interest and before the security interest is perfected.
- RSA 2000 cP-7 s20;2006 cS-4.5 s108(15)

Measure of damages suffered

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

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

1988 cP-4.05 s21;1990 c31 s13;1994 cC-10.5 s148;1996 c28 s33

Priority of purchase-money security interest

22(1) A purchase-money security interest in

- (a) collateral, other than an intangible, that is perfected not later than 15 days after the day that
 - (i) the debtor obtains possession of the collateral, or
 - (ii) a third party, at the request of the debtor, obtains possession of the collateral,whichever is the earlier, or
- (b) an intangible that is perfected not later than 15 days after the day the security interest attaches

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

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

possession of the goods or a document of title to the goods,
whichever is earlier.

1988 cP-4.05 s22;1996 c28 s33

Continuity of perfection

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

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

1988 cP-4.05 s23;1990 c31 s14

Perfection by possession

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

- (a) goods,
- (b) chattel paper,
- (c) repealed 2006 cS-4.5 s108(16),
- (d) a negotiable document of title,
- (e) an instrument, and
- (f) money,

but only while it is actually held as collateral and not while it is held as a result of a seizure or repossession.

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

(3) Subject to section 19, a secured party may perfect a security interest in a certificated security by taking delivery of the certificated security under section 68 of the *Securities Transfer Act*.

(4) Subject to section 19, a security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 68 of the *Securities Transfer Act* and remains perfected by delivery until the debtor obtains possession of the security certificate.

RSA 2000 cP-7 s24;2006 cS-4.5 s108(16)

Perfection of security interest in investment property

24.1(1) Subject to section 19, a security interest in investment property may be perfected by control of the collateral under section 1(1.1).

(2) Subject to section 19, a security interest in investment property is perfected by control under section 1(1.1) from the time the secured party obtains control and remains perfected by control until

- (a) the secured party does not have control, and
- (b) one of the following occurs:
 - (i) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate,
 - (ii) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner, or
 - (iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

2006 cS-4.5 s108(17)

Perfection by registration

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

1988 cP-4.05 s25

Temporary perfection

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

- (a) an instrument or a certificated security that a secured party delivers to the debtor for the purpose of
 - (i) ultimate sale or exchange,
 - (ii) presentation, collection or renewal, or
 - (iii) registering a transfer,
- or
- (b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of
 - (i) ultimate sale or exchange,

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

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

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

RSA 2000 cP-7 s26;2006 cS-4.5 s108(18)

Perfection where goods in possession of 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 where the bailee has issued one,
- (c) a holding by the bailee on behalf of the secured party pursuant to section 24, or
- (d) the registration of a financing statement.

(2) The issuance of a negotiable document of title covering goods does not preclude any other security interest in the goods from arising during the period that the negotiable document of title is outstanding.

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

1988 cP-4.05 s27;1990 c31 s16

Perfection re proceeds

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

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

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

(1.1) The limitation of the amount secured by a security interest as provided in subsection (1) does not apply where the collateral is investment property.

(2) A security interest in proceeds is a continuously perfected security interest if the interest in the original collateral is perfected

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

(3) Where the security interest in the original collateral was perfected other than in a manner referred to in subsection (2), the security interest in the proceeds is a continuously perfected security interest but becomes unperfected on the expiration of 15 days after the security interest in the original collateral attaches to the proceeds, unless the security interest in the proceeds is otherwise perfected by any of the methods and under the circumstances prescribed in this Act for original collateral of the same kind.

RSA 2000 cP-7 s28;2006 cS-4.5 s108(19)

Goods returned or repossessed

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

- (a) the goods are returned to, seized or repossessed by the debtor or a transferee of chattel paper created by the sale or lease, and
- (b) the obligation secured remains unpaid or unperformed.

(2) Where a security interest reattaches under subsection (1), the perfection of the security interest and the time of registration or

perfection is determined as if the goods had not been sold or leased if the security interest was perfected by registration at the time of the sale or lease, and the registration is effective at the time of the return, seizure or repossession.

(3) Where a sale or lease of goods creates an account or chattel paper, and

- (a) the account or chattel paper is transferred to a secured party, and
- (b) the goods are returned to, seized or repossessed by the debtor or the transferee of the chattel paper,

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

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

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

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

- (a) a security interest in the goods arising under subsection (1), and
- (b) a security interest in the goods as after-acquired property that attaches on the return, seizure or repossession of the goods

if the transferee of the chattel paper would have priority under section 31(6) as to the chattel paper over an interest in the chattel paper claimed by the holder of the security interest in the goods.

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

priority over a security interest in the goods arising under this section.

1988 cP-4.05 s29;1990 c31 s18

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 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 accession
 - (i) under a contract with a buyer of goods, or
 - (ii) under a contract with a person who is a party to a contract with a buyer of goods.

(2) A buyer or lessee of goods sold or leased in the ordinary course of business of the seller or lessor takes free of any perfected or unperfected security interest in the goods given by the seller or lessor or arising under section 28 or 29, whether or not the buyer or lessee has knowledge of it, unless the buyer or lessee also has knowledge that the sale or lease constitutes a breach of the security agreement under which the security interest was created.

(3) A buyer or lessee of goods that are acquired as consumer goods takes free from 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 \$1000 or, in the case of a lease, the market value of which exceeds \$1000.

(5) A buyer or lessee of goods takes free from a security interest that is temporarily perfected under section 26, 28(3) or 29(4) or a

security interest the perfection of which is continued under section 51 during any of the 15-day periods referred to in those sections, if the buyer or lessee

- (a) gave 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 perfected under section 25 if

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

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

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

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

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

(9) A purchaser of a security, other than a secured party, who

- (a) gives value,
- (b) does not know that the transaction constitutes a breach of a security agreement granting a security interest in the security to a secured party that does not have control of the security, and
- (c) obtains control of the security,

acquires the security free from the security interest.

(10) A purchaser referred to in subsection (9) is not required to determine whether a security interest has been granted in the

security or whether the transaction constitutes a breach of a security agreement.

(11) An action based on a security agreement creating a security interest in a financial asset, however framed, may not be brought against a person who acquires a security entitlement under section 95 of the *Securities Transfer Act* for value and did not know that there has been a breach of the security agreement.

(12) A person who acquires a security entitlement under section 95 of the *Securities Transfer Act* is not required to determine whether a security interest has been granted in a financial asset or whether there has been a breach of the security agreement.

(13) If an action based on a security agreement creating a security interest in a financial asset could not be brought against an entitlement holder under subsection (11), it may not be asserted against a person who purchases a security entitlement, or an interest in it, from the entitlement holder.

RSA 2000 cP-7 s30;2006 cS-4.5 s108(20)

Protection of transferees of negotiable collateral

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

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

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

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

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

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

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

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

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

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

RSA 2000 cP-7 s31;2006 cS-4.5 s108(21)

Rights under Securities Transfer Act

31.1(1) This Act does not limit the rights of a protected purchaser of a security under the *Securities Transfer Act*.

(2) The interest of a protected purchaser of a security under the *Securities Transfer Act* takes priority over an earlier security interest, even if perfected, to the extent provided in that Act.

(3) This Act does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under the *Securities Transfer Act*.

