



## **PLEASE NOTE**

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For more information concerning the history of this Act, please see the [Table of Public Acts](#).

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This Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted when determining the authoritative statement of the law.

For more information, please contact:

Island Information Service  
P.O. Box 2000  
Charlottetown, Prince Edward Island  
Canada  
C1A 7N8

Tel: (902) 368-4000

Email: [island@gov.pe.ca](mailto:island@gov.pe.ca)

## CHAPTER P-3.1

### PERSONAL PROPERTY SECURITY ACT

#### PART I

##### INTERPRETATION AND APPLICATION

- 1. In this Act** Definitions
- (a) “accession” means goods that are installed in or affixed to other goods; accession
- (b) “account” means a monetary obligation not evidenced by chattel paper, a security or an instrument, whether or not the obligation has been earned by performance; account
- (c) “advance” means the payment of money, the provision of credit or the giving of value and includes any liability of the debtor to pay interest, credit costs and other charges payable by the debtor in connection with an advance or the enforcement of a security interest securing the advance; advance
- (d) “building” means a structure, erection, mine or work built, constructed or opened on or in land; building
- (e) “building materials” means materials that are incorporated into a building and includes goods attached to a building so that their removal  
building materials
- (i) would necessarily involve the dislocation or destruction of some other part of the building and cause substantial damage to the building, apart from the loss of value of the building resulting from the removal, or
- (ii) would result in weakening the structure of the building or exposing the building to weather damage or deterioration,
- but does not include
- (iii) heating, air conditioning or conveyancing devices, or
- (iv) machinery installed in a building or on land for use in carrying on an activity in the building or on the land;
- (f) “chattel paper” means one or more writings that evidence both a monetary obligation and a security interest in, or a lease of, specific goods or specific goods and accessions; chattel paper
- (g) “collateral” means personal property that is subject to a security interest; collateral

commercial consignment	<p>(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</p> <p style="padding-left: 40px;">(i) in the ordinary course of the consignor’s business, deals in goods of that description, and</p> <p style="padding-left: 40px;">(ii) reserves an interest in the goods after they have been delivered,</p> <p>but does not include an agreement under which goods are delivered to</p> <p style="padding-left: 40px;">(iii) an auctioneer for sale, or</p> <p style="padding-left: 40px;">(iv) a consignee for sale, lease or other disposition if the consignee is generally known to the creditors of the consignee to be selling or leasing goods of others;</p>
consumer goods	<p>(i) “consumer goods” means goods that are used or acquired for use primarily for personal, family or household purposes;</p>
court	<p>(j) “court” means the Supreme Court of Prince Edward Island;</p>
creditor	<p>(k) “creditor” includes an assignee for the benefit of creditors, an executor, an administrator or a guardian of a creditor;</p>
crops	<p>(l) “crops” means crops, whether or not matured, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, and includes trees only if they are</p> <p style="padding-left: 40px;">(i) being grown as nursery stock,</p> <p style="padding-left: 40px;">(ii) being grown for uses other than for the production of lumber and wood products, or</p> <p style="padding-left: 40px;">(iii) intended to be replanted in another location for the purpose of reforestation;</p>
debtor	<p>(m) “debtor” means</p> <p style="padding-left: 40px;">(i) a person who owes payment or performance of an obligation secured, whether or not that person owns or has rights in the collateral,</p> <p style="padding-left: 40px;">(ii) a person who receives goods from another person under a commercial consignment,</p> <p style="padding-left: 40px;">(iii) a lessee under a lease for a term of more than one year,</p> <p style="padding-left: 40px;">(iv) a transferor of an account or chattel paper,</p> <p style="padding-left: 40px;">(v) a seller under a sale of goods without a change of possession,</p> <p style="padding-left: 40px;">(vi) in sections 17, 24, 26 and 58, subsections 59 (15) and 61(8) and section 66, the transferee of a debtor’s interest in the collateral, and</p> <p style="padding-left: 40px;">(vii) if the person referred to in subclause (i) and the owner of the collateral are not the same person,</p>

- (A) where “debtor” is used in a provision dealing with the collateral, an owner of the collateral,
- (B) where “debtor” is used in a provision dealing with the obligation, the obligor, and
- (C) where the context permits, both the owner and the obligor;

- (n) “default” means default
- (i) the failure to pay or otherwise perform the obligation secured when due, or
  - (ii) the occurrence of any event or set of circumstances whereupon, 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 document of title
- (i) that covers goods in the bailee’s possession that are identified or that are fungible portions of an identified mass, and
  - (ii) in which it is stated that the goods covered by it will be delivered to a named person, or to the transferee of that person, or to bearer or to the order of a named person;
- (o.1) “enforcement proceeding” means any proceeding authorised by the *Judgment and Execution Act* R.S.P.E.I. 1988, Cap. J-2, the *Supreme Court Act* R.S.P.E.I. 1988, Cap. S-10 or the *Rules of Court* to be taken for the purpose of enforcing a money judgment or for the purpose of enforcing the claims of creditors against the personal property of a debtor; enforcement proceeding
- (p) “equipment” means goods that are held by a debtor other than as inventory or consumer goods; equipment
- (p.1) “exigible personal property” means any personal property of a judgment debtor that can be made the subject of an enforcement proceeding; exigible personal property
- (q) “financing change statement” means the data authorized by the regulations to be entered in the Registry to renew, discharge or otherwise amend a financing statement; financing change statement
- (r) “financing statement” means the data authorized by the regulations to be entered in the Registry to effect a registration for the purpose of perfecting a security interest in collateral pursuant to this Act and, where the context permits, includes financing statement
- (i) a financing change statement, and
  - (ii) a security agreement registered pursuant to the *Assignment of Book Debts Act* R.S.P.E.I. 1988, Cap. A-22, the *Bills of Sale Act* R.S.P.E.I. 1988, Cap. B-3, the *Conditional Sales Act* R.S.P.E.I. 1988, Cap. C-15 or the *Corporation Securities Registration Act*

R.S.P.E.I. 1988, Cap. C-26 before the coming into force of this Act, together with any writing that was registered with the agreement or registered to rectify, amend or renew the agreement;

- fixture (s) “fixture” does not include building materials;
- future advance (t) “future advance” means an advance, whether or not made pursuant to an obligation and includes advances and reasonable costs incurred and expenditures made for the protection, maintenance, preservation or repair of the collateral;
- goods (u) “goods” means tangible personal property, fixtures, crops and the unborn young of animals but does not include a document of title, chattel paper, a security, an instrument, money or trees, other than crops, until they are severed or minerals until they are extracted;
- instrument (v) “instrument” means  
 (i) a bill of exchange, note or cheque within the meaning of the *Bills of Exchange Act* (Canada) R.S.C. 1985, Chap. B-4,  
 (ii) any other writing that evidences a right to payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or  
 (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) a document of title, chattel paper or a security, or  
 (v) a writing that provides for or creates a mortgage or charge in respect of an interest in land that is specifically identified in the writing;
- intangible (w) “intangible” means personal property that is not goods, a document of title, chattel paper, a security, an instrument or money;
- inventory (x) “inventory” means goods that are  
 (i) held by a person for sale or lease, or that have been leased by that person as lessor,  
 (ii) to be furnished or that have been furnished under a contract of service,  
 (iii) raw materials or work in progress, or  
 (iv) materials used or consumed in a business or profession;
- lease for a term of more than one year (y) “lease for a term of more than one year” includes  
 (i) a lease of goods for an indefinite term including a lease for an indefinite term that is determinable by one or both parties within one year after its execution,

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

(iii) a lease of goods for a term of one year or less where the lease provides that it is renewable for one or more terms automatically or at the option of one of the parties or by agreement of the parties if the total terms, including the original term, may exceed one year,

but does not include

(iv) a lease of goods by 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 goods of a prescribed kind, regardless of the length of the term of the lease;

(z) "minerals" includes oil, gas and hydrocarbons;

minerals

(aa) "money" means a medium of exchange authorized by the Parliament of Canada as part of the currency of Canada or authorized or adopted by a foreign government as part of its currency;

money

(bb) "obligation secured" means, for the purpose of determining the amount payable under a lease that secures payment or performance of an obligation,

obligation secured

(i) the amount originally contracted to be paid as rent under the lease,

(ii) any other amount payable under the terms of the lease, or

(iii) the amount, if any, required to be paid by the lessee to obtain ownership of the collateral,

less any amount paid before the determination;

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

pawnbroker

(i) takes and perfects security interests in consumer goods by taking possession of them, or

(ii) purchases consumer goods under agreements or undertakings, express or implied, that the goods may be repurchased by the sellers;

personal property	(dd) “personal property” means goods, a document of title, chattel paper, a security, an instrument, money or an intangible’
prescribed	(ee) “prescribed” means prescribed by the regulations;
prior security interest	(ff) “prior security interest” means an interest created by or provided for under a valid security agreement or other transaction entered into before the coming into force of this Act 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 when the security agreement or other transaction was entered into;
proceeds	(gg) “proceeds” means <ul style="list-style-type: none"> <li>(i) identifiable or traceable personal property that is derived directly or indirectly from any dealing with collateral or proceeds of collateral and in which the debtor acquires an interest,</li> <li>(ii) an insurance or other payment that represents indemnity or compensation for loss of or damage to collateral or proceeds of collateral, or a right to such a payment, or</li> <li>(iii) a payment made in total or partial discharge or redemption of chattel paper, a security, an instrument or an intangible;</li> </ul>
purchase	(hh) “purchase” means taking by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, gift or any other consensual transaction creating an interest in property;
purchase money security interest	(ii) “purchase money security interest” means <ul style="list-style-type: none"> <li>(i) a security interest taken in collateral to the extent that it secures all or part of the purchase price of the collateral,</li> <li>(ii) a security interest taken in collateral by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire the rights,</li> <li>(iii) the interest of a lessor of goods under a lease for a term of more than one year, or</li> <li>(iv) the interest of a consignor who delivers goods to a consignee under a commercial consignment,</li> </ul> <p>but does not include a transaction of sale by and lease back to the seller, and for the purpose of this definition, “purchase price” and “value” include interest, credit card costs and other charges payable for the purchase or loan credit;</p>
receiver	(jj) “receiver” includes a receiver-manager;
Registrar	(kk) “Registrar” means the Registrar of the Personal Property Registry, appointed pursuant to this Act;

(ll) “Registry” means the Personal Property Registry established by this Act;

Registry

(mm) “registry of deeds” means the office of a registrar of deeds established pursuant to the *Registry Act* R.S.P.E.I. 1988, Cap. R-10;

registry of deeds

(nn) “sale of goods without a change of possession” means a sale of goods that is not accompanied by an immediate delivery and an actual, apparent and continued change of possession of the goods sold, but does not include a sale of goods in the ordinary course of business of the seller, and for the purpose of this definition, “sale” includes an assignment, transfer, conveyance, declaration of trust or any other agreement or transaction, not intended to secure payment or performance or an obligation, by which an interest in goods is conferred;

sale of goods  
without a change of  
possession

(oo) “secured party” means

secured party

- (i) a person who has a security interest
- (ii) a person who holds a security interest for the benefit of another person, or
- (iii) a trustee, if a security interest is embodied in a trust indenture;

(pp) “security” means a writing, whether or not in the form of a security certificate, that

security

- (i) is recognized in the jurisdiction in which it is issued or dealt with as evidencing a share, participation or other interest in property or an enterprise, or that evidences an obligation of the issuer,
- (ii) is one of a class or series or, by its terms, is divisible into classes or series of writings, and
- (iii) in the ordinary course of business is transferred by
  - (A) delivery with the necessary endorsement, assignment or registration in the records of the issuer or of an agent of the issuer, or compliance with restrictions on transfer, or
  - (B) an entry into the records of a clearing agency,

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

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

security agreement

- (i) an agreement that creates or provides for a prior security interest, and
- (ii) a writing that evidences a security agreement;



- security interest (rr) “security interest” means
- (i) an interest in personal property that secures payment or performance of an obligation, but does not include the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of an agent of the seller, unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods, and
  - (ii) the interest of
    - (A) a consignor who delivers goods to a consignee under a commercial consignment
    - (B) lessor under a lease for a term of more than one year
    - (C) a transferee under a transfer of an account or a transfer of chattel paper, or
    - (D) a buyer under a sale of goods without a change of possession,
 that does not secure payment or performance of an obligation;
- security with a clearing agency (ss) “security with a clearing agency” means a security
- (i) in the form of a security certificate
    - (A) in bearer form,
    - (B) endorsed in blank by an appropriate person, or
    - (C) registered in the name of the clearing agency or its nominee or custodian,
 that is in the custody of the clearing agency, or
  - (ii) not in the form of a security certificate and that is registered or recorded in the records maintained by or on behalf of the issuer in the name of a clearing agency or its nominee or custodian;
- seriously misleading defect, irregularity, omission or error (ss.1) “seriously misleading defect, irregularity, omission or error” includes a defect, irregularity, omission or error in a serial number in a registration that would result in the registration not being identified as a registration that contains information that exactly or closely matches the serial number used by a person making a search of the Registry in accordance with the regulations;
- specific goods (tt) “specific goods” means goods identified and agreed on at the time a security agreement in respect of those goods is made;
- trust indenture (uu) “trust indenture” means a deed, indenture or document, however designated, by the terms of which a person issues or guarantees or provides for the issue or guarantee of debt obligations secured by a security interest and in which another person is appointed as trustee for the holders of the debt obligations issued, guaranteed or provided for under it;

(vv) “value” means any consideration sufficient to support a simple contract and includes an antecedent debt or liability, and “new value” means value other than an antecedent debt or liability. 1997,c.33,s.1; 1997,c.67,s.1; 2003,c.42,s.1.

value

**2.** (1) For the purposes of this Act,

Knowledge imputed, where

(a) a natural person knows or has knowledge when information is acquired by that person 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 partners, or where the partnership is a limited partnership, 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 body corporate knows or has knowledge when information, in writing, has been delivered to the body corporate’s registered office or recognized agent appointed by the body corporate in accordance with the *Companies Act* R.S.P.E.I. 1988, Cap. C-14, or when information has come to the attention of

(i) a managing director or officer of the body corporate, or

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

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

(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 members,

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

(e) a 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.

(2) Except as otherwise provided in this Act, the determination as to whether goods are “consumer goods”, “inventory” or “equipment” shall be made as of the time the security interest attaches.

Determination of type of goods

(3) Proceeds are traceable whether or not there is a fiduciary relationship between the person who has a security interest in the

Traceable proceeds

proceeds as provided in section 28 and the person who has rights in or has dealt with the proceeds.

