1989

c 16 Personal Property Security Act, 1989

Ontario
CHAPTER 16

An Act to revise the Personal Property Security Act and to repeal and amend certain other Acts related to Personal Property

Assented to March 2nd, 1989

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PERFECTION AND PRIORITIES

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

1.—(1) In this Act,

"accessions" means goods that are installed in or affixed to other goods;

"account" means any monetary obligation not evidenced by chattel paper, an instrument or a security, whether or not it has been earned by performance;

"chattel paper" means one or more than one writing that evidences both a monetary obligation and a security interest in or a lease of specific goods;

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

"consumer goods" means goods that are used or acquired for use primarily for personal, family or household purposes;
“debtor” means a person who owes payment or other performance of the obligation secured, whether or not the person owns or has rights in the collateral, and includes,

(a) an assignor of an account or chattel paper, and

(b) a transferee of or successor to a debtor’s interest in collateral;

“default” means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable;

“document of title” means any writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee’s possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

“equipment” means goods that are not inventory or consumer goods;

“financing change statement” means a document in the form prescribed for a financing change statement;

“financing statement” means a document in the form prescribed for a financing statement;

“future advance” means the advance of money, credit or other value secured by a security agreement whether or not such advance is given pursuant to commitment;

“goods” means tangible personal property other than chattel paper, documents of title, instruments, money and securities, and includes fixtures, growing crops, the unborn young of animals, timber to be cut, and minerals and hydrocarbons to be extracted;

“instrument” means,

(a) a bill, note or cheque within the meaning of the Bills of Exchange Act (Canada) or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or

R.S.C. 1985, c. B-4
(b) a letter of credit and an advice of credit if the letter or advice states that it must be surrendered upon claiming payment thereunder,

but does not include a writing that constitutes part of chattel paper, a document of title or a security;

“intangible” means all personal property, including choses in action, that is not goods, chattel paper, documents of title, instruments, money or securities;

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

“money” means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada or by a foreign government as part of its currency;

“obligation secured”, for the purposes of determining the amount payable under a lease, means the amount contracted to be paid as rent under the lease and all other amounts that have or may become payable under the lease, including the amount, if any, required to be paid by the lessee to obtain full ownership of the collateral, as of the relevant date, less any amounts paid;

“personal property” means chattel paper, documents of title, goods, instruments, intangibles, money and securities and includes fixtures but does not include building materials that have been affixed to real property;

“prescribed” means prescribed by the regulations;

“proceeds” means identifiable or traceable personal property in any form derived directly or indirectly from any dealing with collateral or the proceeds therefrom, and includes any payment representing indemnity or compensation for loss of or damage to the collateral or proceeds therefrom;

“purchase” includes taking by sale, lease, negotiation, mortgage, pledge, lien, gift or any other consensual transaction creating an interest in personal property;

“purchase-money security interest” means,

(a) a security interest taken or reserved in collateral to secure payment of all or part of its price, or
(b) a security interest taken by a person who gives value for the purpose of enabling the debtor to acquire rights in or to collateral to the extent that the value is applied to acquire the rights,

but does not include a transaction of sale by and lease back to the seller;

“purchaser” means a person who takes by purchase;

“registrar” means the registrar of personal property security;

“regulations” means the regulations made under this Act;

“secured party” means a person who holds a security interest for the person's own benefit or for the benefit of any other person and includes a trustee where the holders of obligations issued, guaranteed or provided for under a security agreement are represented by a trustee as the holder of the security interest and for the purposes of sections 17, 59 to 64, 66 and 67 includes a receiver or receiver and manager;

“security” means a document that is,

(a) issued in bearer, order or registered form,

(b) of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,

(c) one of a class or series or by its terms is divisible into a class or series of documents, and

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

and includes an uncertificated security within the meaning of Part VI (Investment Securities) of the Business Corporations Act, 1982; 1982, c. 4

“security agreement” means an agreement that creates or provides for a security interest and includes a document evidencing a security interest;

“security interest” means an interest in personal property that secures payment or performance of an obligation, and includes, whether or not the interest secures payment or
performance of an obligation, the interest of a transferee of an account or chattel paper;

"trust indenture" means any security agreement by the terms of which a body corporate, with or without share capital and wherever or however incorporated,

(a) issues or guarantees debt obligations or provides for the issue or guarantee of debt obligations, and

(b) appoints a person as trustee for the holders of the debt obligations so issued, guaranteed or provided for;

"value" means any consideration sufficient to support a simple contract and includes an antecedent debt or liability. R.S.O. 1980, c. 375, s. 1, amended.

Fungibles

(2) For the purposes of this Act, fungible goods and fungible securities are goods or securities, as the case may be, of which any unit is, by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement. New.

PART I

APPLICATION AND CONFLICT OF LAWS

2. Subject to subsection 4 (1), this Act applies to,

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

(i) a chattel mortgage, conditional sale, equipment trust, debenture, floating charge, pledge, trust indenture or trust receipt, and

(ii) an assignment, lease or consignment that secures payment or performance of an obligation; and

(b) a transfer of an account or chattel paper even though the transfer may not secure payment or performance of an obligation. R.S.O. 1980, c. 375, s. 2, amended.
3. This Act applies to the Crown and every agency of the Crown.