2006 cS-4.5 s108(22)

Priority of liens

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

1988 cP-4.05 s32;1990 c31 s21

Alienation of rights of debtor

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

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

1988 cP-4.05 s33;1990 c31 s22

Priority of purchase-money security interests

34(1) In this section, “non-proceeds security interest” or “non-proceeds purchase-money security interest” means a security interest or purchase-money security interest, as the case may be, in original collateral.

(2) A purchase-money security interest in

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

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

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

- (a) the purchase-money security interest in the inventory is perfected at the time the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier,
- (b) the secured party gives a notice to any other secured party who has, before the registration of the purchase-money security interest, registered a financing statement containing a description that includes the same item or kind of collateral,
- (c) the notice referred to in clause (b) states that the person giving the notice expects to acquire a purchase-money security interest in inventory of the debtor, and describes the inventory by item or kind, and
- (d) the notice is given before the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier.

(4) A notice referred to in subsection (3) may be given in accordance with section 72 or by registered mail addressed to the address of the person to be notified as it appears in the financing statement referred to in subsection (3)(b).

(5) A purchase-money security interest in goods or, subject to section 28, its proceeds, taken by a seller, lessor or consignor of the collateral, that is perfected

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

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

(6) A non-proceeds security interest in accounts given for new value has priority over a purchase-money security interest in the accounts as proceeds of inventory if a financing statement relating to the security interest in the accounts is registered before the purchase-money security interest is perfected or a financing statement relating to it is registered.

(7) A non-proceeds purchase-money security interest has priority over a purchase-money security interest in the same collateral as proceeds if the non-proceeds purchase-money security interest,

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

(8) For the purposes of this section, where goods are shipped by common carrier to a debtor or to a person designated by the debtor, the debtor is deemed not to have obtained possession of the goods until the debtor, or another person at the request of the debtor, has obtained actual possession of the goods or a document of title to the goods, whichever is earlier.

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

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

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

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

1988 cP-4.05 s34;1990 c31 s23

Residual priority rules

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

- (a) priority between perfected security interests in the same collateral is determined by the order of occurrence of the following:
 - (i) the registration of a financing statement, without regard to the date of attachment of the security interest,

- (ii) possession of the collateral under section 24, without regard to the date of attachment of the security interest, or
 - (iii) perfection under section 5, 7, 26, 29 or 77, whichever is earlier,
- (b) a perfected security interest has priority over an unperfected security interest, and
- (c) priority between unperfected security interests is determined by the order of attachment of the security interests.
- (2)** For the purposes of subsection (1), a continuously perfected security interest shall be treated at all times as having been perfected by the method by which it was originally perfected.
- (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 by the regulations as serial number goods is not registered or perfected by registration for the purposes of subsection (1), (7) or (9) unless a financing statement relating to the security interest and containing a description of the goods by serial number is registered.
- (5)** Subject to subsection (6), the priority that a security interest has under subsection (1) applies to all advances, including future advances.
- (6)** A perfected security interest that would otherwise have priority over a writ of enforcement issued under the *Civil Enforcement Act* has that priority only to the extent of
- (a) advances made before the secured party acquires knowledge of the writ within the meaning of section 32 of the *Civil Enforcement Act*,
 - (b) advances made pursuant to an obligation owing to a person other than the debtor entered into by the secured party before acquiring the knowledge referred to in clause (a), and
 - (c) reasonable costs incurred and expenditures made by the secured party for the protection, preservation or repair of the collateral.

(7) Subsection 8 applies to the re-registration of a security interest the registration of which has lapsed as a result of a failure to renew the registration or has been discharged in error or without authorization.

(8) If the secured party re-registers a security interest within 30 days after the lapse or discharge of its registration, the lapse or discharge does not affect the priority status of the security interest in relation to a competing perfected security interest or registered writ of enforcement 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.

(9) 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 the secured party who holds the security interest in the transferred collateral has knowledge of the information required to register a financing statement disclosing the transferee as the new debtor, and
- (b) before the secured party referred to in clause (a) amends the registration to disclose the name of the transferee as the new debtor or takes possession of the collateral.

(10) Subsection (9) does not apply where the transferee acquires the debtor's interest free from the security interest granted by the debtor.

1988 cP-4.05 s35;1990 c31 s24;1994 cC-10.5 s148;1997 c18 s21

Priority among conflicting security interests

35.1(1) The rules in this section govern priority among conflicting security interests in the same investment property.

(2) A security interest of a secured party having control of investment property under section 1(1.1) has priority over a security interest of a secured party that does not have control of the investment property.

(3) A security interest in a certificated security in registered form that is perfected by taking delivery under section 24(3) and not by

control under section 24.1 has priority over a conflicting security interest perfected by a method other than control.

(4) Except as otherwise provided in subsections (5) and (6), conflicting security interests of secured parties each of which has control under section 1(1.1) rank according to priority in time of

- (a) if the collateral is a security, obtaining control,
- (b) if the collateral is a security entitlement carried in a securities account,
 - (i) the secured party's becoming the person for which the securities account is maintained, if the secured party obtained control under section 25(1)(a) of the *Securities Transfer Act*,
 - (ii) the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account, if the secured party obtained control under section 25(1)(b) of the *Securities Transfer Act*, or
 - (iii) if the secured party obtained control through another person under section 25(1)(c) of the *Securities Transfer Act*, when the other person obtained control,

or

- (c) if the collateral is a futures contract carried with a futures intermediary, the satisfaction of the requirement for control specified in section 1(1.1)(d)(ii) with respect to futures contracts carried or to be carried with the futures intermediary.

(5) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(6) A security interest held by a futures intermediary in a futures contract or a futures account maintained with the futures intermediary has priority over a conflicting security interest held by another secured party.

(7) Conflicting security interests granted by a broker, securities intermediary or futures intermediary that are perfected without control under section 1(1.1) rank equally.

(8) In all other cases, priority among conflicting security interests in investment property is governed by section 35.

2006 cS-4.5 s108(23)

Fixtures

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

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

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

- (a) a person who acquires for value an interest in the land after the goods become fixtures, including an assignee for value of the interest of a person with an interest in the land at the time the goods become fixtures, and
- (b) a person with a registered mortgage on the land who, after the goods become fixtures,
 - (i) makes an advance under the mortgage, but only with respect to the advance, or
 - (ii) obtains an order confirming sale or a vesting order in a foreclosure action

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

(4) Where

- (a) a search is made of a certificate of title,
- (b) at the time of the search there is not any notice under section 49 endorsed on that certificate of title, and
- (c) on the day that search is made, in reliance on that search, mortgage money is advanced under a mortgage registered against that certificate of title,

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

- (5)** A security interest in goods that attaches after the goods become fixtures is subordinate to the interest of a person who
- (a) has an interest in the land at the time the goods become fixtures and who
 - (i) has not consented to the security interest,
 - (ii) has not disclaimed an interest in the goods or fixtures,
 - (iii) has not entered into an agreement under which a person is entitled to remove the goods, or
 - (iv) is not otherwise precluded from preventing the debtor from removing the goods, or
 - (b) acquires an interest in the land after the goods become fixtures, if the interest is acquired without fraud and before the security interest in the goods is registered in accordance with section 49.
- (6)** A security interest referred to in subsection (2) or (5) is subordinate to the interest of a creditor of the debtor who caused to be registered a writ of enforcement, judgment, order, certificate or similar instrument authorized to be registered pursuant to an Act in the appropriate land titles office after the goods became fixtures and before the security interest is registered in accordance with section 49.
- (7)** The interest of a creditor referred to in subsection (6) does not take priority over a purchase-money security interest in goods that is registered in accordance with section 49 not later than 15 days after the goods are affixed to the land.
- (8)** A secured party who, under this Act, has the right to remove goods from land shall exercise that right of removal in a manner that causes no greater damage or injury to the land and to other property situated on it and that puts the occupier of the land to no greater inconvenience than is necessarily incidental to the removal of the goods.
- (9)** A person, other than the debtor, who has an interest in the land at the time the goods subject to the security interest are affixed to the land is entitled to reimbursement for any damages to the person's interest in the land caused during the removal of the goods, but is not entitled to reimbursement for diminution in the value of the land caused by the absence of the goods removed or by the necessity of replacement.