- |                               |   |
|-------------------------------|---|
| Deemed possession of security | (4) Where collateral is a security with a clearing agency, the transferee or secured party is deemed to have taken possession of the security when the appropriate entries have been made in the records of the clearing agency.  |
| Inter-jurisdictional harmony  | (5) This Act is to be interpreted and applied, in so far as the context permits, in a manner that promotes the inter-jurisdictional harmony of the law of personal property security in Canada. 1997,c.33,s.2.  |
| Application of Act            | <p><b>3.</b> (1) Subject to section 4, this Act applies to</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) without limiting the generality of clause (a), a chattel mortgage, conditional sale, fixed charge, floating charge, pledge, trust indenture, trust receipt, assignment, consignment, lease, trust or transfer of chattel paper where it secures payment or performance of an obligation.</li> </ul>  |
| <i>Idem</i>                   | <p>(2) Subject to sections 4 and 55, this Act applies to</p> <ul style="list-style-type: none"> <li>(a) a commercial consignment;</li> <li>(b) a lease for a term of more than one year;</li> <li>(c) a transfer of an account or chattel paper; and</li> <li>(d) a sale of goods without a change of possession</li> </ul> <p>that does not secure payment or performance of an obligation. 1997,c.33,s.3.</p>   |
| Act not applicable            | <p><b>4.</b> Except as otherwise provided in this Act, this Act does not apply to</p> <ul style="list-style-type: none"> <li>(a) a lien, charge or other interest given by rule of law or statute unless the statute provides that this Act applies;</li> <li>(b) the creation or transfer of an interest or claim in or under a contract of annuity or policy of insurance except the transfer of a right to money or other value payable under a policy of insurance as indemnity or compensation for loss of or damage to collateral;</li> <li>(c) the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for work or services, the assignment or transfer of which is prohibited by any statute or rule of law;</li> <li>(d) the transfer of an unearned right to payment under a contract to a transferee who is to perform the transferor's obligations under the contract;</li> <li>(e) the creation or transfer of an interest in land including a lease;</li> </ul> |

- (f) the creation or transfer of an interest in a right to payment that arises in connection with an interest in or a lease of land other than an interest in a right to payment evidenced by a security or an instrument;
- (g) a sale of accounts, chattel paper or goods as part of a sale of the business out of which they arose unless the vendor remains in apparent control of the business after the sale;
- (h) a transfer of accounts made solely to facilitate the collection of accounts for the transferor;
- (i) the creation or transfer of a right to damages in tort;
- (j) a mortgage or sale registered pursuant to the *Canada Shipping Act* (Canada) R.S.C. 1985, Chap. S-9;
- (k) a security agreement governed by an Act of the Parliament of Canada that deals with the rights of parties to the agreement or the rights of third parties affected by a security interest created by the agreement, including any security agreement governed by Part VIII of the *Bank Act* (Canada) R.S.C. 1985, Chap. B-1. 1997,c.33,s.4.

- 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 a negotiable document of title, chattel paper, a security, an instrument and money,
- are governed by the law of the jurisdiction where the collateral is situated when the security interest attaches.
- (2) For the purposes of subsection (1), a security with a clearing agency is situated where the records of the clearing agency are kept.
- (3) A security interest in goods perfected pursuant to 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 sixty days after the goods are brought into the province;
  - (b) not later than fifteen days after the secured party has knowledge that the goods have been brought into the province; or
  - (c) before perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached,
- whichever is earliest.
- (4) Notwithstanding subsection (3), a security interest in goods referred to in that subsection is subordinate to the interest of a buyer or lessee of the goods who acquires the interest without knowledge of the security interest and before it is perfected in the province pursuant to section 24 or 25.

Location of collateral determines applicable law

Location of clearing agency

Security interest perfected in other jurisdiction

Priority of buyer without notice

Security interest perfected via Act	(5) A security interest that is not perfected in accordance with subsection (3) may be otherwise perfected in the province pursuant to this Act.
<i>Idem</i>	(6) Where a security interest referred to in subsection (1) is not perfected pursuant to the law of the jurisdiction in which the collateral was situated when the security interest attached and before the collateral was brought into the province, it may be perfected pursuant to this Act. 1997,c.33,s.5.
Perfection in other jurisdictions	<b>6.</b> (1) Subject to section 7, where the parties to a security agreement that creates a security interest in goods in one jurisdiction understand when the security interest attaches that the goods will be kept in another jurisdiction, the validity, perfection and effect of perfection or non-perfection of the security interest are determined by the law of the other jurisdiction if the goods are removed to the other jurisdiction, for purposes other than transportation through the other jurisdiction, within thirty days after the security interest attaches.
May be perfected in province	(2) Where 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 subsection 5(3) applies if it was perfected pursuant to the law of the other jurisdiction to which the goods were removed. 1997,c.33,s.6.
Location of debtor	<b>7.</b> (1) For the purposes of this section, a debtor is located <ul style="list-style-type: none"> <li>(a) at the place of business of the debtor, if any;</li> <li>(b) at the chief executive office of the debtor, if the debtor has more than one place of business; and</li> <li>(c) at the principal residence of the debtor, if the debtor has no place of business.</li> </ul>
Perfection governed by laws of debtor's location	(2) The validity, perfection and effect of perfection or non-perfection of <ul style="list-style-type: none"> <li>(a) a security interest in an intangible;</li> <li>(b) a security interest in goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or are inventory leased or held for lease by the debtor to others; and</li> <li>(c) a non-possessory security interest in a negotiable document of title, chattel paper, a security, an instrument or money,</li> </ul> are governed by the law, including the conflict of law rules, of the jurisdiction where the debtor is located when the security interest attaches.
Debtor relocates or transfers interest	(3) Where a debtor relocates to another jurisdiction or transfers an interest in the collateral to a person located in another jurisdiction, a

security interest perfected pursuant to the law that is applicable under subsection (2) continues perfected in the province if it is perfected in the other jurisdiction

- (a) not later than sixty days after the debtor relocates or transfers an interest in the collateral to a person located in the other jurisdiction;
- (b) not later than fifteen days after the secured party has knowledge that the debtor has relocated or transferred an interest in the collateral to a person located in the other jurisdiction; or
- (c) before perfection ceases under the law of the first jurisdiction, whichever is earliest.

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

Security interest may be subordinate

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

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

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

Perfection under this Act

(6) Notwithstanding section 6 and subsection (2), 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 minehead or wellhead that

Governing jurisdiction at minehead or wellhead

- (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 sale of the minerals,

are governed by the law of the jurisdiction in which the minehead or wellhead is located. 1997,c.33,s.7.

**8.** (1) Notwithstanding sections 5, 6 and 7,

- (a) procedural issues that relate to the enforcement of the rights of a secured party against collateral, other than intangibles, are governed by the law of the jurisdiction in which the collateral is located when the rights are exercised;
- (b) procedural issues that relate to the enforcement of the rights of a secured party against intangibles are governed by the law of the forum; and

Governing law respecting procedural and substantive issues

(c) substantive issues that relate to 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 debtor.

Perfection pursuant to law of a jurisdiction

(2) For the purposes of sections 5, 6 and 7, a security interest shall be deemed to be perfected pursuant to the law of a jurisdiction if

(a) the secured party has complied with the law of that jurisdiction relating to the creation and continuance of a security interest; and

(b) the security interest has a status under the law of that jurisdiction in relation to the interests of other secured parties, buyers, creditors of the debtor and a trustee in bankruptcy of the debtor similar to the status of an equivalent security interest created and perfected pursuant to this Act. 1997,c.33,s.8.

## PART II

### VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES

Security agreement

**9.** Except as otherwise provided in this or any other Act, a security agreement is effective according to its terms. 1997,c.33,s.9.

Security interest enforceable against third party

**10.** (1) A security interest is enforceable against a third party only where

(a) the collateral is in the possession of the secured party or another person on the secured party's behalf; or

(b) the debtor has signed a security agreement that contains

(i) a description of the collateral by item or kind, or by reference to one or more of the following: "goods", "document of title", "chattel paper", "security", "instrument", "money" or "intangible",

(ii) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property, or

(iii) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property except specified items or kinds of personal property or except one or more of the following: "goods", "document of title", "chattel paper", "security", "instrument", "money" or "intangible".

Apparent possession or control of debtor

(2) A secured party does not have possession of collateral for the purpose of clause (1)(a) if the collateral is in the apparent possession or control of the debtor or the debtor's agent.

Detail required for consumer goods as collateral

(3) A description is inadequate for the purpose of subclause (1)(b)(i) if it describes the collateral as consumer goods or equipment without further describing the item or kind of collateral but, where the personal property to be excluded from a description of collateral under subclause

(1)(b)(iii) is the consumer goods of the debtor, the excluded property may be described simply as consumer goods.

(4) A description of collateral as inventory is adequate for the purpose of clause (1)(b) only while it is held by the debtor as inventory.

Inventory collateral must be held by debtor

(5) A security interest in proceeds is enforceable against a third party, whether or not the security agreement contains a description of the proceeds. 1997,c.33,s.10.

Security interest in proceeds enforceable against third party

**11.** Where a security agreement is in writing, the secured party shall deliver a copy of the security agreement to the debtor within ten days after its execution and, if the secured party fails to do so after a request by the debtor, the court may, on application by the debtor, order the delivery of the copy to the debtor. 1997,c.33,s.11.

Copy of written security agreement to be delivered to debtor

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

When security interest attaches

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

(2) Notwithstanding subsection (1), where the parties have specifically agreed to postpone the time of attachment, the security interest attaches at the agreed time.

Postponement of time of attachment

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

Rights where lessee or consignee obtains possession

(4) For the purposes of clause (1)(b), 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; or
- (d) trees, other than crops, until they are severed. 1997,c.33,s.12.

Rights in crops, animal progeny, minerals, trees

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

After-acquired property



Security interest does not attach in certain after-acquired property	<p>(2) A security interest does not attach under an after-acquired property clause in a security agreement to after-acquired personal property that is</p> <p style="padding-left: 20px;">(a) crops that become growing crops 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 attach, if the parties agree, to crops to be grown on the land concerned during the term of the lease, agreement for sale or mortgage; or</p> <p style="padding-left: 20px;">(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. 1997,c.33,s.13.</p>
Future advances	<p><b>14.</b> (1) A security agreement may secure future advances.</p> <p>(2) Unless otherwise agreed, an obligation owing to a debtor to make future advances is not binding on a secured party if</p> <p style="padding-left: 20px;">(a) a judgment has been registered against the debtor pursuant to the <i>Judgment and Execution Act</i>;</p> <p style="padding-left: 20px;">(b) the collateral in which the secured party has a security interest includes non-exempt exigible personal property or attachable debts of the debtor within the meaning of the <i>Judgment and Execution Act</i>; and</p> <p style="padding-left: 20px;">(c) the secured party has knowledge of the registration of the judgment before making the advances. 1997,c.33,s.13; 1997,c.67,s.2.</p>
Future advances, where judgment registered	<p><b>15.</b> Where a seller has a purchase money security interest in goods, the law relating to contracts of sale governs the sale and the seller's performance obligations with respect to the goods, including any disclaimer, limitation or modification of those obligations. 1997,c.33,s.15.</p>
Sale of goods law applies to purchase money security interest	<p><b>16.</b> Where a security agreement provides that a secured party may accelerate payment or performance when the secured party considers that the collateral is in jeopardy or that the secured party is insecure, 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. 1997,c.33,s.16.</p>
Collateral in jeopardy or secured party insecure	<p><b>17.</b> (1) In this section, "secured party" includes a receiver.</p> <p>(2) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession and, unless</p>
Definition	<p>Secured party to use reasonable care</p>

otherwise agreed, in the case of chattel paper, a security or an instrument, reasonable care includes taking necessary steps to preserve rights against other persons.

(3) Unless otherwise agreed, where collateral is in the secured party's possession, Collateral in secured party's possession

- (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral and in its preservation 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, 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;
- (d) the secured party shall apply any increase or profits in the form of money resulting from the collateral, unless remitted to the debtor, immediately on its receipt in reduction of the obligation secured; and
- (e) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled.

(4) Subject to subsection (2), a secured party may use the collateral Use of collateral by secured party

- (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) in accordance with an order of the court. 1997,c.33,s.17.

**18.** (1) Subject to subsection (4), the debtor, a creditor, a sheriff, a person with an interest in personal property of the debtor or an authorized representative of any of them may require a secured party, by a demand in writing, to send or make available the information or documentation referred to in subsection (3) 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. Who may demand documentation

(2) A demand made pursuant to subsection (1) shall contain an address for reply and may be delivered to the secured party Delivery of demand

- (a) at the most recent address of the secured party that was registered as part of a financing statement that includes a description of personal property of the debtor; or
- (b) at a more recent address that is the current address of the secured party if known by the person making the demand.

(3) Any or all of the following may be demanded pursuant to subsection (1): Documents that may be demanded

- (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 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 within the province to enable a person entitled to receive a copy of the security agreement to inspect it within the province.

Person with interest  
may only demand  
security agreement

(4) A person with an interest in personal property of the debtor may make a demand pursuant to subsection (1) only with respect to a security agreement providing for a security interest in the personal property in which the person has an interest.

Time, place of  
inspection

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

Exceptions noted

(6) Where a person makes a demand pursuant to subsection (1) for a written approval or correction of an itemized list referred to in clause (3)(c) and the secured party claims a security interest, in all of the debtor's present and after-acquired personal property, except specified items or kinds of personal property, or in all of a specified kind of the debtor's personal property, the secured party may indicate this instead of approving or correcting the itemized list.

Compliance with  
demand

(7) A secured party shall comply with a demand made pursuant to subsection (1) or (5) within

- (a) twenty-five days after the demand is made, if the secured party is a trustee under a trust indenture; or
- (b) ten days after the demand is made, in the case of any other secured party.

Apply to court  
where failure to  
comply

(8) Where, without reasonable excuse, the secured party fails to comply with a demand made pursuant to subsection (1) or (5) within the time specified in subsection (7) or provides an incomplete or incorrect reply to a demand made pursuant to subsection (1), 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.

(9) Where a person receiving a demand made pursuant to subsection (1) or (5) no longer has an interest in the obligation or property of the debtor that is the subject of the demand, that person shall, within fifteen days after receiving the demand, disclose the name and address of the immediate successor in interest and, if known, the latest successor in interest.

Person receiving demand no longer has interest

(10) Where, without reasonable excuse, the person receiving the demand fails to comply with subsection (9), the person making the demand, in addition to any other remedy provided in this Act, may apply to the court for an order requiring the person receiving the demand to comply.

Failure to disclose successor in interest

(11) On an application pursuant to subsection (8) or (10), the court may make an order requiring the secured party or the person receiving the demand to comply with the demand or to disclose the information.

Court order

(12) On an application pursuant to subsection (8) or (10) or on a separate application, the court may make

*Idem*

- (a) any order that it considers necessary to ensure compliance with the demand;
- (b) an order that, in the event of non-compliance with an order made on an application pursuant to subsection (8), the security interest of the secured party in relation to which the demand was made is unperfected or extinguished and the person making the demand may register a financing change statement discharging any registration related to that security interest.

(13) On an application pursuant to subsection (8) or (10), or on an application by the secured party referred to in subsection (8) or by the person receiving a demand referred to in subsection (9), the court, subject to section 66, may make

*Idem*

- (a) an order exempting the secured party or person receiving the demand, in whole or in part, from complying with subsection (7) or (9), unless the demand is made by the debtor; or
- (b) an order extending the time for compliance.

(14) Where a secured party replies to a demand made pursuant to subsection (1), the secured party and a successor in interest referred to in subsection (9) are stopped, 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 relied on the reply, from denying

Estoppel arises

- (a) the accuracy of any of the information referred to in clause (3)(b), (c) or (d) that is contained in the reply; or
- (b) that the copy of the security agreement referred to in clause (3)(a) that is provided with the reply is a true copy of that security agreement.

Not estopped

- (15) A successor in interest referred to in subsection (9) is not estopped pursuant to subsection (14) if
- (a) the person making the demand knows the identity and address of the successor in interest; or
  - (b) before the demand, a financing change statement has been registered pursuant to section 45 disclosing the successor in interest as the secured party.

Fee for demand

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

Assumption that person entitled

- (17) A secured party who receives a demand that purports to be made by a person entitled to make the demand pursuant to 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. 1997,c.33,s.18.

### PART III

#### PERFECTION AND PRIORITIES

Security interest perfected

- 19.** A security interest is perfected when
- (a) it has attached; and
  - (b) all steps required for perfection pursuant to this Act have been completed,
- regardless of the order of occurrence. 1997,c.33,s.19.

Unperfected security interest subordinate

- 20.** (1) An unperfected security interest in collateral is subordinate to the interest of
- (a) a judgment creditor who has registered a judgment pursuant to the *Judgment and Execution Act* if the security interest is unperfected when the judgment is registered;
  - (b) all persons entitled to participate in a distribution of personal property subject to the interest of a creditor referred to in clause (a);
  - (c) a sheriff and a representative of creditors for the purpose of enforcing the rights of a creditor referred to in clause (a).