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

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

- (a) an order determining who is entitled to reimbursement under this section;
- (b) an order determining the amount and kind of security to be provided by the secured party;
- (c) an order prescribing the depository for the security;
- (d) an order dispensing with the need to provide security for reimbursement under subsection (10).

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

- (a) the amount secured by the security interest having priority over the person's interest, and
- (b) the market value of the goods if they were removed.

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

- (a) the name and address of the secured party,
- (b) a description of the goods to be removed,
- (c) the amount required to satisfy the obligation secured by the security interest,
- (d) a description of the land to which the goods are affixed,
- (e) a statement of intention to remove the goods unless the amount referred to in subsection (12) is paid on or before a specified date that is not less than 15 days after the notice is given in accordance with subsection (14), and
- (f) a statement of the market value of the goods.

(14) A notice referred to in subsection (13) shall be given at least 15 days before removal of the goods, and may be given in accordance with section 72 or by registered mail addressed to the address of the person to be notified as it appears in the records of the land titles office.

(15) A person entitled to receive a notice under subsection (13) may apply to the Court for an order postponing removal of the goods from the land.

1988 cP-4.05 s36;1990 c31 s25;1994 cC-10.5 s148

Security interests in crops

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

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

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

- (a) a person who acquires for value an interest in the land while the crops are growing crops, including an assignee for value of the interest of a person with an interest in the land where the assignee acquires that interest for value and while the crops are growing crops, and
- (b) a person with a registered mortgage on the land who, after the crops become growing crops,
 - (i) makes an advance under the mortgage, but only with respect to the advance, or
 - (ii) obtains an order confirming sale or a vesting order in a foreclosure action

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

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

(5) The interest of a creditor referred to in subsection (4) does not take priority over a purchase-money security interest in the crops,

or a security interest in the crops referred to in section 34(9), that is registered in accordance with section 49 not later than 15 days after the time the security interest in the crops attaches.

(6) Section 36(8) to (15) apply to the seizure and removal of growing crops from land.

1988 cP-4.05 s37;1990 c31 s26;1994 cC-10.5 s148

Security interests re accessions

38(1) In this section,

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

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

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

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

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

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

- (a) has an interest in the other goods at the time the goods become an accession and who
 - (i) has not consented to the security interest,

- (ii) has not disclaimed an interest in the accession,
- (iii) has not entered into an agreement under which a person is entitled to remove the accession, or
- (iv) is not otherwise precluded from preventing the debtor from removing the accession,

or

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

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

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

(7) The person entitled to reimbursement as provided in subsection (6) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.

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

- (a) an order determining who is entitled to reimbursement under this section;
- (b) an order determining the amount and kind of security to be provided by the secured party;
- (c) an order prescribing the depository for the security;
- (d) an order dispensing with the need to provide security for reimbursement under subsection (7).

(9) A person having an interest in the whole that is subordinate to a security interest as provided in this section may, before the

accession has been removed from the whole by the secured party, retain the accession on payment to the secured party of the lesser of

- (a) the amount secured by the security interest having priority over the person's interest, and
- (b) the market value of the accession if it were removed.

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

- (a) to each person who is known by the secured party to have an interest in the other goods or in the whole, and
- (b) to each person who has registered a financing statement indexed in the name of the debtor and referring to the other goods or according to the serial number of the other goods where the other goods are of a kind prescribed by the regulations as serial number goods

a notice of the intention of the secured party to remove the accession.

(11) A notice referred to in subsection (10) shall contain

- (a) the name and address of the secured party,
- (b) a description of the goods to be removed,
- (c) the amount required to satisfy the obligations secured by the security interest,
- (d) a description of the other goods,
- (e) a statement of intention to remove the accession unless the amount referred to in subsection (9) is paid on or before a specified date that is not less than 15 days after the notice is given in accordance with subsection (12), and
- (f) a statement of the market value of the accession.

(12) A notice referred to in subsection (10) must be given at least 15 days before removal of the accession, and may be given in accordance with section 72 or by registered mail addressed to the address of the person to be notified as it appears on the financing statement.

(13) A person entitled to receive a notice under subsection (10) may apply to the Court for an order postponing removal of the accession.

1988 cP-4.05 s38;1990 c31 s27;1994 cC-10.5 s148

Security interests in processed or commingled goods

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

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

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

(4) Subject to subsection (6), if more than one perfected security interest continues in the same product or mass under subsection (1), and each was a security interest in separate goods, the security interests are entitled to share in the product or mass according to the ratio that the obligation secured by each security interest bears to the sum of the obligations secured by all the security interests.

(5) For the purposes of subsection (4), the obligation secured by a security interest does not exceed the market value of the goods at the time the goods become part of the product or mass.

(6) A perfected purchase-money security interest in goods that continues in the product or mass under subsection (1) has priority over

- (a) a non-purchase-money security interest in the goods that continues in the product or mass under subsection (1),
- (b) a non-purchase-money security interest in the product or mass, other than as inventory, given by the same debtor, and
- (c) a non-purchase-money security interest in the product or mass as inventory given by the same debtor if
 - (i) the secured party with the purchase-money security interest in the product or mass gives a notice to any secured party with a non-purchase-money security interest in the product or mass who registers a financing

statement containing a description of collateral that includes the product or mass, before the identity of the goods is lost in the product or mass,

- (ii) the notice contains a statement that the person giving the notice has acquired or expects to acquire a purchase-money security interest in goods supplied to the debtor as inventory, and
- (iii) the notice is given before the identity of the goods is lost in the product or mass.

(7) A notice referred to in subsection (6)(c) may be given in accordance with section 72 or by registered mail addressed to the address of the person to be notified as it appears on the financing statement referred to in subsection (6)(c).

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

1988 cP-4.05 s39;1990 c31 s28

Subordination of interest

40 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.

1988 cP-4.05 s40;1990 c31 s29

Rights of assignee

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

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

- (a) the terms of the contract between the account debtor and the assignor and any defence or claim arising out of the contract 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 has knowledge of the assignment,

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

(3) To the extent that an assigned right to payment arising out of the contract has not been earned by performance, and

notwithstanding notice of the assignment to the account debtor, any modification of or substitution for the contract, made in good faith and in accordance with reasonable commercial standards and without material adverse effect on the assignee's rights under the contract or the assignor's ability to perform the contract, is effective against the assignee unless the account debtor has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract.

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

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

(a) before the account debtor receives a notice that

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

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

or

(b) after

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

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

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

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

Part 4 Registration

Personal Property Registry

42(1) The Central Registry and the Vehicle Registry continued under the *Chattel Security Registries Act*, SA 1983 cC-7.1, are continued as the Personal Property Registry for the purposes of registrations under this Act and for registrations that are permitted or required under any other Act to be made in the Registry.

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

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

(b) this Part applies to the registration.

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

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

(5) The Registrar may designate one or more persons as deputy registrars.

(6) The Registrar shall direct and supervise the operation of the Registry under the direction of the Minister.

1988 cP-4.05 s42;1990 c31 s31;1992 c21 s34

Registration of financing statements

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

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

(3) The Registrar may refuse to register a financing statement or to issue a search result under this Part until any prescribed fees have been paid or arrangements for their payment have been made.

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

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

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

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

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

(b) the serial number of the collateral,

the registration is invalid.

(8) Nothing in subsections (6) and (7) shall require, as a condition to a finding that a defect, irregularity, omission or error is 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 when, in the opinion of the Registrar, it does not comply with this Act or the regulations or any other Act and the regulations under any other Act under which registration of a financing statement is authorized, and the Registrar shall give the reason for the rejection.

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

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

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

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

1988 cP-4.05 s43;1990 c31 s32

Duration of and amendments to registrations

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

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

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

1988 cP-4.05 s44;1990 c31 s33

Registration of transfers and subordinations

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

(2) Where an interest in part of the collateral is transferred, the financing change statement shall disclose the transferee and shall 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 disclosing the transferee as the secured party.

(4) A financing change statement referred to in subsection (1) or (2) may be registered before or after the transfer.

(5) After registration of a financing change statement referred to in subsection (1) or (2), the transferee is the secured party for the purposes of this Part.

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

1988 cP-4.05 s45;1990 c31 s34

Registry records

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

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

- (a) when the registration is no longer effective or is superseded under section 77,
- (b) on receipt of a financing change statement discharging or partially discharging the registration, or
- (c) on receipt of an order of the Court compelling the discharge or partial discharge of a registration.

1988 cP-4.05 s46;1990 c31 s35

Registration not constructive notice

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

1988 cP-4.05 s47

Registry searches

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

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

- (2) A printed search result that purports to be issued by the Registry is receivable in evidence as proof, in the absence of evidence to the contrary, of its contents, including the following:
- (a) the time of registration of a financing statement to which the search result refers, and
 - (b) the order of registration of the financing statement as indicated by the registration number.
- (3) A copy of a registered printed 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.

1988 cP-4.05 s48;1990 c31 s36;1991 c21 s29(6)

Registration in land titles office

49(1) In this section,

- (a) “debtor” includes any person named in a notice under this section as a debtor;
 - (b) “secured party” includes any person named in a notice under this section as a secured party.
- (2) A security interest in a fixture under section 36 and a security interest in a growing crop under section 37 may be registered by tendering a notice in the prescribed form to the appropriate land titles office.
- (3) The registrar of the land titles office to which the notice in subsection (2) is tendered shall make a memorandum of the notice on the certificate of title in respect of the parcel of land to which the notice relates, or on the condominium plan if the notice relates to common property shown on that plan.
- (4) If a notice has been registered in a land titles office under subsection (2) and the registration of the notice has not expired, a notice in the prescribed form of a renewal, amendment, transfer or discharge of the security interest to which the original notice relates, or a notice in the prescribed form of postponement of the security interest to another interest, may be registered in the land titles office, and, on its being so registered, the registrar of the land titles office shall make a memorandum of it on the proper certificate of title or condominium plan, as the case may be.
- (5) Sections 43(4), (5), (6), (8), (9) and (11), 44 and 45 apply to a notice registered under this section.

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

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

- (a) all of the obligations under the security agreement to which the notice relates have been performed,
- (b) the secured party has agreed to release part or all of the collateral described in the notice,
- (c) the description of the collateral contained in the notice includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor,
- (d) no security agreement exists between the secured party and the debtor, or
- (e) the collateral described in the notice is not affixed to the land to which the notice relates,

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

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

- (a) submit for registration a notice in the prescribed form
 - (i) discharging the registration of the notice, in a case falling within subsection (7)(a), (d) or (e),
 - (ii) amending or discharging the registration of the notice, as the case may be, to reflect the terms of the agreement, in a case falling within subsection (7)(b), or
 - (iii) amending the collateral description on the notice to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor, in a case falling within subsection (7)(c),

or

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

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

(10) A demand referred to in subsection (7) may be given in accordance with section 72 or by registered mail addressed to the address of the secured party as it appears on the notice registered under this section.

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

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

1988 cP-4.05 s49;1990 c31 s37;1991 c21 s29(7)

Amendment or discharge of registrations

50(1) In this section,

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

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

(3) Where a financing statement is registered and

- (a) all of the obligations under the security agreement to which it relates have been performed,
- (b) the secured party has agreed to release part or all of the collateral described in the financing statement,
- (c) the collateral description in the financing statement includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor or does not distinguish between original collateral and proceeds, or

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

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

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

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

or

- (b) provide to the Registrar an order of the Court confirming that the registration need not be amended or discharged, accompanied with a completed financing change statement in respect of the order.

(5) If a secured party fails to comply with a demand referred to in subsection (3), the person giving the demand may register the financing change statement referred to in subsection (4)(a) on providing to the Registrar satisfactory proof that the demand has been given to the secured party.

(6) A demand referred to in subsection (3) may be given in accordance with section 72 or by registered mail addressed to the address of the secured party as it appears on the financing statement.

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

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

(b) be discharged or amended.

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

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

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

(11) Where there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations or otherwise give value, a secured party having control of investment property under section 25(1)(b) of the *Securities Transfer Act* or section 1(1.1)(d)(ii) shall, within 10 days after receipt of a written demand by the debtor, send to the securities intermediary or futures intermediary with which the security entitlement or futures contract is maintained a written record that releases the securities intermediary or futures intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party.

RSA 2000 cP-7 s50;2006 cS-4.5 s108(24)

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

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

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

- (c) a perfected security interest in the transferred collateral registered or perfected after the transfer and before the expiry of the 15th day after the transfer, if, before the expiry of the 15 days,
 - (i) the registration of the security interest first mentioned in this subsection is not amended to disclose the transferee of the interest in the collateral as the new debtor, or
 - (ii) the secured party does not take possession of the collateral.

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

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

the security interest in the transferred collateral, where clause (a) applies, and in the collateral, where clause (b) applies, is subordinate to the interests referred to in subsection (3).

(3) Where subsection (2) applies, the security interest in the transferred collateral, where subsection (2)(a) applies, and in the collateral, where subsection (2)(b) applies, is subordinate to

- (a) an interest, other than a security interest in the collateral, arising in the period from the expiry of the 15th day after the secured party first has knowledge of the information referred to in subsection (2)(a) or of the new name of the debtor, as the case may be, to, but not including, the day the secured party amends the registration to disclose the transferee of the collateral as the new debtor, or to disclose the new name of the debtor, as the case may be, or takes possession of the collateral,
- (b) a perfected security interest in the collateral registered or perfected in the period referred to in clause (a), or
- (c) a perfected security interest in the collateral registered or perfected after the secured party first has knowledge of the information referred to in subsection (2)(a) or of the new name of the debtor, as the case may be, and before the

expiry of the 15th day referred to in clause (a), if, before the expiry of the 15 days,

- (i) the registration of the security interest first mentioned in subsection (2) 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.