Unperfected security interest not effective

- (2) An unperfected security interest in collateral is not effective against

- (a) a trustee in bankruptcy if the security interest is unperfected at the time of the bankruptcy;
- (b) a liquidator appointed pursuant to the *Winding-up Act* (Canada) if the security interest is unperfected when the winding-up order is made; or
- (c) a creditor, assignee or sheriff who has registered a judgment pursuant to the *Judgment and Execution Act*, for the purpose of any enforcement proceedings commenced in accordance with that *Act* if the security interest is unperfected at the time the notice is given.

(3) An unperfected security interest in collateral is subordinate to the interest of a transferee of the collateral if the transferee

Unperfected security interest subordinate to transferee

- (a) acquires the interest under a transaction that is not a security agreement;
- (b) gives value; and
- (c) acquires the interest without knowledge of the security interest and before the security interest is perfected.

(4) For the purpose of subsection (3), a purchaser of an instrument or a security or a holder of a negotiable document of title who acquires it under a transaction entered into in the ordinary course of the transferor's business has knowledge only if the purchaser or holder acquires the interest with knowledge that the transaction violates the terms of the security agreement creating or providing for the security interest. 1997,c.67,s.3.

Actual knowledge of security agreement

**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 person under clause 20(2)(a) or (b) or where the leased goods are seized pursuant to judgment enforcement proceedings by a person entitled to priority under subsection 20(1), the lessor or consignee is deemed to have suffered damages, as against the lessee or consignee in an amount equal to

Lessor or consignor, deemed damages

- (a) the value of the leased or consigned goods at the time of the bankruptcy, winding-up order or seizure; and
- (b) the amount of the loss, other than that referred to in clause (a), resulting from the termination of the lease or consignment. 1997,c.67,s.4.

**22.** (1) A purchase money security interest in collateral, other than an intangible, has priority over the interests of persons referred to in subsections 20(1) and (2) if it is perfected not later than fifteen days after the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier.

Priority of purchase money security interest

Shipping by common carrier	(2) 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 for the purposes of subsection (1) 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.
Priority of purchase money security interest in intangible	(3) A purchase money security interest in an intangible has priority over the interests of persons referred to in subsections 20(1) and (2) if it is perfected not later than fifteen days after it attaches.
Priority of security interest in goods	(4) A security interest in goods referred to in paragraph 1(rr)(ii)(D) has priority over the interests of persons referred to in subsections 20(1) and (2) if it is perfected not later than thirty days after the sale of the goods. 1997,c.33,s.22; 1997,c.67,s.5.
Continuous perfection of security interest	<b>23.</b> (1) Where a security interest is originally perfected pursuant to this Act and is again perfected in some other way pursuant to this Act without an intermediate period when it is unperfected, the security interest is deemed to be perfected continuously for the purposes of this Act.
Transferee has priority of transferor	(2) A transferee of a security interest has the same priority in relation to perfection of the security interest as the transferor had at the time of the transfer. 1997,c.33,s.23.
Where possession perfects security interest	<b>24.</b> (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 <ul style="list-style-type: none"> <li>(a) goods;</li> <li>(b) a negotiable document of title;</li> <li>(c) chattel paper;</li> <li>(d) a security;</li> <li>(e) an instrument; or</li> <li>(f) money.</li> </ul>
Where not possession	(2) A secured party does not have possession of collateral for the purposes of subsection (1) if <ul style="list-style-type: none"> <li>(a) the collateral is in the actual or apparent possession or control of the debtor or the debtor's agent; or</li> <li>(b) possession is the result of seizure or repossession.</li> </ul> 1997,c.33,s.24.
Registration of financing statement	<b>25.</b> Subject to section 19, registration of a financing statement perfects a security interest in collateral. 1997,c.33,s.25.

**26.** (1) Where a security interest in an instrument or a security is perfected by possession pursuant to section 24 and the secured party delivers the instrument or security to the debtor for the purpose of

Delivery of collateral to debtor, effect on perfection

- (a) ultimate sale or exchange;
- (b) presentation, collection or renewal; or
- (c) registration of a transfer,

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

(2) Where a security interest in a negotiable document of title or in goods held by a bailee that are not covered by a negotiable document of title is perfected by possession pursuant to section 24 and the secured party makes the document of title or goods available to the debtor for the purpose of

*Idem*

- (a) ultimate sale or exchange;
- (b) loading, unloading, storing, shipping or trans-shipping; or
- (c) manufacturing, processing, packaging or other dealing with goods in a manner preliminary to their sale or exchange,

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

(3) On the expiry of the fifteen-day period referred to in subsection (1) or (2), a security interest referred to in those subsections is subject to the other provisions of this Act relating to the perfection of a security interest. 1997,c.33,s.26.

Security interest to be re-perfected

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

Goods in possession of bailee

- (a) possession of the goods by the bailee on the secured party's behalf pursuant to section 24;
- (b) registration of a financing statement relating to the goods pursuant to section 25;
- (c) the issue by the bailee of a document of title to the goods in the name of the secured party;
- (d) perfection of a security interest in a negotiable document of title to the goods if the bailee has issued one.

(2) The issue 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.

Negotiable document of title does not preclude security interest

(3) A perfected security interest in a negotiable document of title covering goods takes priority over a security interest in the goods that is

Priority of negotiable document of title



otherwise perfected after the goods become covered by the negotiable document of title. 1997,c.33,s.27.

Security interest in proceeds	<p><b>28.</b> (1) Subject to this Act, where collateral is dealt with or otherwise gives rise to proceeds, the security interest</p> <ul style="list-style-type: none"> <li>(a) continues in the collateral unless the secured party expressly or impliedly authorizes the dealing; and</li> <li>(b) extends to the proceeds.</li> </ul>
Enforcement, market value	<p>(2) Where a 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.</p>
Where proceeds continuously perfected security interest	<p>(3) A security interest in proceeds is a continuously perfected security interest if the interest in the original collateral is perfected by registration of a financing statement pursuant to section 25 that includes a description of</p> <ul style="list-style-type: none"> <li>(a) the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind;</li> <li>(b) the original collateral, if the proceeds are of a kind that are within the description of the original collateral; or</li> <li>(c) the original collateral, if the proceeds consist of money, cheques or deposit accounts in a bank, credit union or similar financial institution.</li> </ul>
Where security interest in proceeds expires	<p>(4) Where the security interest in the original collateral is perfected other than in a manner referred to in subsection (3), the security interest in the proceeds is a continuously perfected security interest for the first fifteen days after the security interest in the original collateral attaches to the proceeds but becomes unperfected on the expiry of that period, unless the security interest in the proceeds is otherwise perfected by any of the methods and under the circumstances specified in this Act for original collateral of the same kind. 1997,c.33,s.28.</p>
When security interest reattaches if goods sold	<p><b>29.</b> (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 clause 28(1)(a) or section 30, the security interest reattaches to the goods if</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) the obligation secured remains unpaid or unperformed.</li> </ul>
Time of perfection	<p>(2) Where a security interest reattaches under subsection (1), the perfection of the security interest and the time of registration or</p>

perfection shall be determined as if the goods had not been sold or leased if

- (a) the security interest was perfected by registration pursuant to section 25 when the goods were sold or leased; and
- (b) the registration is effective when the goods are returned, seized or repossessed.

(3) Where a sale or lease of goods creates an account or chattel paper that is transferred to a secured party, and 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.

Account or chattel paper, effect of seizure

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

Financing statement to continue perfection

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

Priority of reattached interest

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

Priority of transferee of chattel paper

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

if the transferee of the chattel paper would have priority under subsection 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, lessee or debtor and that is perfected when the goods are returned, seized or repossessed, has priority over a security interest in the goods arising under this section. 1997,c.33,s.29.

Priority of buyer in possession

**30.** (1) In this section

Definitions

- (a) “buyer of goods” includes a person who obtains vested rights in goods under a contract to which the person is a party, as a

consequence of the goods becoming a fixture or accession to property in which the person has an interest;

(b) “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 under a contract with a buyer or under a contract with a person who is party to a contract with such a buyer.

Buyer or lessee in ordinary course of business

(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 given by the seller or lessor or arising under section 28 or 29, whether or not the buyer or lessee knows of it, unless the buyer or lessee also knows that the sale or lease constitutes a breach of the security agreement under which the security interest was created.

Consumer goods

(3) A buyer or lessee of goods that are acquired as consumer goods takes free of a perfected or unperfected security interest in the goods if the buyer or lessee

(a) gave value for the interest acquired; and

(b) bought or leased the goods without knowledge of the security interest.

Exception, where fixture or value over \$1,000

(4) Subsection (3) does not apply to a security interest in

(a) a fixture; or

(b) goods if the purchase price of the goods exceeds \$1,000 or if the market value of the goods, in the case of a lease, exceeds \$1,000.

Buyer or lessee without notice

(5) A buyer or lessee of goods who buys or leases the goods during any of the fifteen-day periods referred to in subsection 26(1) or (2), 28(4), 29(4) or section 51 takes free of the security interest referred to in those provisions 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 and

(i) in a case within subsection 26(1) or (2), 28(4) or 29(4), before the security interest was perfected by possession pursuant to section 24 or by registration pursuant to section 25, or

(ii) in a case within section 51, before the registration of the security interest was amended in accordance with that section or the secured party took possession of the collateral.

*Idem*

(6) A buyer or lessee of goods takes free of a security interest in the goods perfected by registration pursuant to section 25 if

(a) the buyer or lessee bought or leased the goods without knowledge of the security interest; and

(b) the goods were not described by serial number in the registration relating to the security interest, or were described in that registration by a serial number in which there is a seriously misleading defect, irregularity, omission or error.

(7) Subsection (6) applies only to goods that are equipment and that are of a kind that are prescribed as serial numbered goods. Applicability of subsection (6)

(8) A sale or lease under subsection (2), (3), (5) or (6) may be Does not include transfer as security  
 (a) for cash  
 (b) by exchange for other property; or  
 (c) on credit,

and includes the delivery of goods or a document of title 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. 1997,c.33,s.30; 2003,c.42,s.2.

**31.** (1) A holder of money has priority over a security interest in it perfected by registration pursuant to section 25 or temporarily perfected under subsection 28(4) if the holder Priority of holder of money

(a) acquired the money without knowledge that it is subject to the security interest; or  
 (b) is a holder for value, whether or not that person acquired the money without knowledge that it is subject to the 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 in the instrument at the time of delivery. Priority of instrument drawn for payment

(3) A purchaser of an instrument or a security has priority over a security interest in the instrument or security perfected by registration pursuant to section 25 or temporarily perfected under subsection 26(1) or 28(4) if the purchaser Purchaser of instrument, without knowledge

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

(4) A holder to whom a negotiable document of title is negotiated has priority over a security interest in the document of title that is perfected by registration pursuant to section 25 or temporarily perfected under subsection 26(2) or 28(4) if the holder Holder of negotiated document of title

(a) gave value for the document of title; and

(b) acquired the document of title without knowledge that it is subject to a security interest.

Actual knowledge	(5) For the purposes of subsections (3) and (4), a purchaser of an instrument or a security or a holder of a negotiable document of title who acquires it under a transaction entered into in the ordinary course of the transferor's business has knowledge only if the purchaser acquires the interest with knowledge that the transaction violates the terms of the security agreement creating or providing for the security interest.
Purchaser of chattel paper in ordinary course of business	(6) A purchaser of chattel paper who takes possession of it in the purchaser's ordinary course of business and for new value has priority over any security interest in the chattel paper that <ul style="list-style-type: none"> <li>(a) was perfected by registration pursuant to section 25, if the purchaser does not have knowledge at the time of taking possession that the chattel paper is subject to a security interest; or</li> <li>(b) has attached to proceeds of inventory under section 28, whatever the extent of the purchaser's knowledge. 1997,c.33,s.31.</li> </ul>
Priority of lien	<b>32.</b> A lien on goods that arises as a result of the provision, in the ordinary course of business, of materials or services in respect of the goods, has priority over a perfected or unperfected security interest in the goods unless the lien arises under an Act that provides that it is not to have such priority. 1997,c.33,s.32.
Transfer	<b>33.</b> (1) In this section "transfer" includes a sale, the creation of a security interest or a transfer under judgment enforcement proceedings.
Effect of transfer of debtor's rights	(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 by the debtor does not prejudice the rights of the secured party under the agreement or otherwise, including the right to treat a prohibited transfer as an act of default. 1997,c.33,s.33.
Priority of purchase money security interest	<b>34.</b> (1) Subject to section 28, a purchase money security interest in <ul style="list-style-type: none"> <li>(a) collateral or its proceeds, other than intangibles or inventory, that is perfected not later than fifteen days after the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier; or</li> <li>(b) an intangible or its proceeds that is perfected not later than fifteen days after the security interest in the intangible attaches,</li> </ul> has priority over any other security interest in the same collateral given by the same debtor.

(2) Subject to section 28, a purchase money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor if Priority of inventory

(a) the purchase money security interest in the inventory is perfected when the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier;

(b) the secured party gives a notice to any other secured party who has registered, before the registration of the financing statement relating to the purchase money security interest in the inventory, a financing statement where the collateral description in the financing statement includes the same item or kind of collateral or includes accounts;

(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.

(3) A notice pursuant to subsection (2) may be given in accordance with section 69 or by registered mail addressed to the address of the person to be notified that was registered as part of the financing statement referred to in clause (2)(b). Manner of notice

(4) A purchase money security interest in goods or, subject to section 28, in their proceeds, taken by a seller, lessor or consignee of the collateral, that is perfected Priority where debtor in possession

(a) in the case of inventory, when a debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier; and

(b) in the case of collateral other than inventory, not later than fifteen days after a debtor, or another person at the request of a debtor, obtains possession of the collateral, whichever is earlier, has priority over any other purchase money security interest in the same collateral given by the same debtor.

(5) A purchase money security interest in collateral as original collateral has priority over a purchase money security interest in the same collateral as proceeds, if it is perfected Priority of collateral over proceeds

(a) in the case of inventory, when a debtor, or another party at the request of a debtor, obtains possession of the collateral, whichever is earlier; and

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

Common carrier

(6) Where goods are shipped by common carrier to a debtor or to a person designated by a debtor, the debtor does not have possession of the goods for the purposes of this section 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.

No interest in proceeds where obligation discharged

(7) A purchase money security interest in an item of collateral does not extend to or continue in the proceeds of the item after the obligation to pay the purchase price of the item or repay the value given for the purpose of enabling the debtor to acquire rights in it has been discharged.

Crops

(8) A perfected security interest in crops or their proceeds, given for value to enable a debtor to produce the crops and given while the crops are growing crops or during a period of six months immediately before the time the crops become growing crops, has priority over any other security interest in the same collateral given by the same debtor.

Animals

(9) A perfected security interest in fowl, cattle, horses, sheep, swine or 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 animals or fish has priority over any other security interest in the same collateral or its proceeds given by the same debtor other than a perfected purchase money security interest. 1997,c.33,s.34.

Priority where no method provided

**35.** (1) Where this Act provides no other method for determining priority between competing security interests in the same collateral,

(a) priority between perfected security interests is determined by the order of the occurrence of

(i) the registration of a financing statement pursuant to section 25 without regard to the time of attachment of the security interest,

(ii) possession of the collateral pursuant to section 24 without regard to the time of attachment of the security interest, or

(iii) perfection under sections 5, 7, 26, 29 or 74,

whichever is earliest;

(b) a perfected security interest has priority over an unperfected security interest; and

(c) priority between unperfected security interests is determined by the order of attachment of the security interests.