(4) This section does not have the effect of subordinating a prior security interest under prior registration law deemed under section 77 to be registered under this Act.

(5) Where the debtor's interest in part or all of the collateral is transferred without the consent of the secured party and there are one or more subsequent transfers of the collateral without the consent of the secured party before the secured party acquires knowledge of the name of the 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 the name of the most recent transferee and of the information required to register a financing change statement, and the secured party need not register financing change statements with respect to any intermediate transferee.

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

1988 cP-4.05 s51;1990 c31 s39

Recovery of loss caused by error in Registry

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

- (a) the person's reliance on a printed search result under section 48 that is incorrect because of an error or omission in the operation of the Registry, or
- (b) subject to section 43(3) and (10), an error or omission of the Registrar relating to the registration of a printed financing statement submitted for registration.

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

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

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

whichever is earlier.

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

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

1988 cP-4.05 s52;1990 c31 s41

Recovery of loss where trust deeds involved

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

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

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

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

1988 cP-4.05 s53

Payment of claim for loss

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

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

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

(4) The Minister may, without an action being brought, pay the amount of a claim against the Registrar from the General Revenue Fund on the report of the Registrar setting out the facts and on receipt of a certificate of the Registrar stating that in the Registrar's opinion the claim is just and reasonable.

(5) When an award of damages has been made in favour of the claimant and the time for appeal has expired, or when an appeal is taken and is disposed of in favour of the plaintiff, the Minister shall pay the amount specified in the judgment from the General Revenue Fund.

RSA 2000 cP-7 s54;2006 c23 s63

Part 5

Rights and Remedies on Default

Application of Part

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

(2) The rights and remedies referred to in this Part are cumulative.

(3) Notwithstanding subsection (1), this Part does not apply to a transaction between a pledgor and a pawnbroker.

(4) Subject to any other Act or rule of law to the contrary, where the same obligation is secured by an interest in land and a security interest to which this Act applies, the secured party may

- (a) proceed under this Part as to the personal property, or
- (b) proceed as to both the land and the personal property, as if the personal property were land, in which case
 - (i) the secured party's rights, remedies and duties in respect of the land apply to the personal property as if the personal property were land, and
 - (ii) this Part does not apply.

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

(6) The secured party referred to in subsection (5)

- (a) has standing in proceedings taken in accordance with subsection (4)(b), and
- (b) may apply to the Court for the conduct of a judicially supervised sale under subsection (4)(b).

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

(8) A security interest does not merge merely because a secured party has reduced the secured party's claim to judgment.

1988 cP-4.05 s55;1990 c31 s43

Rights and remedies

56(1) Where the debtor is in default under a security agreement,

- (a) except as provided by subsection (2), the secured party has against the debtor the rights and remedies provided in the security agreement, the rights, remedies and obligations provided in this Part and in sections 36, 37 and 38 and when in possession or control, the rights, remedies and obligations provided in section 17 or 17.1, and
- (b) the debtor has against the secured party, the rights and remedies provided in the security agreement, the rights and remedies provided by any other Act or rule of law not inconsistent with this Act and the rights and remedies provided in this Part and in section 17 and 17.1.

(2) Except as provided in sections 17, 17.1, 60, 61 and 63, no provision of section 17 or 17.1 or sections 58 to 67, to the extent that it gives rights to the debtor or imposes obligations on the secured party, can be waived or varied by agreement or otherwise.

RSA 2000 cP-7 s56;2006 cS-4.5 s108(25)

Collection rights of secured party

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

- (a) to notify a debtor on an intangible or chattel paper or an obligor on an instrument to make payment to the secured party whether or not the assignor was making collections on the collateral before the notification, and
- (b) to apply any money taken as collateral to the satisfaction of the obligation secured by the security interest.

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

- (a) money held as collateral, or
- (b) an amount collected
 - (i) from a debtor on an intangible or chattel paper, or
 - (ii) from an obligor under an instrument.

1988 cP-4.05 s57;1990 c31 s45;1991 c21 s29(8)

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

58(1) Subject to Part 2 of the *Civil Enforcement Act* and sections 36, 37 and 38, 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) if the collateral is a document of title, the secured party may proceed either as to the document of title or as to the goods covered by it, and any method of enforcement that is available with respect to the document of title is also available, with all the necessary modifications, with respect to the goods covered by it,
- (c) where the collateral is goods of a kind that cannot be readily moved from the debtor's premises or of a kind for which adequate alternative storage facilities are not readily available, the collateral may be seized without removing it from the debtor's premises in any manner by which a civil

enforcement agency may seize without removal under subsection (2)(b) to (d), if the secured party's interest is perfected by registration, and

- (d) where clause (c) applies or where the collateral has been seized by a civil enforcement agency as provided in subsection (2)(b) to (d) and the collateral is of a kind mentioned in clause (c), the secured party may dispose of the collateral on the debtor's premises, but shall not cause the person in possession of the premises any greater inconvenience and cost than is necessarily incidental to the disposal.

(2) To make a seizure of property, the civil enforcement agency may

- (a) take physical possession of the property,
- (b) give to the debtor or the person in possession of the collateral a notice of seizure in the prescribed form,
- (c) post in some conspicuous place on the premises on which the property is located at the time of seizure a notice of seizure in the prescribed form, or
- (d) in the case of property in the form of goods, affix to the goods a sticker in the prescribed form,

and seizure by the civil enforcement agency shall continue until possession of the property is surrendered to the secured party or the secured party's agent, or the seizure has been released.

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

(4) When a seizure occurs, a civil enforcement agency, on the written request of the person who has reasonable grounds to believe that the person has an interest in or a right to property seized by the civil enforcement agency, shall deliver to that person a list of items of property seized that fall within the general description of property in or to which that person claims to have an interest.

(5) On making a seizure, a civil enforcement agency may surrender possession or the right of possession of the property seized to the secured party or to a person designated in writing by the secured party.

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

(7) If the person to whom the notice referred to in subsection (6) is given does not take possession of the property referred to in the notice on or before the date specified, the civil enforcement agency may release the seizure.

(8) After surrender of possession as provided in subsection (5) or release of seizure as provided in subsection (7), the civil enforcement agency has no liability for loss or damage to the property or for unlawful interference with the rights of the debtor or any other person who has rights in or to the property, occurring after the surrender or release.

(9) A seizure shall not affect the interest of a person who under this Act or under any other law has priority over the rights of the secured party.

1988 cP-4.05 s58;1990 c31 s46;1994 cC-10.5 s148

Seizure of mobile homes

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

- (a) a vacation trailer or house trailer, or
- (b) a structure, whether ordinarily equipped with wheels or not, that is designed to be moved from one point to another by being towed or carried and to provide living accommodation for one or more persons.

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

(3) The order may provide that if the occupant fails to deliver up possession of the mobile home within the time specified in the order, the civil enforcement agency shall eject and remove the

occupant together with all goods the occupant may have in the mobile home, and the civil enforcement agency may take any reasonable steps necessary to obtain possession of the mobile home.

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

1988 cP-4.05 s59;1990 c31 s47;1994 cC-10.5 s148

Disposal of collateral on default

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

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

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

(2) Collateral may be disposed of as follows:

- (a) by private sale;
- (b) by public sale, including public auction or closed tender;
- (c) as a whole or in commercial units or parts;
- (d) if the security agreement so provides, by lease or by deferred payment.

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

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

- (a) the debtor and 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 has, prior to the date that the notice of disposition is given to the debtor, registered a financing statement according to the name of the debtor or according to the serial number of the collateral in the case of goods of a kind prescribed by the regulations as serial number goods, or
 - (ii) whose interest was perfected by possession at the time the secured party seized the collateral,and
- (c) any other person with an interest in the collateral who has given notice to the secured party of the person's interest in the collateral prior to the date that the notice of disposition is given to the debtor.

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

- (a) a description of the collateral,
- (b) the amount required to satisfy the obligations secured by the security interest,
- (c) the sums actually in arrears, exclusive of the operation of any acceleration clause in the security agreement, and a brief description of any default other than non-payment, and the provision of the security agreement the breach of which resulted in the default,
- (d) the amount of the applicable expenses referred to in subsection (1)(a) or, where the amount of those expenses has not been determined, a reasonable estimate,
- (e) a statement that, on payment of the amounts due under clauses (b) and (d), any person entitled to receive the notice may redeem the collateral,
- (f) a statement that, on payment of the sums actually in arrears, exclusive of the operation of any acceleration clause in the security agreement, or the curing of any other default, as the case may be, together with payment of the amounts due under subsection (1)(a), the debtor may reinstate the security agreement,

- (g) a statement that, unless the collateral is redeemed or the security agreement is reinstated, the collateral will be disposed of and the debtor may be liable for any deficiency, and
- (h) the date, time and place of any sale by public auction, the place to which closed tenders may be delivered and the date after which closed tenders will not be accepted or the date after which any private disposition of the collateral is to be made.

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

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

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

- (a) the debtor, and if the debtor is a corporation, a director of the corporation,
- (b) any other person who is known by the secured party to be an owner of the collateral,
- (c) any person referred to in subsection (4)(b), and
- (d) any other person with an interest in the collateral who has given notice to the receiver of the person's interest in the collateral prior to the date that the notice of disposition is given to the debtor.

(9) The notice referred to in subsection (8) shall contain

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

(10) The notice required under subsection (4) or (8) may be given in accordance with section 72 or, where notice is to be given to the person who has registered a financing statement, by registered mail

addressed to the address of the person to whom it is to be given as it appears on the financing statement.

(11) The secured party may purchase the collateral or any part of it only at a public sale and only for a price that bears a reasonable relationship to the market value of the collateral.

(12) When a secured party disposes of the collateral to a purchaser who acquires the purchaser's 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, as regards the purchaser, deemed performed for the purposes of sections 49(7)(a) and 50(3)(a).

(13) Subsection (12) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 77 who has not been given a written notice under this section.

(14) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or a similar instrument and who receives a transfer of collateral from the secured party or who is subrogated to the rights of the secured party has the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral.

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

- (a) the collateral is perishable,
- (b) the secured party believes on reasonable grounds that the collateral will decline substantially in value if not disposed of immediately after default,
- (c) the cost of care and storage of the collateral is disproportionately large relative to its value,
- (d) the collateral is a security or an instrument that is to be disposed of by sale in an organized market that handles large volumes of transactions between many different sellers and many different buyers,

- (e) the collateral is money other than a medium of exchange authorized by the Parliament of Canada,
- (f) the Court, on ex parte application, is satisfied that a notice is not required, or
- (g) after default, every person entitled to receive the notice consents to the disposition of the collateral without notice.

1988 cP-4.05 s60;1990 c31 s48;1991 c21 s29(9)

Surplus or deficiency

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

- (a) a person who has a subordinate security interest in the collateral
 - (i) who has, prior to the distribution of the proceeds, registered a financing statement according to the name of the debtor or according to the serial number of the collateral in the case of goods of a kind prescribed by the regulations as serial number goods, or
 - (ii) whose interest was perfected by possession at the time the collateral was seized,
- (b) any other person who has an interest in the collateral, if that person has given a written notice of that person's interest to the secured party prior to distribution of the proceeds, and
- (c) the debtor or any other person who is known by the secured party to be the owner of the collateral

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

(2) Where there is a question as to who is entitled to receive payment under subsection (1), the secured party may pay the surplus into the Court and the surplus shall not be paid out except on an application under section 69 by a person claiming an entitlement to the surplus.

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

- (a) the amount collected pursuant to section 57(1) or the amount realized from the disposition of the collateral under section 60,
- (b) the manner in which the collateral was disposed of,
- (c) the amount of expenses deducted as provided in sections 17, 57 and 60,
- (d) the distribution of the amount received from the collection or disposition, and
- (e) the amount of any surplus.

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

1988 cP-4.05 s61;1990 c31 s49

Retention of collateral

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

- (a) the debtor or any other person who is known by the secured party to be the owner of the collateral,
- (b) a creditor or person who has a security interest in the collateral whose interest is subordinate to that of the secured party, and
 - (i) who has, prior to the date that the notice of the proposal is given to the debtor, registered a financing statement according to the name of the debtor or according to the serial number of the collateral in the case of goods of a kind prescribed by the regulations as serial number goods, or
 - (ii) whose interest was perfected by possession at the time the collateral was seized,
- (c) any other person with an interest in the collateral who has given a written notice to the secured party of an interest in the collateral prior to the date that notice is given to the debtor, and
- (d) the civil enforcement agency, unless possession or seizure has been surrendered or released by the civil enforcement agency pursuant to section 58(5) or (7).

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

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

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

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

who has been given the notice and all obligations secured by the interests referred to in clauses (a) and (b) are deemed performed for the purposes of sections 49(7)(a) and 50(3)(a).

(4) The notice required under subsection (1) may be given in accordance with section 72 or, where notice is to be given to a person who has registered a financing statement, by registered mail addressed to the address of the person to whom it is to be given as it appears on the financing statement.

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

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

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

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

(7) Where a secured party disposes of the collateral to a purchaser who acquires the purchaser's interest for value and in good faith

and who takes possession of it, the purchaser acquires the collateral free from

- (a) the interest of the debtor,
- (b) an interest subordinate to that of the debtor, and
- (c) an interest subordinate to that of the secured party

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

(8) Subsection (7) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 77 who has not been given a written notice under this section.

1988 cP-4.05 s62;1990 c31 s50;1991 c21 s29(10);1994 cC-10.5 s148

Redemption of collateral

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

- (a) any person entitled to receive a notice of disposition under section 60(4) or (8) may, unless the person has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral, or
- (b) the debtor, other than a guarantor or indemnitor, may, unless the debtor has otherwise agreed in writing after default, reinstate the security agreement by paying the sums actually in arrears, exclusive of the operation of any acceleration clause, and by curing any other default by reason of which the secured party intends to dispose of the collateral,

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

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

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

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

1988 cP-4.05 s63

Application to Court

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

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

1988 cP-4.05 s64;1990 c31 s51;1994 cC-10.5 s148

Receiver

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

(2) A receiver shall

- (a) take the collateral into the receiver's custody and control in accordance with the security agreement or order under which the receiver is appointed, but unless appointed a receiver-manager or unless the Court orders otherwise, shall not carry on the business of the debtor,
- (b) where the debtor is a corporation, immediately notify the Registrar of Corporations of the receiver's appointment or discharge,

- (c) open and maintain a bank account in the receiver's name as receiver for the deposit of all money coming under the receiver's control as a receiver,
- (d) keep detailed records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions involving collateral or other property of the debtor,
- (e) prepare at least once in every 6-month period after the date of the receiver's appointment financial statements of the receiver's administration that, as far as is practical, are in the form required by section 155 of the *Business Corporations Act*, and
- (f) on completion of the receiver's duties, render a final account of the receiver's administration in the form referred to in clause (e), and, where the debtor is a corporation, send copies of the final account to the debtor, the directors of the debtor and to the Registrar of Corporations.