Continuously perfected security interest

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

(3) For the purposes of subsection (1) and subject to section 28, the time of registration, possession or perfection of a security interest in original collateral is also the time of registration, possession or perfection of a security interest in its proceeds.

Time

(4) A security interest in goods that are equipment and are of a kind that are prescribed as serial numbered goods is not registered or perfected by registration for the purposes of subsection (1), (7) or (8) or 34(1) unless a financing statement relating to the security interest that includes a description of the goods by serial number is registered and the serial number does not contain a seriously misleading defect, irregularity, omission or error.

Serial numbered equipment

(5) Subject to subsection (9), the priority that a security interest has under subsection (1) applies to all advances, including future advances.

Priority applies to advances

(6) Where a registration lapses as a result of a failure to renew it or if a registration is discharged without authorization or in error, and the secured party re-registers in accordance with the regulations within thirty days after the lapse or discharge, the lapse or discharge does not affect the priority ranking of the security interest to which the lapsed or discharged registration relates as against a competing perfected security interest that immediately before the lapse or discharge had a subordinate priority ranking, except to the extent that the competing security interest secures advances made or contracted for after the lapse or discharge and before the re-registration.

Re-registration, grace period

(7) 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

Priority on transfer of interest in collateral

(a) after the expiry of fifteen days from when the secured party who holds the security interest in the transferred collateral has knowledge of the information required to register a financing change statement in accordance with section 51 disclosing the transferee as the new debtor; and

(b) before the secured party referred to in clause (a) takes possession of the collateral or registers a financing change statement in accordance with section 51 disclosing the transferee as the new debtor.

(8) Subsection (7) does not apply if the transferee acquires the debtor's interest free of the security interest granted by the debtor.

Exception



- Perfected security interest over judgment, where
- (9) A perfected security interest has priority over the interest of a judgment creditor referred in clause 20(1)(a) only to the extent of
- (a) advances made before the judgment creditor registers the judgment referred to in clause 20(1)(a);
  - (b) advances made before the secured party has knowledge of the registration of the judgment referred to in clause 20(1)(a);
  - (c) advances made in accordance with a statutory requirement, or a legally binding obligation owing to a person other than the debtor entered into by the secured party before acquiring the knowledge referred to in clause (b); and
  - (d) reasonable costs and expenses incurred by the secured party for the protection, preservation, maintenance or repair of the collateral.
- 1997,c.33,s.35; 1997,c.67,s.6; 2003,c.42,s.3.
- Definition
- 36.** (1) In this section “secured party” includes a receiver.
- Security before goods become fixtures
- (2) Except as provided in section 30 and subsections (3), (4) and (9), a security interest in goods that attaches before or when the goods become fixtures has priority with respect to the goods over a claim to the goods made by a person with an interest in the land.
- Priority of purchaser of land, without notice
- (3) A security interest referred to in subsection (2) is subordinate to the interest of 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, if the interest is acquired without fraud and before notice of the security interest is registered pursuant to section 49.
- Priority of mortgagee’s advance
- (4) A security interest referred to in subsection (2) is subordinate to the interest of a person with a registered mortgage of the land who, after the goods become fixtures,
- (a) makes an advance under the mortgage, but only with respect to that advance; or
  - (b) obtains an order for sale, foreclosure or foreclosure and sale, without fraud and before notice of the security interest in the fixtures is registered pursuant to section 49.
- Search by mortgagee on same day as registration
- (5) Where a notice of a security interest in fixtures has not been registered pursuant to section 49 when a search is made of the records of the registry of deeds by or on behalf of a person with a registered mortgage of the land, any advance under the mortgage made on the same day that the search was made is deemed to have been made before registration of a notice pursuant to section 49, notwithstanding that the notice was registered on the same day that the search was made.

(6) The priority under this section of a person with an interest in the land referred to in subsection (3) or of a person with a registered mortgage of land referred to in subsection (4) is not affected by priority rights in the land under the *Registry Act*.

Priorities not affected by *Registry Act*

(7) A security interest in goods that attaches after the goods become fixtures is subordinate to the interest of a person who has an interest in the land when the goods become fixtures and who

Priority of interest in land, where no consent

- (a) has not consented to the security interest;
- (b) has not disclaimed an interest in the goods or fixtures;
- (c) has not entered into an agreement entitling the person to remove the goods; or
- (d) is not otherwise precluded from preventing the debtor from removing the goods.

(8) A security interest in goods that attaches after the goods become fixtures is subordinate to the interest of a person who acquires an interest in the land after the goods become fixtures if the interest is acquired without fraud and before notice of the security interest in the fixtures is registered pursuant to section 49.

Priority of interest in land, where no notice

(9) A security interest in goods that attaches before, when or after the goods become fixtures is subordinate to the interest of a creditor of the debtor who causes a certificate of judgment affecting the land to be registered pursuant to the *Registry Act* before notice of the security interest in the fixtures is registered pursuant to section 49.

Priority of judgment, before notice

(10) The interest of a creditor of the debtor referred to in subsection (9) does not take priority over a purchase money security interest in goods that become fixtures if a notice of the security interest in the fixtures is registered pursuant to section 49 not later than fifteen days after the goods are affixed to the land.

Exception to (9)

(11) A secured party who has the right, under this Act, to remove goods from land shall exercise the right of removal in a manner that causes no unnecessary damage or injury to the land and to other property situated on it or that puts the occupier of the land to any greater inconvenience than is necessarily incidental to the removal of the goods.

Removal of fixtures

(12) A person, other than the debtor, who has an interest in the land when the goods subject to the security interest are affixed to the land is entitled to reimbursement for any damage to the interest of the person 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 to replace them.

Reimbursement on removal

Security for reimbursement	(13) A person entitled to reimbursement under subsection (12) may refuse permission to remove the goods until the secured party has given adequate security for the reimbursement.
Court order, conditions of removal	(14) The secured party may apply to the court for an order <ul style="list-style-type: none"> <li>(a) determining the person entitled to reimbursement under this section;</li> <li>(b) determining the amount and kind of security to be provided by the secured party;</li> <li>(c) specifying the depository for the security;</li> <li>(d) authorizing the removal of the goods without the provision of security for reimbursement under subsection (13).</li> </ul>
Retention of fixtures upon payment	(15) Where the interest of a person with an interest in the land is subordinate to a security interest in the goods under this section, the person with an interest in the land 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 <ul style="list-style-type: none"> <li>(a) the amount secured by the security interest in the goods that has priority over the interest of the person with the interest in the land; and</li> <li>(b) the market value of the goods were the goods to be removed from the land.</li> </ul>
Notice of removal intention	(16) A secured party who has a right to remove goods from land shall give to each person who appears by the records of the registry of deeds for the registration district in which the land is located to have an interest in the land, a notice of the intention of the secured party to remove the goods.
Contents of notice	(17) A notice pursuant to subsection (16) shall contain <ul style="list-style-type: none"> <li>(a) the name and address of the secured party;</li> <li>(b) a description of the goods to be removed;</li> <li>(c) the amount required to satisfy the obligation secured by the security interest;</li> <li>(d) the market value of the goods;</li> <li>(e) a description of the land to which the goods are affixed; and</li> <li>(f) a statement of intention to remove the goods unless the amount referred to in subsection (15) is paid on or before a specified date that is not less than fifteen days after the notice is given pursuant to subsection (16).</li> </ul>
Time, manner of notice	(18) A notice pursuant to subsection (16) shall be given at least fifteen days before removal of the goods and may be given in accordance with section 69 or by registered mail addressed to the address last known to the secured party of the person entitled to the notice.

(19) A person entitled to receive a notice pursuant to subsection (16) may apply to the court for an order postponing removal of the goods from the land. 1997,c.33,s.36. Court may order postponement of removal

**37.** (1) In this section “secured party” includes a receiver. Definition

(2) Except as provided in subsections (3), (4), (5) and (7), a security interest in crops has priority with respect to the crops over a claim to the crops made by a person with an interest in the land. Priority of crop security over interest in land

(3) A security interest in crops is subordinate to the interest of 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 while the crops are growing crops, if the interest is acquired without fraud and before notice of the security interest is registered pursuant to section 49. Priority of land interest

(4) A security interest in crops is subordinate to the interest of a person with a registered mortgage of the land who, after the crops become growing crops, Priority of mortgagee’s advance

(a) makes an advance under the mortgage, but only with respect to that advance; or

(b) obtains an order for sale, foreclosure or foreclosure and sale, without fraud and before notice of the security interest in the crops is registered pursuant to section 49.

(5) Where a notice of a security interest in crops has not been registered pursuant to section 49 when a search is made of the records of the registry of deeds for the registration district in which the lands are located by or on behalf of a person with a registered mortgage of the land, any advance under the mortgage made on the same day that the search was made is deemed to have been made before registration of a notice pursuant to section 49, notwithstanding that the notice was registered on the same day that the search was made. Effect of search on same day as registration

(6) The priority under this section of a person with an interest in the land referred to in subsection (3) or of a person with a registered mortgage of the land referred to in subsection (4) is not affected by priority rights in the land under the *Registry Act* R.S.P.E.I. 1988, Cap. R-10. Priorities not affected by *Registry Act*

(7) A security interest in crops is subordinate to the interest of a creditor of the debtor who causes a certificate of judgment affecting the land to be registered pursuant to the *Registry Act* before notice of the security interest is registered pursuant to section 49. Priority of judgment

Exception	(8) The interest of a creditor of the debtor referred to in subsection (7) does not take priority over a purchase money security interest in the crops or a security interest in the crops referred to in subsection 34(8) if a notice of the security interest in the crops is registered pursuant to section 49 not later than fifteen days after the security interest in the crops attaches.
Rules apply to seizure of crops	(9) Subsections 36(11) to (19) apply with the necessary changes to the seizure and removal of growing crops from land. 1997,c.33,s.37.
Definitions	<p><b>33.</b> (1) In this section</p> <p>(a) “other goods” means goods to which an accession is installed or affixed;</p> <p>(b) “secured party” includes a receiver;</p> <p>(c) “the whole” means an accession and the goods to which the accession is installed or affixed.</p>
Priority before goods become accession	(2) Except as provided in section 30 and subsections (3) and (4), a security interest in goods that attaches before or when the goods become an accession has priority with respect to the goods over a claim to the goods as an accession made by a person with an interest in the whole.
Priority of interest in the whole	(3) A security interest referred to in subsection (2) is subordinate to the interest of a person who, after the goods become an accession, acquires for value an interest in the whole, including an assignee of the interest of a person with an interest in the whole if the assignee acquires the interest for value and after the goods become an accession and before a financing statement in relation to the security interest is registered.
Priority of interest in the whole after advance, without notice	<p>(4) A security interest referred to in subsection (2) is subordinate to the interest of a person with a security interest taken and perfected in the whole who</p> <p>(a) makes an advance under a security agreement after the goods become an accession, but only with respect to that advance; or</p> <p>(b) acquires the right to retain the whole in satisfaction of the obligation secured,</p> <p>without knowledge of the security interest in the accession and before it is perfected.</p>
Priority of interest in other goods, where no consent	<p>(5) A security interest in goods that attaches after the goods become an accession is subordinate to the interest of a person who has an interest in the other goods when the goods become an accession and who</p> <p>(a) has not consented to the security interest;</p> <p>(b) has not disclaimed an interest in the goods or accessions;</p> <p>(c) has not entered into an agreement entitling the person to remove the accession; or</p>

(d) is not otherwise precluded from preventing the debtor from removing the accession.

(6) A security interest in goods that attaches after the goods become an accession is subordinate to the interest of a person who 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. Priority of after acquired interest, without knowledge

(6.1) Subject to subsection (6.2), a security interest in goods that attaches before, at the time, or after the goods become an accession is subordinate to the interest of a judgment creditor referred to in clause 20(1)(a) if the security interest is not perfected when a judgment referred to in clause 20(1)(a) is registered. Security interest in accession, subordinate to prior judgment

(6.2) The interest of a judgment creditor referred to in clause 20(1)(a) does not take priority under subsection (6.1) over a purchase money security interest in goods that is perfected within 15 days after the goods become an accession. Exception where purchase money security interest

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

(8) A person, other than the debtor, who has an interest in the whole when the goods subject to the security interest become an accession is entitled to reimbursement for any damages to the interest of that person in the whole caused during the removal of the accession, but is not entitled to reimbursement for diminution in the value of the whole caused by the absence of the accession or by the necessity to replace it. Reimbursement for damages

(9) A person entitled to reimbursement under subsection (8) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement. Security for reimbursement

(10) The secured party may apply to the court for an order Court order, conditions of removal

- (a) determining the person entitled to reimbursement under this section;
- (b) determining the amount and kind of security to be provided by the secured party;
- (c) specifying the depository for the security;
- (d) authorizing the removal of the accession without the provision of security for reimbursement under subsection (9).

Retention of accession, upon payment	<p>(11) Where the interest of a person with an interest in the whole is subordinate to a security interest in the accession under this section, the person with an interest in the whole 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</p> <ul style="list-style-type: none"> <li>(a) the amount secured by the security interest entitled to priority;</li> <li>and</li> <li>(b) the market value of the accession were the accession to be removed from the other goods.</li> </ul>
Notice of removal intention	<p>(12) The secured party who has a right to remove the accession from the whole shall give a notice of the secured party's intention to remove the accession to each person who</p> <ul style="list-style-type: none"> <li>(a) is known by the secured party to have an interest in the other goods or in the whole; and</li> <li>(b) has registered a financing statement that includes the name of the debtor and a description of the other goods, or that includes the serial number of the other goods if the other goods are of a kind that are prescribed as serial numbered goods.</li> </ul>
Contents of notice	<p>(13) A notice pursuant to subsection (12) shall contain</p> <ul style="list-style-type: none"> <li>(a) the name and address of the secured party;</li> <li>(b) a description of the goods to be removed;</li> <li>(c) the amount required to satisfy the obligations secured by the security interest;</li> <li>(d) the market value of the accession;</li> <li>(e) a description of the other goods; and</li> <li>(f) a statement of intention to remove the accession unless the amount referred to in subsection (11) is paid on or before a specified date that is not less than fifteen days after the notice is given in accordance with subsection (12).</li> </ul>
Time, manner of notice	<p>(14) A notice pursuant to subsection (12) shall be given at least fifteen days before removal of the accession and may be given in accordance with section 69 or by registered mail addressed to the address of the person to be notified that was registered as part of the financing statement referred to in clause (12)(b).</p>
Court may order postponement of removal	<p>(15) A person entitled to receive a notice under subsection (12) may apply to the court for an order postponing removal of the accession. 1997,c.33,s.38; 1997,c.67,s.7.</p>
Interest continues where identity of goods lost	<p><b>39.</b> (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.</p>

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

Ratio of interest in product

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

Perfection of interest applies to product

(4) For the purposes of subsection (2), the obligation secured by a security interest that continues in the product or mass under subsection (1) is limited to the market value of the goods when the goods become part of the product or mass.

Security limited to market value of product

(5) Any priority that a perfected security interest that continues in the product or mass under subsection(1) has over an interest in the product or mass is limited to the market value of the goods when the goods become part of the product or mass.

Priority limited to market value

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

Priority of purchase money security interest

- (a) in the goods that continues in the product or mass under subsection (1); and
- (b) in the product or mass, other than as inventory, given by the same debtor.

(7) A perfected purchase money security interest in goods that continues in the product or mass under subsection (1) has priority over any non-purchase money security interest in the product or mass as inventory given by the same debtor if

Notice to holder of non-purchase money security interest

- (a) the secured party with the purchase money security interest gives a notice to any secured party with a non-purchase money security interest in the product or mass who has registered, before the identity of the goods is lost in the product or mass, a financing statement that includes a description of the product or mass;
- (b) the notice referred to in clause (a) states 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
- (c) the notice is given before the identity of the goods is lost in the product or mass.

(8) A notice pursuant to subsection (7) may be given in accordance with section 69 or by registered mail addressed to the address of the

Manner of notice



person to be notified that was registered as part of the financing statement referred to in clause (7)(a).

Exception (9) This section does not apply to a security interest in an accession to which section 38 applies. 1997,c.33,s.39.

Secured party may agree to be subordinate **40.** (1) A secured party may subordinate, in a security agreement or otherwise, the secured party's security interest to any other interest.

Third party may enforce (2) A 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 the class of persons for whose benefit the subordination was intended. 1997,c.33,s.40.

Definitions **41.** (1) In this section,  
 (a) "account debtor" means a person who is obligated under an intangible or chattel paper;  
 (b) "assignee" includes a secured party and a receiver.

Rights of assignee subject to (2) Unless the account debtor on an intangible or chattel paper has made an enforceable agreement not to assert defences or claims arising out of a contract, the rights of an assignee of the intangible or chattel paper are subject to  
 (a) the terms of the contract between the account debtor and the assignor and any defence or claim arising from the contract or a closely connected contract; and  
 (b) any other defence or claim of the account debtor against the assignor that accrues before the account debtor acquires knowledge of the assignment.

Modification of contract (3) A modification of or substitution for a contract made in good faith and in accordance with reasonable commercial standards and without material adverse effect on the assignee's rights under the contract or the assignor's ability to perform the contract is effective against the assignee unless the account debtor has otherwise agreed.

Application of ss(3) (4) Subsection (3) applies  
 (a) to the extent that an assigned right to payment arising out of the contract has not been earned by performance; and  
 (b) notwithstanding that notice of the assignment has been given to the account debtor.

Assignee's rights under modified contract (5) Where the contract has been substituted or modified in the manner referred to in subsection (3), the assignee obtains rights corresponding to those of the assignor under the modified or substituted contract.

(6) Nothing in subsections (3) to (5) affects the validity of a term in an assignment agreement that provides that a modification or substitution referred to in those subsections is a breach of contract by the assignor.

Modification may be breach

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

Payments to assignor

(a) before the account debtor receives notice of the assignment in accordance with subsection (8); or

(b) after the account debtor receives notice of the assignment if the account debtor requests the assignee to furnish proof of the assignment and the assignee fails to furnish proof within fifteen days after the request.

(8) A notice of an assignment pursuant to subsection (7) shall

Notice of assignment

(a) state that the amount payable or to become payable under the contract has been assigned and that payment is to be made to the assignee; and

(b) identify the contract under which the amount payable is to become payable.

(9) Payment by an account debtor to an assignee after the account debtor receives notice of the assignment in accordance with subsection (8) discharges the obligation of the account debtor to the extent of the payment.

Payment to assignee

(10) A term in a contract between a debtor on an account or chattel paper and an assignor that prohibits or restricts assignment of the whole of the account or chattel paper for money due or to become due is binding on the assignor only to the extent that the assignor may be liable in damages for breach of the term, but is unenforceable against third parties. 1997,c.33,s.41.

Effect of assignment restriction

#### PART IV

#### REGISTRATION

**42.** (1) There shall be an electronic registry known as the Personal Property Registry for the purpose of registrations pursuant to this Act and pursuant to any other Act that provides for registration in the Registry.

Personal Property Registry

(2) The Registrar shall be appointed in accordance with the *Civil Service Act*.

Registrar

(3) One or more deputy registrars shall be appointed in accordance with the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8.

Deputy registrars

Powers and duties of Registrar	(4) The Registrar shall supervise and administer the operation of the Registry and has such powers and duties as are set out in this Act or the regulations or any other Act that provides for registration in the Registry or the regulations pursuant to that Act.
Powers and duties of deputy registrar	(5) A deputy registrar has the same powers and duties as the Registrar, subject to the direction and supervision of the Registrar.
Delegation	(6) The Registrar and deputy registrars may designate one or more persons to act on their behalf.
Registrar may suspend services	(7) When it is not practical, in the opinion of the Registrar, to provide access to the Registry or to provide one or more Registry services, the Registrar may refuse access to the Registry or otherwise suspend one or more of its services. 1997,c.33,s.42.
Register financing statement	<b>43.</b> (1) A person may register a financing statement in the Registry at an office of the Registry in accordance with the regulations.
Agreement for access to Registry	(2) The Registrar may enter into an agreement with any person to provide access to the Registry on terms and conditions that the Registrar considers advisable and may vary the terms and conditions from time to time as the Registrar considers advisable.
Registration pursuant to agreement	(3) A person who has entered into an agreement with the Registrar pursuant to subsection (2) may register a financing statement in the Registry in accordance with the agreement and the regulations.
Effective date and time of registration	(4) Registration of a financing statement is effective from the time that a registration number, date and time is assigned to the registration in the Registry.
Registration before or after security taken	(5) A financing statement may be registered before or after a security agreement is made or a security interest attaches.
Registration respecting multiple agreements	(6) A registration may relate to one or more than one security agreement.
Defects, errors, etc.	(7) The validity of the registration of a financing statement is not affected by any defect, irregularity, omission or error in the financing statement unless the defect, irregularity, omission or error is seriously misleading.
Registration invalid for seriously misleading defect	(8) Subject to subsection (10), a registration is invalid if there is a seriously misleading defect, irregularity, omission or error in <ul style="list-style-type: none"> <li>(a) the name of any of the debtors required to be included in the financing statement other than a debtor who does not own or have rights in the collateral; or</li> </ul>

(b) the serial number of the collateral if the collateral is consumer goods of a kind that are prescribed as serial numbered goods.

(8.1) For greater certainty, if there is a seriously misleading defect, irregularity, omission or error in the name of any of the debtors required to be included in the financing statement, other than a debtor who does not own or have rights in the collateral, the registration is invalid even if there is no seriously misleading defect, irregularity, omission or error in a serial number. *Idem*

(8.2) For greater certainty, if there is a seriously misleading defect, irregularity, omission or error in the serial number that is included in the financing statement for collateral that is consumer goods of a kind that are prescribed as serial numbered goods, the registration is invalid even if there is no seriously misleading defect, irregularity, omission or error in the name of any of the debtors required to be included in the financing statement. *Idem*

(9) In order to establish that a defect, irregularity, omission or error is seriously misleading, it is not necessary to prove that anyone was actually misled by it. Person need not actually be misled

(10) Failure to include a description of any item or kind of collateral in a financing statement does not affect the validity of the registration with respect to the description of other collateral included in the financing statement. Failure to include some descriptions

(11) The secured party or person named as secured party in a financing statement shall give to each person named as debtor in the statement, within thirty days after it is registered, a verification statement in accordance with the regulations, except where that person has waived in writing the right to receive it. 1997,c.33,s.43; 2003,c.42,s.4. Verification statement

**44.** (1) Except as otherwise prescribed, a registration pursuant to this Act is effective for the period of time specified as part of the financing statement by which the registration is effected. Effective period of registration

(2) A registration may be renewed by registering a financing change statement at any time before the registration expires and, except as otherwise prescribed, the period of time for which the registration is effective shall be extended by the renewal period specified as part of the financing change statement. Renewal of registration

(3) An amendment to a registration may be effected by registering a financing change statement at any time during the period that the registration is effective and the amendment is effective from the time that Amended registration

the financing change statement is registered to the expiry of the registration being amended.

Financing change statement may amend

(4) Notwithstanding that an amendment of a registration is not specifically provided for in this Part, a financing change statement may be registered to amend the registration. 1997,c.33,s.44.

Financing change statement, transfer

**45.** (1) Where a secured party with a security interest that is perfected by registration transfers the security interest or a part of it, a financing change statement may be registered to disclose the transfer.

Description of collateral transferred

(2) Where a financing change statement is registered pursuant to subsection (1) and an interest in part, but not all, of the collateral is transferred, the financing change statement shall include a description of the collateral in which the interest is transferred.

Financing statement shows transferee

(3) Where a secured party with a security interest that is not perfected by registration transfers the security interest, a financing statement may be registered in which the transferee is disclosed as the secured party.

Transferee becomes secured party

(4) After registration of a financing change statement disclosing a transfer of a security interest, the transferee is the secured party for the purposes of this Part.

Registration before or after transfer

(5) A registration disclosing a transfer of a security interest may be registered before or after the transfer.

Disclosure of subordinated interest

(6) Where a security interest has been subordinated by the secured party to the interest of another person, a financing change statement may be registered to disclose the subordination at any time during the period that the registration of the subordinated security interest is effective. 1997,c.33,s.45.

Removal of data from Registry

**46.** Data in a registration may be removed from the records of the Registry

- (a) when the registration is no longer effective; or
- (b) on the registration of a financing change statement discharging or partially discharging the registration. 1997,c.33,s.46.

Registration not notice

**47.** Registration of a financing statement in the Registry by itself does not constitute notice or knowledge to any person of the existence or contents of the financing statement or of the existence of the security interest or the contents of any security agreement to which the registration relates. 1997,c.33,s.47.

Printed search result

**48.** (1) A person may search the records of the Registry and obtain a printed search result

- (a) at an office of the Registry; or

(b) in accordance with an agreement entered into with the Registrar pursuant to subsection 43(2).

(2) A search pursuant to subsection (1) may be conducted according to Search fields  
 (a) the name of the debtor;  
 (b) the serial number of goods of a kind that are prescribed as serial numbered goods; or  
 (c) a registration number.

(3) A printed search result that purports to be issued by the Registry is receivable as evidence and is, in the absence of evidence to the contrary, proof of the registration of any financing statement to which the search result relates, including Printed search result as evidence  
 (a) the date and time of registration of the financing statement; and  
 (b) the order of registration of the financing statement as indicated by the registration number, date and time set out in the printed search result. 1997,c.33,s.48.

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

(2) A security interest in a fixture under section 36 and a security interest in a crop under section 37 may be registered in a registry of deeds by submitting a notice in accordance with the regulations to that registry. Registration with deeds registry

(3) On the submission of a notice pursuant to subsection (2) and on the payment of any prescribed fee, the registrar of deeds shall register it in that office. *Idem*

(4) On the registration of a notice pursuant to subsection (3), every person dealing with the land to which the notice relates is deemed to have knowledge of the security interest referred to in the notice. Deemed notice

(5) The secured party or person named as secured party in a notice registered pursuant to subsection (3) shall give to each person named as a debtor in the notice, within thirty days after it is registered, a copy of the notice, except where that person has waived in writing the right to receive it. Copy of notice to debtor

(6) Where a notice registered pursuant to subsection (3) has not expired, notice of its renewal, amendment or discharge or notice of the transfer or subordination of the security interest to which it relates may Registration of renewal

be registered by submitting a notice in accordance with the regulations to the registry of deeds in which the notice is registered.

*Idem*

(7) On the submission of a notice pursuant to subsection (6) and on the payment of any prescribed fee, the registrar of the registry of deeds to which the notice is submitted shall register it in that office.

Other provisions apply

(8) Subsections 43(6), (7), (8), (10) and (11) and sections 44 and 45 apply with the necessary changes, to the notices referred to in subsections (2) and (6).

Cancellation of registration

(9) Where a notice registered pursuant to subsection (3) expires or a notice of its discharge is registered pursuant to subsection (7), it is of no effect and the appropriate registrar may cancel registration of the notice and any other notice that relates to the same security interest in the registry of deeds.

Demand to secured party

(10) The debtor named in a notice registered pursuant to subsection (3) or (7), and any person with a registered interest in the land to which the notice relates, may give a written demand to the secured party if

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

Discharge or amendment of notice

(11) A demand pursuant to subsection (10) may require that the secured party, within thirty days after the demand is given, submit for registration a notice pursuant to subsection (6)

- (a) discharging the registration of the notice, in a case within clause (10)(a) or (d);
- (b) amending or discharging the registration of the notice to reflect the terms of the agreement, in a case within clause (10)(b); or
- (c) amending the collateral description in 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 within clause (10)(c).

Secured party fails to comply with demand

(12) Where a secured party fails to comply with a demand made pursuant to subsection (10) within thirty days after it is given, or fails to give to the person giving the demand an order of the court confirming that the registration need not be amended or discharged, the person

making the demand may submit for registration the notice referred to in subsection (11) and the registrar shall register the notice.

(13) A demand pursuant to subsection (10) may be given in accordance with section 69 or by registered mail addressed to the address of the secured party as it appears on the most recent notice registered pursuant to subsection (3) or (7). Manner of demand notice

(14) On application by the secured party, the court may order that the registration Court may order  
 (a) be maintained on any condition, and subject to section 44, for any period of time; or  
 (b) be discharged or amended.

(15) Subsection (12) does not apply to a registration of a notice of a security interest provided for in a trust indenture if the notice states that the security agreement providing for the security interest is a trust indenture. Not applicable to trust indenture

(16) In a case within subsection (15), where the secured party fails to comply with a demand made pursuant to subsection (10) within fifteen days after it is made, the person making the demand may apply to the court for an order directing that the registration be amended or discharged. Court application

(17) No fee or expense shall be charged by a secured party for compliance with a demand made pursuant to subsection (10) unless the charge was agreed to by the parties before the demand was given. 1997,c.33,s.49. No fee for compliance

**50.** (1) In this section Definitions  
 (a) “debtor” includes any person named as a debtor in a registered financing statement;  
 (b) “secured party” includes any person named as a secured party in a registered financing statement.

(2) Where a registration relates exclusively to a security interest in consumer goods, the secured party shall discharge the registration within thirty days after all obligations under the security agreement creating the security interest are performed, unless the registration lapses before the expiry of that thirty-day period. Consumer goods

(3) The debtor, or any person with an interest in property that falls within the collateral description included in a registered financing statement, may make a written demand to the secured party if Demand respecting collateral  
 (a) all of the obligations under the security agreement to which the financing statement relates have been performed;



- (b) the secured party has agreed to release part or all of the collateral described in the collateral description included in the financing statement;
- (c) the collateral described in the collateral description included in the financing statement includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor; or
- (d) no security agreement exists between the secured party and the debtor.
- Contents of demand (4) A demand made pursuant to subsection (3) may require that the secured party, within fifteen days after the demand is made, register a financing change statement
- (a) discharging the registration, in a case within clause (3)(a) or (d);
- (b) amending or discharging the registration so as to reflect the terms of the agreement, in a case within clause (3)(b); or
- (c) amending the collateral description 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 within clause (3)(c).
- Failure to comply with demand (5) Where a secured party fails to comply with a demand made pursuant to subsection (3) within fifteen days after it is made, or fails to give to the person making the demand an order of the court confirming that the registration need not be amended or discharged, the person making the demand may register the financing change statement referred to in subsection (4).
- Manner of giving notice of demand (6) A demand made pursuant to subsection (3) may be given in accordance with section 69 or by registered mail addressed to the address of the secured party that was registered as part of the financing statement.
- Court orders (7) On application by the secured party, the court may order that the registration
- (a) be maintained on any condition, and subject to section 44, for any period of time; or
- (b) be discharged or amended.
- Not applicable to trust indenture (8) Subsection (5) does not apply to the registration of a security interest provided for in a trust indenture if the registration discloses that the security agreement providing for the security interest is a trust indenture.
- Court order (9) In a case within subsection (8), where the secured party fails to comply with a demand made pursuant to subsection (3) within fifteen days after it is made, 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 by a secured party for compliance with a demand made pursuant to subsection (3) unless the charge was agreed to by the parties before the demand was given. 1997,c.33,s.50. No fee for compliance

**51.** (1) Where a security interest is 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 Transfer of debtor's interest in collateral, priorities

- (a) an interest, other than a security interest in the transferred collateral, arising in the period from the expiry of the fifteenth day after the transfer to the time the secured party amends the registration to disclose the name of 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 that is registered or perfected during the period referred to in clause (a); and
- (c) a perfected security interest in the transferred collateral that is registered or perfected after the transfer and before the expiry of the fifteenth day after the transfer if, before the expiry of the fifteen days,
  - (i) the registration of the security interest first referred to in this subsection is not amended to disclose the transferee of the interest in the collateral as the new debtor, or
  - (ii) the secured party does not take possession of the collateral.