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

(4) The debtor, and where the debtor is a corporation, a director of the debtor, a sheriff, civil enforcement agency, a person with an interest in the collateral in the custody or control of the receiver, or the authorized representative of any of them, may, by a demand in writing given to the receiver, require the receiver to provide copies of the financial statements referred to in subsection (2)(e) or the final account referred to in subsection (2)(f) or make available those financial statements or that final account for inspection during regular business hours at the place of business of the receiver in the Province.

(5) The receiver shall comply with the demands referred to in subsection (3) or (4) not later than 10 days from the date of receipt of the demand.

(6) The receiver may require the payment in advance of a fee in the amount prescribed for each demand made under subsection (4), but the sheriff and the debtor, or in the case of an incorporated debtor, a director of the debtor, are entitled to inspect or to receive a copy of the financial statements and final account without charge.

- (7) On the application of any interested person, the Court may
- (a) appoint a receiver;
 - (b) remove, replace or discharge a receiver whether appointed by the Court or pursuant to a security agreement;
 - (c) give directions on any matter relating to the duties of a receiver;
 - (d) approve the accounts and fix the remuneration of a receiver;
 - (e) exercise with respect to a receiver appointed under a security agreement the jurisdiction it has with respect to a receiver appointed by the Court;
 - (f) notwithstanding anything contained in a security agreement or other document providing for the appointment of a receiver, make an order requiring a receiver or a person by or on behalf of whom the receiver is appointed, to make good any default in connection with the receiver's custody, management or disposition of the collateral of the debtor or to relieve that person from any default or failure to comply with this Part.
- (8) The powers referred to in subsection (7) and in section 64 are in addition to any other powers the Court may exercise in its jurisdiction over receivers.
- (9) Unless the Court orders otherwise, a receiver is required to comply with sections 60 and 61 only when the receiver disposes of collateral other than in the course of carrying on the business of the debtor.

1988 cP-4.05 s65;1990 c31 s52;1994 cC-10.5 s148

Part 6

Miscellaneous

Proper exercise of rights, duties and obligations

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

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

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

1988 cP-4.05 s66;1990 c31 s53

Deemed damages

67(1) If a person fails, without reasonable excuse, 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.

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

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

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

the debtor or, in a case of non-compliance with section 43(11), 49 or 50, the person disclosed as the debtor in a registration, is deemed to have suffered damages not less than the amount prescribed.

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

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

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

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

(5) Except as otherwise provided in this Act, a provision in a security agreement or any other agreement that purports to exclude a duty or onus imposed by this Act, or that purports to limit the liability of or the amount of damages recoverable from a person

who has failed to discharge a duty or obligation imposed on the person by this Act is void.

1988 cP-4.05 s67;1990 c31 s54

Unauthorized discharge or amendment

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

1990 c31 s55

Order of the Court

69 On application of an interested person, the Court may

- (a) make an order determining questions of priority or entitlement to collateral;
- (b) direct an action to be brought or an issue to be tried.

1988 cP-4.05 s68

Application to Court

70(1) An application to the Court under this Act must be made in accordance with the *Alberta Rules of Court*.

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

(3) Repealed 2009 c53 s129.

RSA 2000 cP-7 s70;2009 c53 s129

Extension of time

71 Where in Part 5 or in sections 11, 36(13), 38(13) and 43(11) a time is prescribed not later than or before which an act or thing must be done, the Court, on application made before or after the time has expired, may extend or abridge, conditionally or otherwise, the time for compliance.

1988 cP-4.05 s69;1990 c31 s57

Service of notices and demands

72(1) A notice or demand, other than a demand under section 18, or a copy of a financing statement or statement used by the Registry to confirm a registration referred to in section 43(11), required or permitted to be given under this Act may be given as follows:

- (a) to an individual by leaving it with the individual or by registered mail addressed by indicating the individual's

name and residence, or the name and place of any business of the person;

- (b) to a partnership
 - (i) by leaving it with
 - (A) one or more of the general partners, or
 - (B) a person having at the time the notice is given control or management of the partnership business, or
 - (ii) by registered mail addressed to
 - (A) the partnership,
 - (B) any one or more of the general partners, or
 - (C) any person having at the time the notice is given control or management of the partnership businessat the address of the partnership business;
- (c) to a corporation, other than a municipality or Metis settlement,
 - (i) by leaving it with an officer or director of the corporation or person in charge of any office or place of business of the corporation,
 - (ii) by leaving it with, or by registered mail addressed to, the registered or head office of the corporation, and
 - (iii) where the corporation has its registered or head office outside the Province, by leaving it with, or by registered mail addressed to, the attorney for service for the corporation appointed under Part 21 of the *Business Corporations Act*;
- (d) to a municipal corporation by leaving it with, or by registered mail addressed to, the principal office of the corporation or to the chief administrative officer of the corporation;
- (e) to a Metis settlement by leaving it with, or by registered mail addressed to, the permanent office of the settlement or to the settlement administrator;
- (f) to an association

- (i) by leaving it with an officer of the association, or
 - (ii) by registered mail addressed to an officer of the association at the address of the officer;
- (g) to a cooperative
- (i) by leaving it with an officer or director of the cooperative or a person in charge of any office or place of business of the cooperative,
 - (ii) by leaving it with or by registered mail addressed to the registered or head office of the cooperative, and
 - (iii) where the cooperative has its registered or head office outside the Province, by leaving it with, or by registered mail addressed to, the attorney for service for the cooperative appointed under Part 17 of the *Cooperatives Act*.

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

RSA 2000 cP-7 s72;2001 cC-28.1 s462

Regulations

73(1) The Lieutenant Governor in Council may make regulations

- (a) respecting the kinds of goods the leases of which are not within the scope of this Act;
- (b) respecting the Registry and the duties of the Registrar, including the transition from a prior registry system to the system established by this Act;
- (c) respecting fees;
- (d) respecting the registration of financing statements or other writings;
- (e) respecting
 - (i) the form, contents and manner of use of financing statements and other writings,
 - (ii) the form, contents and manner of use of notices referred to in this Act, including notices registered under section 49 in a land titles office or at another place determined in accordance with clause (s)(ii),

- (iii) the manner in which collateral, including proceeds collateral, is described in financing statements and other writings, and
- (iv) what kinds of goods may be or shall be described in part by serial number and the requirements of a description by serial number;
- (f) permitting the registration in the Registry of any interest, right or claim relating to property;
- (g) respecting the manner in which any registration may be made in the Registry under this Act or any other enactment;
- (h) respecting the application of Part 4 to interests that are permitted or required to be registered in the Registry;
- (i) respecting searches of the Registry, the meaning of “search result” and the method of disclosure of registered information, including the form of a search result;
- (j) requiring or permitting the use of statements to confirm the registration of information on financing statements and other writings;
- (j.1) governing the examination of collateral and information to be provided by persons for the purposes of determining or verifying the location of collateral;
- (k) respecting the Registrar’s power to amend a registration that contains an error caused by the act of the Registrar or Registry employees;
- (l) respecting abbreviations, expansions or symbols that may be used in a financing statement or other form, notice or document used in connection with the registration of security interests or the disclosure of information in the Registry;
- (m) respecting any matter required or authorized by this Act to be prescribed;
- (n) respecting the retention and disposition of Registry records;
- (o) respecting the period of time during which a registration in the Registry or under section 49 is effective;
- (p) authorizing the Registrar to enter into agreements whereby fees may be charged on account;

- (q) respecting agreements under clause (p);
- (r) respecting the grounds on which the Registrar may refuse to register a financing statement or other writing;
- (s) respecting
 - (i) the application of all or part of sections 36 and 37 to any land for which a certificate of title has not been issued under the *Land Titles Act*, and
 - (ii) the place at which a registration is to be made and the manner of registration;
- (t) respecting the circumstances in which a financing statement registered prior to October 1, 1990 is deemed to continue the perfected status of an interest referred to in section 77(4).