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

- (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 is transferred; or
- (b) the new name of the debtor, if 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

- (c) an interest, other than a security interest, in that collateral, arising in the period from the expiry of the fifteenth day after the secured party has knowledge of the information referred to in clause (a) or the new name of the debtor to the time the secured party amends the registration to disclose the name of the transferee as the debtor or to disclose the new name of the debtor, or takes possession of the collateral;

(d) a perfected security interest in the collateral that is registered or perfected in the period referred to in clause (c); and

(e) a perfected security interest in the collateral that is registered or perfected after the secured party had knowledge of the information referred to in clause (a) or the new name of the debtor and before the expiry of the fifteenth day referred to in clause (c) if, before the expiry of the fifteen days,

(i) the registration of the security interest first referred to in this subsection is not amended to disclose the transferee of the collateral as the new debtor or to disclose the new name of the debtor, or

(ii) the secured party does not take possession of the collateral.

Does not affect section 74

(3) This section does not have the effect of subordinating a prior security interest deemed by section 74 to be registered pursuant to this Act.

Various transferees of debtor's interest

(4) Where the debtor's interest in part or all of the collateral is transferred by the debtor without the consent of the secured party and there are one or more subsequent transfers of the collateral without the consent of the secured party before the secured party acquires knowledge of the name of the most recent transferee of the collateral, the secured party shall be deemed to have complied with subsection (2) if the secured party registers a financing change statement not later than fifteen days after acquiring knowledge of

(a) the name of the most recent transferee of the collateral; and

(b) 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. 1997,c.33,s.51.

Province's liability for error or omission

**52.** (1) A person may bring action against Her Majesty in right of the province to recover loss or damage suffered by that person because of an error or omission in the operation of the Registry if the loss or damage resulted from reliance on a printed search result issued by the Registry.

No damages, where

(2) Her Majesty in right of the province is not liable directly or vicariously for loss or damage suffered by a person because of

(a) verbal advice given by the Registrar, a deputy registrar or an officer, employee or agent respecting this Act or the regulations or any other Act that provides for registration in the Registry or the regulations pursuant to that Act or the operation of the Registry unless the person bringing the action proves that the Registrar, deputy registrar, officer, employee or agent was not acting in good faith; or

(b) the failure of the Registry to effect a registration or to effect a registration correctly.

(3) No action for damages under this section or section 53 lies against Her Majesty in right of the province unless it is commenced within

Limitation of action

(a) two years after the person entitled to bring the action first had knowledge of the loss or damage; or

(b) ten years after the date the printed search result was issued, whichever is earlier.

(4) Notwithstanding the *Crown Proceedings Act* R.S.P.E.I. 1988, Cap. C-8, no action may be brought against Her Majesty in right of the province, the Registrar, a deputy registrar or an officer, employee or agent of the Registry for any error or omission of the Registrar, deputy registrar, officer, employee or agent of the Registry in respect of the discharge or purported discharge of any duty or function under this Act or the regulations or any other Act or the regulations pursuant to that Act, except as provided in this section and in section 53. 1997,c.33,s.52.

No other right of action against province

**53.** (1) An action for recovery of damages pursuant to 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 a subsequent determination of the amount of damages suffered by each person, constitutes a judgment between each person and Her Majesty in right of the province in respect of each error or omission.

Action by trustee on behalf of all persons interested

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

Proof that trustee relied on search result

(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 an interest in the same trust indenture.

Court order respecting notice

(4) Subject to subsection 54(1), the court may order payment of all or a portion of the damages awarded to identified persons with interests in the same trust indenture at any time after judgment, and the obligation of Her Majesty in right of the province to satisfy the judgment is satisfied to the extent that payment is so made. 1997,c.33,s.53.

Court may order payment to identified persons

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

Total damages as prescribed

Subrogation	(2) Where damages are paid to a claimant under this section, Her Majesty in right of the province 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.
Balance of damages has priority over subrogation	(3) Where the amount of the damages paid to a claimant is less than the value of the interest the claimant would have had if the error or omission had not occurred, the right of subrogation under subsection (2) does not prejudice the right of the claimant to recover in priority to Her Majesty in right of the province 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.
Payment of claim without action	(4) The Provincial Treasurer may, without action being brought, pay out of the Operating Fund of the province, the amount of a claim against Her Majesty in right of the province when furnished with a report of the Registrar setting forth the facts and the opinion of the Registrar that the claim is just and reasonable.
Judgment to be paid from operating fund	(5) Where an award of damages has been made in favour of a claimant and the time for appeal has expired, or when an appeal is taken and is disposed of, in whole or in part, in favour of the claimant, the Provincial Treasurer shall authorize payment out of the Operating Fund of the province, subject to subsection (1), of the amount specified in the judgment in the manner specified in the judgment, including the costs of the claimant if the judgment so provides. 1997,c.33,s.54.

## PART V

### DEFAULT RIGHTS AND REMEDIES

Not applicable to	<b>55.</b> (1) This Part does not apply to <ul style="list-style-type: none"> <li>(a) a transaction referred to in subsection 3(2); or</li> <li>(b) a transaction between a pledgor and a pawnbroker.</li> </ul>
Definition	(2) In this section “secured party” includes a receiver.
Rights cumulative	(3) The rights and remedies in this Part are cumulative.
Alternate security	(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 by a security interest to which this Act applies, the secured party may <ul style="list-style-type: none"> <li>(a) proceed pursuant to this Part as to the personal property; or</li> <li>(b) proceed as to both the land and the personal property in which case the secured party shall proceed as against the personal property in accordance with the secured party’s rights, remedies and</li> </ul>

obligations in respect of the land, as if the personal property were land, and this Part, except for subsections 58(3) to (7), does not apply.

(5) Clause (4)(b) does not limit the rights of a secured party who has a security interest in the personal property taken before or after the security interest referred to in subsection (4). Does not limit rights of other secured party

(6) A secured party referred to in subsection (5) Standing  
 (a) has standing in proceedings taken pursuant to clause (4)(b); and  
 (b) may apply to the court for the conduct of a judicially supervised sale pursuant to clause (4)(b).

(7) For the purpose of distributing the proceeds realized from the sale of both land and personal property where the purchase price is not allocated to each separately, the amount that is attributable to the sale of the personal property is that proportion of the total proceeds that the market value of the personal property at the time of the sale bears to the market value of the land and the personal property at the time of the sale. Proportion determined by market value of goods

(8) A security interest does not merge merely because a secured party has reduced the claim to judgment. 1997,c.33,s.55. No merger

**56.** (1) In this section “secured party” includes a receiver. Definition

(2) Subject to subsection (4), where the debtor is in default under a security agreement, the secured party has against the debtor only Debtor in default  
 (a) the rights and remedies provided in the security agreement;  
 (b) the rights and remedies provided in this Part and sections 36, 37 and 38; and  
 (c) when in possession of the collateral, the rights and remedies provided in section 17.

(3) Subject to subsection (4), where the debtor is in default under a security agreement, the debtor has against the secured party the rights and remedies provided Idem  
 (a) in the security agreement;  
 (b) by any other Act or rule of law not inconsistent with this Act; and  
 (c) in this Part and in section 17.

(4) Except as provided in sections 17, 59, 60 and 62, no provision of section 17 or sections 57 to 66, to the extent that the provision gives rights and remedies to the debtor or imposes obligations on the secured party, can be waived or varied by agreement or otherwise. 1997,c.33,s.56. No waiver of certain rights

Definition	<b>57.</b> (1) In this section, “secured party” includes a receiver.
Debtor in default	(2) Where the debtor is in default under a security agreement, the secured party may <ul style="list-style-type: none"> <li>(a) notify a debtor on an intangible or chattel paper or an obligor on an instrument or security to make payment to the secured party whether or not the assignor was making collections on the collateral before the notification;</li> <li>(b) apply any money taken as collateral or paid to the secured party pursuant to clause (a) to the satisfaction of the obligation secured by the security interest; and</li> <li>(c) subject to section 59, take control of any proceeds to which the secured party is entitled under section 28.</li> </ul>
Notice to primary debtor	(3) A secured party who enforces a security interest by giving notice in accordance with clause (2)(a) shall notify the debtor within fifteen days after doing so.
Reasonable expenses	(4) A secured party may deduct reasonable collection expenses from <ul style="list-style-type: none"> <li>(a) amounts collected from a debtor on an intangible or chattel paper or from an obligor under an instrument; or</li> <li>(b) money held as collateral. 1997,c.33,s.57.</li> </ul>
Definitions	<b>58.</b> (1) In this section <ul style="list-style-type: none"> <li>(a) “dependant” means a person living with a debtor who is wholly or substantially dependent on the debtor for financial support;</li> <li>(b) “secured party” includes a receiver.</li> </ul>
Secured party rights where debtor in default	(2) Subject to subsections (3) to (7), sections 36, 37 and 38, the <i>Bankruptcy and Insolvency Act</i> (Canada) R.S.C. 1985, Chap. B-3 and any other Act or rule of law requiring a secured party to give prior notice of the intention to enforce a security interest, if the debtor is in default under a security agreement, <ul style="list-style-type: none"> <li>(a) the secured party has, unless otherwise agreed, the right to take possession of the collateral or otherwise enforce the security interest by any method permitted by law;</li> <li>(b) the secured party may, if the collateral is goods of a kind that cannot be readily moved from the debtor’s premises or of a kind for which adequate storage facilities are not readily available, seize or repossess the collateral without removing it from the debtor’s premises in any manner by which a sheriff acting under an execution order may seize without removal, if the secured party’s interest is perfected by registration pursuant to section 25;</li> <li>(c) the secured party may, if clause (b) applies, dispose of the collateral on the debtor’s premises but shall not cause the person in</li> </ul>

possession of the premises any greater inconvenience and cost than is necessarily incidental to the disposal; and  
 (d) the secured party may, if the collateral is a document of title, 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 the necessary changes, with respect to the goods covered by it.

(3) Subject to subsection (7), a debtor may claim the following items of collateral to be exempt from seizure by a secured party: Collateral exempt from seizure

- (a) furniture, household furnishings and appliances used by the debtor or a dependent to a realizable value of \$5,000 or to any greater amount that may be prescribed;
- (b) one motor vehicle having a realizable value of not more than \$6,500 at the time the claim for exemption is made, or not more than any greater amount that may be prescribed, if the motor vehicle is required by the debtor in the course of or to retain employment or in the course of and necessary to the debtor's trade, profession or occupation or for transportation to a place of employment where public transportation facilities are not reasonably available;
- (c) medical or health aids necessary to enable the debtor or a dependent to work or to sustain health;
- (d) consumer goods in the possession and use of the debtor or a dependent if, on application, the court determines that
  - (i) the loss of the consumer goods would cause serious hardship to the debtor or dependent, or
  - (ii) the costs of seizing and selling the goods would be disproportionate to the value that would be realized.

(4) A dependant may claim an item of collateral within clause (3)(a), (c) or (d) to be exempt from seizure but a claim may not be made by both a debtor and a dependant with respect to an item of the same kind. No duplicate exemption claims

(5) Where a claim for exemption is made pursuant to clause (3)(a) or (b) and the realizable value of the collateral for which the claim is made exceeds the maximum amount of the exemption specified in those clauses, the secured party may seize the collateral. Where maximum exemption amount exceeded

(6) A secured party who seizes collateral in the circumstances referred to in subsection (5) shall dispose of it in accordance with section 59 and shall pay to the debtor an amount equivalent to the maximum amount of the exemption, whether or not the proceeds of the disposition exceed that maximum amount. Payment to debtor of exemption amount

(7) Clauses (3)(a) to (c) and subsections (4), (5) and (6) do not apply in relation to goods that are subject to a purchase money security interest Effect of purchase money security interest



held by the secured party against whom the claim to exemption is made. 1997,c.33,s.58.

Definition	<b>59.</b> (1) In subsections (2), (7) and (15) “secured party” includes a receiver.
Make ready for disposition	(2) After seizing or repossessing the collateral, a secured party may dispose of it in its existing condition or after repair, processing or preparation for disposition.
Proceeds of disposition	(3) The proceeds of the disposition of collateral shall be applied consecutively to <ul style="list-style-type: none"> <li>(a) the reasonable expenses of seizing, repossessing, holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expenses incurred by the secured party; and</li> <li>(b) the satisfaction of the obligations secured by the security interest of the party making the disposition.</li> </ul>
Surplus proceeds	(4) Any surplus proceeds of the disposition of collateral shall be dealt with in accordance with section 60.
Manner of disposing of collateral	(5) Collateral may be disposed of <ul style="list-style-type: none"> <li>(a) by private sale;</li> <li>(b) by public sale, including public auction or closed tender;</li> <li>(c) as a whole or in commercial units or parts; or</li> <li>(d) if the security agreement so provides, by lease.</li> </ul>
Deferred payment by purchaser	(6) Where the security agreement so provides, the payment for the collateral being disposed of may be deferred.
Delay disposition	(7) The secured party may delay disposition of the collateral, in whole or in part.
Notice of disposition	(8) Not less than twenty days before disposition of the collateral, the secured party shall give a notice to <ul style="list-style-type: none"> <li>(a) the debtor and any other person who is known by the secured party to be an owner of the collateral;</li> <li>(b) each creditor or person with a security interest in the collateral whose security interest is subordinate to that of the secured party and           <ul style="list-style-type: none"> <li>(i) who has registered, before the notice of disposition is given to the debtor, a financing statement that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods, or</li> </ul> </li> </ul>

- (ii) whose security interest was perfected by possession when the secured party seized or repossessed the collateral;
  - (c) each judgment creditor whose interest in the collateral is subordinate to that of the secured party and who has registered, before the notice of disposition is given to the debtor, a notice of judgment that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods; and
  - (d) any other person with an interest in the collateral who has given a written notice to the secured party of that person's interest in the collateral before the notice of disposition is given to the debtor.
- (9) A notice pursuant to subsection (8) shall contain
- (a) a description of the collateral;
  - (b) a statement of the amount required to satisfy the obligation secured by the security interest;
  - (c) a statement of the sum actually in arrears, exclusive of the operation of an acceleration clause in the security agreement;
  - (d) a brief description of any default, other than non-payment, including the term of the security agreement, the breach of which constituted the default;
  - (e) a statement of the amount of the expenses referred to in clause (3)(a) or, where the amount has not been determined, a reasonable estimate;
  - (f) a statement that any person entitled to receive the notice may redeem the collateral on payment of the amount due under clauses (b) and (e);
  - (g) a statement that the debtor may reinstate the security agreement on payment of the sum actually in arrears exclusive of the operation of an acceleration clause in the security agreement, the curing of any other default and payment of the amount of the expenses due under clause (3)(a);
  - (h) a statement that the collateral will be disposed of and the debtor may be liable for a deficiency unless the collateral is redeemed or the security agreement is reinstated; and
  - (i) a statement of the date, time and place of any sale by public auction, or the place to which closed tenders may be delivered and the date after which closed tenders will not be accepted, or the date after which any private disposition of the collateral is to be made.

Contents of Notice

- (10) Where a notice pursuant to subsection (8) is given to a person other than the debtor, it need not contain the information in clauses (9)(c), (g) and (h) and, where the debtor is not entitled to reinstate the security agreement, the notice to the debtor need not contain the information in clauses (9)(c) and (g).

Less information to non-debtor

Notice of disposition	<p>(11) Not less than twenty days before the disposition of the collateral, a receiver shall give a notice to</p> <ul style="list-style-type: none"> <li>(a) the debtor and, where the debtor is a body corporate, a director of the body corporate;</li> <li>(b) any other person who is known by the secured party to be an owner of the collateral;</li> <li>(c) a person referred to in clause (8)(b);</li> <li>(d) a creditor referred to in clause (8)(c); and</li> <li>(e) any other person with an interest in the collateral who has given a written notice to the receiver of that person's interest in the collateral before the notice of disposition is given to the debtor.</li> </ul>
Contents of Notice	<p>(12) A notice pursuant to subsection (11) shall contain</p> <ul style="list-style-type: none"> <li>(a) a description of the collateral;</li> <li>(b) a statement that the collateral will be disposed of unless it is redeemed; and</li> <li>(c) a statement of the date, time and place of any sale by public auction, or the place to which closed tenders may be delivered and the date after which closed tenders will not be accepted, or the date after which any private disposition of the collateral is to be made.</li> </ul>
Manner of giving notice	<p>(13) A notice pursuant to subsection (8) or (11) may be given in accordance with section 69 or, where it is to be given to a person who has registered a financing statement or a notice of judgment, by registered mail addressed to the address of that person that was registered as part of the financing statement or notice of judgment.</p>
When secured party may purchase collateral	<p>(14) The secured party may purchase the collateral or any part of it but only at public sale, including public auction or closed tender, and only for a price that bears a reasonable relationship to the market value of the collateral.</p>
Purchase for value in good faith	<p>(15) Where a secured party disposes of collateral to a purchaser for value and in good faith who takes possession of it, the purchaser acquires the collateral, whether or not the requirements of this section have been complied with by the secured party, free from</p> <ul style="list-style-type: none"> <li>(a) the interest of the debtor;</li> <li>(b) an interest subordinate to that of the debtor; and</li> <li>(c) an interest subordinate to that of the secured party</li> </ul> <p>and all obligations secured by the subordinate interests are deemed to be performed for the purposes of sections 49 and 50.</p>
Where registered secured party not given notice	<p>(16) Subsection (15) does not affect the rights of a person with a security interest that is deemed by section 74 to be registered pursuant to this Act if the person has not been given a notice pursuant to this section.</p>

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

Transfers of collateral to guarantor, etc.

(18) Notice under subsection (8) or (11) need not be given if

Where notice not necessary

- (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 of a type that is customarily sold on 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 as part of the currency of Canada;
- (f) for any other reason, the court, on an application made without notice to any other person, is satisfied that a notice is not required; or
- (g) after default, every person entitled to receive a notice of disposition under subsection (8) or (11) consents in writing to the immediate disposition of the collateral. 1997,c.33,s.59.

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

Definition

(2) Where a security agreement secures an indebtedness and the secured party has dealt with the collateral pursuant to section 57, or has disposed of it, the secured party shall account for any surplus and shall, subject to subsection (5) or the agreement otherwise of all interested persons, pay any surplus in the following order to

Secured party to account for surplus

- (a) a creditor or person with a security interest in the collateral whose security interest is subordinate to that of the secured party and
  - (i) who has registered, before the distribution of the surplus, a financing statement that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods, or
  - (ii) whose security interest was perfected by possession when the secured party seized or repossessed the collateral;
- (b) a judgment creditor whose interest in the collateral is subordinate to that of the secured party and who has registered, before the

distribution of the surplus, a notice of judgment that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods;

(c) any other person with an interest in the surplus who has given a written notice to the secured party of that person's interest before the distribution of the surplus; and

(d) the debtor and any other person who is known by the secured party to be an owner of the collateral.

Priority not affected  
by payment under  
ss.(1)

(3) The priority of the claim of any person referred to in subsection (2) is not prejudiced by payment to anyone in accordance with that subsection.

Request for written  
accounting

(4) Within thirty days after receipt of a written request for an accounting from a person referred to in subsection (2), the secured party shall give to that person a written accounting of

(a) the amount received from the disposition of any collateral or any amount collected under section 57;

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

(c) the amount of expenses as provided in clauses 17(3)(a) and 59(3)(a) and subsection 57(4);

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

(e) the amount of any surplus.

Payment into court  
of surplus

(5) Where there is a question as to who is entitled to receive payment under subsection (2), the secured party may pay the surplus into the court and the surplus shall not be paid out except on an application pursuant to section 67 by a person claiming an entitlement to it.

Deficiency

(6) Unless otherwise agreed, or unless otherwise provided in this or any other Act, the debtor is liable to pay any deficiency to the secured party. 1997,c.33,s.60.

After default,  
collateral may be  
taken in satisfaction

**61.** (1) After default, the secured party may propose to take the collateral in satisfaction of the obligation secured by it and shall give notice of the proposal to

(a) the debtor or any other person who is known by the secured party to be an owner of the collateral;

(b) a creditor or person with a security interest in the collateral whose security interest is subordinate to that of the secured party and

(i) who has registered, before the notice of the proposal is given to the debtor, a financing statement that includes the name of the debtor or that includes the serial number of the collateral if the

collateral is goods of a kind that are prescribed as serial numbered goods, or

(ii) whose security interest was perfected by possession when the secured party seized or repossessed the collateral;

(c) a judgment creditor whose interest in the collateral is subordinate to that of the secured party and who has registered, before the notice of the proposal is given to the debtor, a notice of judgment that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods; and

(d) any other person with an interest in the collateral who has given a written notice to the secured party of that person's interest before the notice of the proposal is given to the debtor.

Notice of objection

(2) Where the interest in the collateral of any person entitled to a notice under subsection (1) would be adversely affected by the secured party's proposal, that person may give to the secured party a notice of objection within fifteen days after the notice under subsection (1) is given.

(3) Subject to subsections (6) and (7), where a notice of objection is given pursuant to subsection (2), the secured party shall dispose of the collateral pursuant to section 59.

Disposition where objection

(4) Where no notice of objection is given pursuant to subsection (2), the secured party

Where no notice of objection

(a) is deemed, on the expiry of the fifteen-day period or periods referred to in subsection (2), to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it; and

(b) may hold or dispose of the collateral free from all rights and interests of the debtor and any person entitled to receive a notice under clause (1)(b), (c) or (d) who has been given the notice,

and all obligations secured by such interests are deemed to have been performed for the purposes of sections 49 and 50.

(5) A notice of a proposal pursuant to subsection (1) and a notice of objection pursuant to subsection (2) may be given in accordance with section 69 or, where the notice is to be given to a person who has registered a financing statement or a notice of judgment, by registered mail addressed to the address of that person that was registered as part of the financing statement or notice of judgment.

Manner of notice

(6) The secured party may require any person who has made an objection to the proposal to furnish proof of that person's interest in the collateral and, unless the person furnishes the proof within ten days after

Proof of interest

the secured party's request, the secured party may proceed as if no objection had been made by that person.

Court may determine objection ineffective

(7) On application by a secured party, the court may determine that an objection to the proposal of a secured party is ineffective because

- (a) the person made the objection for a purpose other than the protection of an interest in the collateral or in the proceeds of a disposition of the collateral; or
- (b) the market value of the collateral is less than the total amount owing to the secured party together with the estimated expenses recoverable under clause 59(3)(a).

Purchaser for value, in good faith

(8) Where a secured party disposes of collateral to a purchaser for value and in good faith who takes possession of it, the purchaser acquires the collateral, whether or not the requirements of this section have been complied with by the secured party, free from

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

and all obligations secured by the subordinate interests are deemed to have been performed for the purposes of sections 49 and 50.

Secured party not given notice

(9) Subsection (8) does not affect the rights of a person with a security interest that is deemed by section 74 to be registered pursuant to this Act if the person has not been given a notice pursuant to subsection (1). 1997,c.33,s.61.

Definition

**62.** (1) In subsection (2) "secured party" includes a receiver.

Redemption of collateral

(2) At any time before the secured party has disposed of the collateral or contracted for its disposition pursuant to section 59, or before the secured party is deemed to have irrevocably elected to retain the collateral under section 61, any person entitled to receive a notice of disposition under subsection 59(8) or (11) may redeem the collateral, unless that person has otherwise agreed in writing after default, by tendering fulfilment of the obligations secured by the security interest, together with a sum equal to the reasonable expenses referred to in clause 59(3)(a) to the extent that such expenses have actually been incurred by the secured party.

Priority of redemption

(3) Where more than one person elects to redeem pursuant to subsection (2), the priority of their rights to redeem is the same as the priority of their respective interests.

Reinstatement of security agreement by debtor

(4) At any time before the secured party has disposed of the collateral or contracted for its disposition pursuant to section 59, or before the secured party is deemed to have irrevocably elected to retain the

collateral pursuant to section 61, the debtor, other than a guarantor or indemnitor, may reinstate the security agreement, unless the debtor has otherwise agreed in writing after default, by

- (a) paying the sum actually in arrears, exclusive of the operation of an acceleration clause in the security agreement;
- (b) curing any other default by reason of which the secured party intends to dispose of the collateral; and
- (c) paying a sum equal to the reasonable expenses referred to in clause 59(3)(a) to the extent that such expenses have actually been incurred by the secured party.

(5) Unless otherwise agreed, the debtor may not reinstate a security agreement Reinstatement not available, where

- (a) more than twice, if the security agreement provides for payment in full by the debtor within twelve months after value was given by the secured party; or
- (b) more than twice each year, if the security agreement provides for payment by the debtor during a period of time of more than one year after value was given by the secured party. 1997,c.33,s.62.

**63.** (1) In this section “secured party” includes a receiver. Definition

(2) On application by a debtor, a creditor of a debtor, a secured party, a sheriff or any person with an interest in the collateral, the court may Court may order

- (a) make any order, including a binding declaration of a right and injunctive relief, that is necessary to ensure compliance with this Part or sections 17, 36, 37 and 38;
- (b) give directions to any person regarding the exercise of rights or the discharge of obligations under this Part or sections 17, 36, 37 and 38;
- (c) relieve a person from compliance with the requirements of this Part or sections 17, 36, 37 and 38;
- (d) stay enforcement of rights provided in this Part or sections 17, 36, 37 and 38; or
- (e) make any order necessary to ensure protection of the collateral or of the interest of any person in the collateral. 1997,c.33,s.63.

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

(2) A receiver shall Duties of a receiver

- (a) take custody and control of the collateral in accordance with the security agreement or order under which the receiver was appointed, but unless appointed a receiver-manager or unless the court orders otherwise, shall not carry on the business of the debtor;



(b) as soon as possible and not later than ten days after becoming a receiver, register a notice in the Registry in accordance with the regulations disclosing the appointment and specifying an office in the province where the records referred to in clause (d) shall be maintained;

(c) open and maintain, in the receiver's name as receiver, one or more accounts at a bank, credit union or similar financial institution for the deposit of all money coming under the receiver's control as receiver;

(d) keep records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions involving collateral or other property of the debtor;

(e) unless a different interim period is ordered by the court, prepare at least once in every six-month period after the date of the appointment financial statements of the receivership administration;

(f) indicate on every business letter, invoice, contract or similar document used or executed in connection with the receivership that the receiver is acting as a receiver;

(g) on completion of the receiver's duties as receiver, prepare a final report and final statements of the financial accounts of the receivership administration and send copies immediately to the debtor and, where the debtor is a body corporate, to the directors of the debtor; and

(h) on termination of the receivership, discharge the registration made pursuant to clause (b).

Debtor may inspect receiver's records

(3) The debtor and, where the debtor is a body corporate, a director of the debtor, or the authorized representative of any of them, may require the receiver, by a demand in writing delivered to the receiver, to make available for inspection the records referred to in clause (2)(d) during regular business hours at the office of the receiver specified in accordance with clause (2)(b).

Who may demand copies of financial statements

(4) The debtor and, where the debtor is a body corporate, a director of the debtor, a sheriff, a person with an interest in the collateral in the custody or control of the receiver, or the authorized representative of any of them, may require the receiver, by a demand in writing delivered to the receiver, to provide copies of the financial statements referred to in clause (2)(e) or the final report and final statements of the financial accounts referred to in clause (2)(g) or to make them available for inspection during regular business hours at the office of the receiver specified in accordance with clause (2)(b).

Receiver must comply

(5) The receiver shall comply with a demand made pursuant to subsection (3) or (4) within ten days after receipt of the demand.

(6) The receiver may require the payment in advance of a fee in the amount prescribed for each demand, but the sheriff and the debtor or, where the debtor is a body corporate, a director of the debtor, are entitled to inspect or to receive a copy of the financial statements and final account without charge.

Fee

- (7) On application by an interested person, the court may
- (a) appoint a receiver;
  - (b) remove, replace or discharge a receiver, whether appointed by the court or in accordance with 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) make an order requiring a receiver or a person by or on behalf of whom the receiver is appointed to make good a default in connection with the receiver's custody, management or disposition of the collateral of the debtor or to relieve the person from any default on such terms as the court thinks fit, notwithstanding anything contained in a security agreement or other document providing for the appointment of a receiver;
  - (f) exercise with respect to receivers appointed in accordance with a security agreement the jurisdiction that it has over receivers appointed by the court.

Application to court respecting receiver

(8) The powers referred to in subsection (7) and in section 63 are in addition to any other powers the court may exercise in its jurisdiction over receivers.

Powers are additional

(9) Unless the court orders otherwise, a receiver is required to comply with sections 59 and 60 only when the receiver deals with or disposes of the collateral other than in the course of operating the business of a debtor. 1997,c.33,s.64.

Dealing with collateral other than operation of business

## PART VI

### GENERAL AND MISCELLANEOUS

**65.** (1) The principles of the common law, equity and the law merchant, except in so far as they are inconsistent with this Act, supplement this Act and continue to apply.

Common law, equity and law merchant principles apply

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

Good faith, commercially reasonable

(3) A person does not act in bad faith merely because that person acts with knowledge of the interest of some other person. 1997,c.33,s.65.

Not bad faith

Definition	<b>66.</b> (1) In this section “secured party” includes a receiver.
Foreseeable loss or damage	(2) Where a person fails, without reasonable excuse, to discharge any obligations imposed on that person by this Act, the person to whom the obligation is owed has the right to recover any loss or damage that was reasonably foreseeable as liable to result from the failure.
Secured party fails to comply	(3) Where a secured party fails, without reasonable excuse, to comply with obligations <ul style="list-style-type: none"> <li>(a) in subsection 43(11) or section 49 or 50; or</li> <li>(b) in section 17, 18, 59, 60 or 61 and the collateral is consumer goods,</li> </ul> the debtor, or, in a case of non-compliance with subsection 43(11) or section 49 or 50, the person named as debtor in a financing statement, is deemed to have suffered damages not less than the amount prescribed.
Registration without authority	(4) Where a debtor or other person with an interest in land or collateral causes the registration of a notice referred to in subsection 49(12) or registers a financing statement referred to in subsection 50(5) without authority under those subsections and without reasonable excuse, the secured party referred to in those subsections is deemed to have suffered damages not less than the amount prescribed.
Non-compliance defence	(5) In an action for a deficiency, the debtor may raise as a defence the failure of the secured party to comply with obligations in section 17, 18, 59 or 60, but non-compliance limits the right to the deficiency only to the extent that it has affected the debtor’s ability to protect the debtor’s interest in the collateral or has made the accurate determination of the deficiency impracticable.
Onus on secured party	(6) Where a secured party fails to comply with obligations in section 17, 18, 59 or 60, the onus is on the secured party to show that the failure <ul style="list-style-type: none"> <li>(a) 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, if the collateral is consumer goods; and</li> <li>(b) did not make the accurate determination of the deficiency impracticable.</li> </ul>
Exclusion of Act voids provision	(7) Except as otherwise provided in this Act, a provision in a security agreement or any other agreement is void if it purports to exclude an obligation or an onus imposed by this Act or purports to limit the liability of or the amount of damages recoverable from a person who has failed to discharge an obligation imposed by this Act. 1997,c.33,s.66.
Non-exempt items bound by judgment	<b>66.1</b> For the purpose of subsection 20(1) and subject to subsection 20(2) of this Act, the non-exempt exigible personal property of a judgment debtor and the non-exempt attachable debts of a judgment debtor are

bound by the registration of a judgment notwithstanding that the security interest referred to in subsection 20(1) of this Act attached before the judgment was registered. 1997,c.67,s.8.