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

RSA 2000 cP-7 s73;2009 c53 s129

Conflict with other legislation

74(1) If there is a conflict between this Act and a provision for the protection of consumers in any Act, the provision of that Act prevails.

(2) Except as otherwise provided in this or any other Act, if there is a conflict between this Act and any Act other than those referred to in subsection (1), this Act prevails.

1988 cP-4.05 s72

References

75(1) A reference in an Act, regulation, agreement or document to the *Assignment of Book Debts Act*, RSA 1980 cA-47, the *Bills of Sale Act*, RSA 1980 cB-5, the *Business Corporations Act*, the *Chattel Security Registries Act*, SA 1983 cC-7.1, or the *Conditional Sales Act*, RSA 1980 cC-21, that relates to a security interest in personal property or fixtures is deemed to be a reference to this Act or to the corresponding provisions of this Act.

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

Transitional application of Act

76(1) In this section and section 77, “prior law” means the law in force immediately before October 1, 1990.

(2) This Act applies

- (a) to every security agreement made after October 1, 1990, including an agreement that renews, extends or consolidates an agreement made before October 1, 1990,
- (b) to a receiver appointed before or after October 1, 1990,
- (c) to every security agreement made before October 1, 1990 that has not been validly terminated in accordance with the prior law before October 1, 1990, and
- (d) subject to subsections (4) and (5), to every prior security interest that is not enforced or otherwise validly terminated in accordance with the prior law before October 1, 1990.

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

(4) The validity of a prior security interest is governed by the prior law.

(5) The order of priorities

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

1988 cP-4.05 s74;1990 c31 s60

Security interest prior to commencement of Act

77(1) In this section, “prior registration law” means the *Assignment of Book Debts Act*, RSA 1980 cA-47, the *Bills of Sale Act*, RSA 1980 cB-5, the *Business Corporations Act*, the *Conditional Sales Act*, RSA 1980 cC-21, and the *Chattel Security Registries Act*, SA 1983 cC-7.1, as they existed immediately before October 1, 1990.

(2) Except as otherwise provided in this section, a prior security interest that on October 1, 1990 is covered by an unexpired filing or registration under prior registration law is deemed to have been registered and perfected under this Act, and, subject to this Act, the

registered and perfected status of the interest continues for the unexpired portion of the filing or registration, as the case may be, and may be further continued by registration under this Act if the security interest could have been perfected by registration if it had attached after October 1, 1990.

(3) A bill of sale that does not evidence a mortgage of chattels and that on October 1, 1990 is covered by a registration under the *Bills of Sale Act*, RSA 1980 cB-5, is deemed to be registered in the Registry for the purposes of section 26(2) of the *Sale of Goods Act* and section 9(2) of the *Factors Act*, and the registration ceases to be effective after September 30, 1993 unless it is continued by registration in the Registry before October 1, 1993.

(4) A prior security interest registered under the *Business Corporations Act* or the *Companies Act* is deemed to have been registered and perfected under this Act, and the registered and perfected status of the interest ceases to be effective after September 30, 1993, but may be further continued under this Act by registration under this Act if the security interest could have been perfected by registration if it had attached after September 30, 1990.

(5) A registration under the *Conditional Sales Act*, RSA 1980 cC-21, that remains unexpired on October 1, 1990 and which relates exclusively or partly to railway rolling stock, ceases to be effective after September 30, 1993, but may be further continued by registration under this Act in respect of any security interest that could have been perfected by registration if it had attached after October 1, 1990.

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

- (a) registration under this Act continues any registration or perfected status under prior registration law for the purposes of section 76(5), and
- (b) the registration under this Act supersedes any registration under prior law.

(7) A prior security interest that under prior law had the status of a perfected security interest without filing or registration and without the secured party taking possession of the collateral is perfected under this Act as of the date the security interest was created, and that perfection continues until September 30, 1993, after which it becomes unperfected unless, being a security interest that could

have been perfected under this Act if it had arisen after October 1, 1990, it is otherwise perfected under this Act.

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

(9) A prior security interest in the form of an assignment of an existing or future debt to which the *Assignment of Book Debts Act*, RSA 1980 cA-47, did not apply

- (a) is deemed perfected for the purposes of section 20(a), and
- (b) is perfected under this Act for all other purposes as of the date notice of the assignment is given to the account debtor as defined in section 41(1),

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

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

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

if it is a security interest that could have been perfected by registration or possession under this Act if it had arisen after October 1, 1990, may be perfected by registration or possession in accordance with this Act.

(11) A prior security interest that under this Act may be perfected by the secured party taking possession of the collateral is perfected for the purposes of this Act when possession of the collateral is taken in accordance with section 24 whether the possession was taken before or after October 1, 1990 and notwithstanding that under prior law the security interest could not be perfected by taking possession of the collateral.

(12) A prior security interest that, on October 1, 1990, was covered by an unexpired filing or registration under prior registration law, which is perfected under this Act without registration or the

secured party taking possession of the collateral, remains perfected under this Act.

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

1988 cP-4.05 s75;1990 c31 s61;1991 c21 s29(12);1996 c28 s33

Transitional provisions

78(1) The provisions of the *Securities Transfer Act*, including amendments made to this Act by section 108 of the *Securities Transfer Act*, do not affect an action or proceeding commenced before the coming into force of section 108 of the *Securities Transfer Act*.

(2) No further action is required to continue perfection of a security interest in a security if

- (a) the security interest in the security was a perfected security interest immediately prior to the coming into force of section 108 of the *Securities Transfer Act*, and
- (b) the action by which the security interest was perfected would suffice to perfect the security interest under this Act.

(3) A security interest in a security remains perfected for a period of 4 months from the coming into force of section 108 of the *Securities Transfer Act* and continues to be perfected after that 4-month period where appropriate action to perfect the security interest under this Act is taken within that period, if

- (a) the security interest in the security was a perfected security interest immediately prior to the coming into force of section 108 of the *Securities Transfer Act*, but
- (b) the action by which the security interest was perfected would not suffice to perfect the security interest under this Act.

(4) A financing statement or financing change statement may be registered within the 4-month period referred to in subsection (3) to continue that perfection or after that 4-month period to perfect the security interest, if

- (a) the security interest was a perfected security interest immediately prior to the coming into force of section 108 of the *Securities Transfer Act*, and
- (b) the security interest can be perfected by registration under this Act.

2006 cS-4.5 s108(26)



Printed on Recycled Paper 