**67.** On application by an interested person, the court may make an order Court may order

- (a) determining questions of priority or entitlement to collateral;
- (b) directing an action to be brought or an issue to be tried;
- (c) extending or abridging, conditionally or otherwise, the time periods for compliance specified in section 11, subsections 36(18), 38(14) and 43(11) or in Part V. 1997,c.33,s.67.

**68.** An appeal lies to the Prince Edward Island Supreme Court, Appeal Division, from an order, judgment or direction of the court made pursuant to this Act. 1997,c.33,s.68. Appeal

**69.** (1) A verification statement pursuant to subsection 43(11) and a notice or a demand given pursuant to this Act, other than a demand pursuant to section 18, may be given to Delivery of verification statement

- (a) an individual, by leaving it with the individual or by sending it by registered mail addressed to
  - (i) the individual by name at the individual's residence, or
  - (ii) where the individual is the sole proprietor of a business, the individual by name at the address of the business;
- (b) a partnership by
  - (i) leaving it with
    - (A) one or more of the partners or, where the partnership is a limited partnership, one or more of the general partners, or
    - (B) any person who has control or management of the partnership business when the notice or demand is delivered, or
  - (ii) sending it by registered mail addressed to
    - (A) the partnership,
    - (B) one or more of the partners or, where the partnership is a limited partnership, one or more of the general partners, or
    - (C) any person who has control or management of the partnership business when the notice or demand is given,
- at the address of the partnership business;
- (c) a body corporate, other than a municipality, by
  - (i) leaving it with an officer or director of the body corporate or person in charge of any office or place of business of the body corporate, or
  - (ii) leaving it, or sending it by registered mail addressed to the body corporate, at its registered or head office,
- (d) a municipality by
  - (i) leaving it with the mayor, deputy mayor, warden, deputy warden, clerk or any solicitor of the municipality, or

- (ii) sending it by registered mail addressed to the municipality, or to the mayor, deputy mayor, warden, deputy warden, clerk or any solicitor of the municipality, at the principal office of the municipality;
  - (e) an unincorporated association by
    - (i) leaving it with an officer of the association or person in charge of any office or premises occupied by the association, or
    - (ii) sending it by registered mail addressed to an officer of the association at the address of the officer; and
  - (f) Her Majesty in right of the province in accordance with the *Crown Proceedings Act* R.S.P.E.I. 1988, Cap. C-32.
  
- Notice given, when

(2) A notice or demand sent by registered mail is deemed to be given

  - (a) when the addressee actually receives the notice or demand; or
  - (b) except when postal services are not functioning, on the expiry of ten days after the date of registration,

whichever is earlier. 1997,c.33,s.69.
  
- Other Act prevails if consumer protection

**70.** (1) Where there is a conflict between a provision of this Act and a provision for the protection of consumers in any other Act, the provision of that Act prevails.
  
- This Act prevails, where

(2) Except as otherwise provided in this or any other Act, where there is a conflict between a provision of this Act and a provision of any other Act other than an Act for the protection of consumers, the provision of this Act prevails. 1997,c.33,s.70.
  
- Regulations

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

  - (a) prescribing the kinds of goods the leases of which are not within the scope of this Act;
  - (b) prescribing duties and powers of the Registrar;
  - (c) respecting the Registry and its operation, including the location and hours of the offices of the Registry;
  - (d) respecting any matters relating to fees payable in relation to registrations, searches or any other matter under this Act or the regulations, including the amount of the fees and their manner of payment;
  - (e) respecting the data to be entered in the Registry to effect, renew, discharge or otherwise amend a registration authorized by this Act and any other matters relating to registrations under this Act;
  - (f) respecting the data to be entered in the Registry to effect, renew, discharge or otherwise amend the registration of interests or notices authorized by any other Act to be registered in the Registry and any other matters relating to those interests or notices and their registration, including the application of any provision of this Act or the regulations;

- (g) respecting the form, content and manner of use of notices under this Act, including notices authorized to be registered in a registry of deeds by section 49;
- (h) respecting the description of collateral, including proceeds collateral, that is to be included in financing statements and financing change statements and prescribing the kinds of goods that may be described in part by serial number and the kinds of goods that must be described in part by serial number and the requirements of a description by serial number;
- (i) respecting the time, place and all other matters relating to searches of the records of the Registry, including the method of disclosure and the form of search results;
- (j) respecting any matters relating to the form, use and manner of obtaining or sending printed or electronic verification statements or notices of a registration;
- (k) prescribing abbreviations, expansions or symbols that may be used in search results and in financing statements, financing change statements or other data authorized by this Act or the regulations to be entered in the Registry to effect a registration;
- (l) respecting the length of time during which a registration is to be effective and the manner in which the period of time is to be specified;
- (m) respecting re-registrations pursuant to subsection 35(7);
- (n) prescribing, for the purposes of subsection 54(1), the maximum total amount recoverable in a single action pursuant to section 52 and the maximum total amount recoverable for all claims in a single action pursuant to section 53;
- (o) prescribing amounts for the purposes of subsections 18(16), 64(6), 66(3) and (4);
- (p) respecting any matter relating to an agreement entered into by the Registrar pursuant to subsection 43(2) including the rights and obligations of the parties to such an agreement;
- (q) respecting forms for the purposes of this Act and the regulations;
- (r) prescribing any matter required or authorized by this Act to be prescribed;
- (s) defining any word or expression used in this Act and not defined in this Act, and redefining, for the purpose of the registration of interests or notices authorized by any other Act to be registered in the Registry, any word or expression defined in this Act;
- (t) respecting any matter or thing the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purposes of this Act.

Regulations for different classes	(2) A regulation made pursuant to subsection (1) may be made in respect of different persons, transactions, classes of persons or classes of transactions.
Regulations respecting notice or interest under other Acts	(3) A power to make a regulation pursuant to this section includes the power to make regulations in respect of any interests or notices that are authorized by or pursuant to any Act, other than this Act, to be registered in the Registry and the registration of such interests or notices, and this section shall be given effect, with the necessary changes, to achieve this purpose.
Retroactive regulations	(4) A regulation made pursuant to subsection (1) may be made to have retroactive effect to the date this Act came into force or to any date after this Act came into force. 1997,c.33,s.71; 2003,c.42,s.5.
Fees	<b>71.1</b> (1) In this Act, “fees” includes fees, levies, charges, tariffs, rentals, taxes and any kind of payment for licenses, goods or services provided by the government under this Act.
Fees payable	<p>(2) The fees payable under this Act are as follows:</p> <p>(a) to effect a registration where the period of time during which the registration is to be effective is 1 to 25 years</p> <p style="padding-left: 20px;">(i) initial registration fee ..... \$24.00</p> <p style="padding-left: 20px;">(ii) plus for each year of the period..... \$7.00</p> <p>(b) to effect a registration where the period of time during which registration is to be effective is more than 25 years, or infinity ..... \$500.00</p> <p>(c) to renew a registration where the period of time during which the registration is to be extended is 1 to 25 years ..... \$7.00 per year</p> <p>(d) to renew a registration where the period of time during which the registration is to be extended is more than 25 years, or infinity ..... \$500.00</p> <p>(e) to discharge a registration .....no fee</p> <p>(f) to re-register a registration under subsection 35(6) of this Act .....no fee</p> <p>(g) to amend a registration ..... \$10.00</p> <p>(h) to effect a global change of multiple registrations ..... \$500.00</p> <p>(i) to search the Registry per search ..... \$8.00</p>
Payable in advance	(3) The fees provided for in subsection (1) shall be payable in advance for the registration period, upon completion of the search.
Fee account	(4) The Registrar may enter into an agreement with a person establishing an account with the Registry to enable fees that are payable

under subsection (1) to be charged on a continuing basis against the balance in the person's account.

(5) The fee payable for the registration of a notice under subsection 49(3) or (7) is \$50. Fee, notice filed in deeds registry

(6) Where a demand for information has been made under subsection 18(16), the person to whom the demand is made is entitled to require the payment of a fee not exceeding the sum of Fee, demand for information

(a) \$20; and

(b) \$0.50 for each page of a security agreement including any amendments if a demand is made for a copy of the security agreement.

(7) Where a demand has been made under subsection 64(6), the receiver is entitled to require the payment of a fee not exceeding the sum of Fee, copies of financial statements

(a) \$20; and

(b) \$0.50 for each page of the receiver's financial statement or final account if a demand is made for copies of the financial statement or final account. 2000,c.17,s.1.

## PART VII

### TRANSITIONAL, CONSEQUENTIAL AMENDMENTS, REPEALS AND COMING INTO FORCE

**72.** (1) A reference to the *Assignment of Book Debts Act*, the *Bills of Sale Act*, the *Conditional Sales Act* or the *Corporations Securities Registration Act* in any enactment other than this Act or a regulation made pursuant to this Act or in any agreement or other writing that relates to a security interest is deemed to be a reference to this Act or to the corresponding provision of this Act. Reference in other Act, deemed reference to this Act

(2) A reference to a bill of sale, chattel mortgage, conditional sales contract, fixed charge, floating charge, pledge or assignment of book debts or the like, or any derivative of those terms, or to any other agreement or transaction that creates or provides for a security interest in any enactment other than this Act or a regulation made pursuant to this Act, or in any agreement or other writing is deemed to be a reference to the corresponding kind of security agreement under this Act. 1997,c.33,s.72. *Idem*

**73.** (1) In this section and in section 74, Definitions  
 (a) "prior law" means the law in force immediately before the coming into force of this Act and includes prior registration law;



(b) “prior registration law” means the *Assignment of Book Debts Act*, the *Bills of Sale Act*, the *Conditional Sales Act* and the *Corporations Securities Registration Act* as they read immediately before the coming into force of this Act.

- Application of Act (2) Except as otherwise provided, this Act applies to
- (a) every security agreement entered into after the coming into force of this Act, including an agreement that renews, extends or consolidates an agreement entered into before the coming into force of this Act;
  - (b) every security agreement entered into before the coming into force of this Act that has not been validly terminated in accordance with prior law before the coming into force of this Act;
  - (c) every prior security interest that is not enforced or otherwise validly terminated in accordance with prior law before the coming into force of this Act; and
  - (d) a receiver appointed before or after the coming into force of this Act.
- Exception (3) Sections 10 and 11 do not apply to a security agreement referred to in clause (2)(b).
- Prior security interest (4) The validity of a prior security interest is governed by prior law.
- Order of priorities (5) The order of priorities
- (a) between prior security interests is determined by prior law, if all the competing security interests arose under security agreements entered into before the coming into force of this Act; and
  - (b) between a prior security interest and the interest of a third party is determined by prior law, if the third party interest arose before the coming into force of this Act and the security interest arose under a security agreement entered into before the coming into force of this Act.
- Idem* (6) Subject to subsection (3) and section 74, the order of priorities
- (a) between a security interest arising after the coming into force of this Act and a prior security interest is determined by this Act; and
  - (b) between a security interest arising after the coming into force of this Act and the interest of a third party arising before the coming into force of this Act is determined by this Act.
- Prior registrations remain searchable (7) Notwithstanding the coming into force of this Act and the repeal of prior registration law, prior law is deemed to continue in force and registrations made pursuant to prior registration law remain searchable to the extent necessary to give effect to this section and section 74. 1997,c.33,s.73.

**74.** (1) Except as otherwise provided in this section, a prior security interest that immediately before the coming into force of this Act was covered by an unexpired registration pursuant to prior registration law is deemed to have been registered and perfected pursuant to this Act as of the time of registration pursuant to prior registration law.

Prior registration deemed perfected under this Act

(2) Subject to this Act, the registered and perfected status of a prior security interest referred to in subsection (1) continues until the expiration of its registration pursuant to prior registration law or the expiration of three years after the coming into force of this Act, whichever is earlier, or, where the registration pursuant to prior registration law does not expire, until the expiration of three years after the coming into force of this Act, and may be further continued by registration pursuant to this Act if the prior security interest could have been perfected by registration pursuant to this Act had the security interest attached after the coming into force of this Act.

Expiry of prior registration

(3) A prior security interest is covered by an unexpired registration pursuant to prior registration law within the meaning of subsections (1) and (2) only if the requirements of prior registration law were complied with and regardless of whether or not the requirements for perfection of the security interest under this Act would have been met had the registration been made pursuant to this Act.

Prior registration must be pursuant to prior law

(4) A prior security interest that under prior law had the status of a perfected security interest without registration and without the secured party taking possession of the collateral is deemed to be perfected pursuant to this Act as of the time the security interest was created.

Prior unregistered interest

(5) The perfected status of a prior security interest referred to in subsection (4) continues only for three years after the coming into force of this Act but may be further continued by perfection pursuant to this Act if the prior security interest could have been perfected pursuant to this Act had the security interest attached after the coming into force of this Act.

Prior perfection for three years

(6) For the purposes of subsection (4), a prior security interest had the status of a perfected security interest under prior law if the secured party complied with prior law relating to the creation and continuance of the security interest and the security interest had a status under prior law similar to that of an equivalent security interest created and perfected pursuant to this Act in relation to the interest of other secured parties, buyers, creditors of the debtor or a trustee in bankruptcy of the debtor.

Perfection under prior law

- Assignment to which *Assignment of Book Debts Act* did not apply
- (7) A prior security interest in the form of an assignment of existing or future debts to which the *Assignment of Book Debts Act* did not apply is deemed to be perfected
- (a) for the purposes of subsection 20(1), as of the time the security interest was created; and
  - (b) for all other purposes under this *Act*, as of the time notice of the assignment is given to the account debtor.
- Continues for three years
- (8) The perfected status of a prior security interest referred to in subsection (7) continues only for three years after the coming into force of this Act but may be continued by perfection pursuant to this Act if the prior security interest could have been perfected pursuant to this Act had the security interest attached after the coming into force of this Act.
- Prior interest not registered
- (9) A prior security interest that, on the coming into force of this Act, could have been but was not
- (a) registered pursuant to prior registration law; or
  - (b) perfected pursuant to prior law through possession of the collateral by the secured party,
- may be perfected pursuant to this Act if it is a security interest that could have been perfected pursuant to this Act had the security interest attached after the coming into force of this Act.
- Prior interest where secured party in possession
- (10) A prior security interest that under this Act may be perfected by the secured party taking possession of the collateral is deemed to be perfected for the purposes of this Act when possession of the collateral is taken in accordance with section 24 whether or not possession was taken before or after the coming into force of this Act and notwithstanding that under prior law the security interest could not have been perfected by taking possession of the collateral.
- Perfected under prior law registration under Act not necessary
- (11) A prior security interest, that, immediately before the coming into force of this Act, is covered by an unexpired registration under prior registration law but that has the status of a perfected security interest under this Act without registration or the secured party taking possession of the collateral, remains perfected under this Act.
- Prior interest may be perfected under Act
- (12) A prior security interest, that, immediately before the coming into force of this Act, could have been, but was not, covered by a registration under prior registration law but 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 the requirements for perfection of a security interest under this Act are met.

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

(a) registration pursuant to this Act continues any registration or perfected status under prior law for the purposes of subsection 73(5); and

(b) the registration supersedes any registration or perfection under prior law. 1997,c.33,s.74; 1997,c.67,s.9.