4.—(1) This Act does not apply,

(a) to a lien given by statute or rule of law, except as provided in subclause 20 (1) (a) (i) or section 31;

(b) to a deemed trust arising under any Act, except as provided in subsection 30 (7);

(c) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity;

(d) to a transaction under the Pawnbrokers Act;

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

(i) an interest in a fixture, or

(ii) an assignment of a right to payment under a mortgage, charge or lease where the assignment does not convey or transfer the assignor's interest in the real property;

(f) to an assignment for the general benefit of creditors to which the Assignments and Preferences Act applies;

(g) to a sale of accounts or chattel paper as part of a transaction to which the Bulk Sales Act applies;

(h) to an assignment of accounts made solely to facilitate the collection of accounts for the assignor; or

(i) to an assignment of an unearned right to payment to an assignee who is to perform the assignor's obligations under the contract. R.S.O. 1980, c. 375, s. 3 (1); 1981, c. 58, s. 1, amended.

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

5.—(1) Except as otherwise provided in this Act, the validity, perfection and effect of perfection or non-perfection of,
(a) a security interest in goods; and

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

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

(2) A security interest in goods perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into Ontario continues perfected in Ontario if a financing statement is registered in Ontario before the goods are brought in or if it is perfected in Ontario,

(a) within sixty days after the goods are brought in;

(b) within fifteen days after the day the secured party receives notice that the goods have been brought in; or

(c) before the date that perfection ceases under the law of the jurisdiction in which the goods were situated at the time the security interest attached,

whichever is earliest, but the security interest is subordinate to the interest of a buyer or lessee of those goods who acquires the goods from the debtor as consumer goods in good faith and without knowledge of the security interest and before the security interest is perfected in Ontario.

(3) Subsection (2) does not apply so as to prevent the perfection of a security interest after the expiry of the time limit set out in that subsection.

(4) Where a security interest mentioned in subsection (1) is not perfected under the law of the jurisdiction in which the collateral was situated at the time the security interest attached and before being brought into Ontario, the security interest may be perfected under this Act.

(5) Where goods brought into Ontario are subject to an unpaid seller's right to revendicate or to resume possession of the goods under the law of the Province of Quebec or any other jurisdiction, the right becomes unenforceable in Ontario twenty days after the goods are brought into Ontario unless the seller registers a financing statement or repossesses the goods within that twenty-day period. New.
6.—(1) Subject to section 7, if the parties to a security agreement creating a security interest in goods in one jurisdiction understand at the time the security interest attaches that the goods will be kept in another jurisdiction, and the goods are removed to that other jurisdiction, for purposes other than transportation through the other jurisdiction, within thirty days after the security interest attached, the validity, perfection and effect of perfection or non-perfection of the security interest shall be governed by the law of the other jurisdiction.

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

7.—(1) The validity, perfection and effect of perfection or non-perfection,

(a) of a security interest in,

(i) an intangible, or

(ii) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others; and

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

shall be governed by the law of the jurisdiction where the debtor is located at the time the security interest attaches.

(2) If a debtor changes location to Ontario, a perfected security interest referred to in subsection (1) continues perfected in Ontario if it is perfected in Ontario,

(a) within sixty days from the day the debtor changes location;

(b) within fifteen days from the day the secured party receives notice that the debtor has changed location; or

(c) prior to the day that perfection ceases under the law of the jurisdiction referred to in subsection (1), whichever is the earliest.
(3) A security interest that is not perfected as provided in subsection (2) may be otherwise perfected under this Act.

(4) For the purpose of this section, a debtor shall be deemed to be located at the debtor's place of business if there is one, at the debtor's chief executive office if there is more than one place of business, and otherwise at the debtor's principal place of residence. New.

8.—(1) Despite sections 5, 6 and 7,

(a) procedural matters affecting the enforcement of the right of a secured party in respect of collateral other than intangibles are governed by the law of the jurisdiction in which the collateral is located at the time of the exercise of those rights;

(b) procedural matters affecting the enforcement of the rights of a secured party against intangibles are governed by the law of the forum; and

(c) substantive matters affecting the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.

(2) For the purposes of this Part, a security interest shall be deemed to be perfected under the law of a jurisdiction if the secured party has complied with the law of the jurisdiction with respect to the creation and continuance of a security interest that is enforceable against the debtor and third parties. New.

PART II

VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

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

(2) A security agreement is not unenforceable against a third party by reason only of a defect, irregularity, omission or error therein or in the execution thereof unless the third party is actually misled by the defect, irregularity, omission or error. New.
Without restricting the generality of subsection (2), the failure to describe some of the collateral in a security agreement does not affect the effectiveness of the security agreement with respect to the collateral that is described.  

10. 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 the execution thereof, and, if the secured party fails to do so after a request by the debtor, the District Court, on the application of the debtor, may order the delivery of such a copy to the debtor.  R.S.O. 1980, c. 375, s. 11, amended.

11.—(1) A security interest is not enforceable against a third party unless it has attached.

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

(a) the secured party or a person on behalf of the secured party other than the debtor or the debtor’s agent obtains possession of the collateral or when the debtor signs a security agreement that contains a description of the collateral sufficient to enable it to be identified;

(b) value is given; and

(c) the debtor has rights in the collateral,

unless the parties have agreed to postpone the time for attachment, in which case the security interest attaches at the agreed time.  R.S.O. 1980, c. 375, ss. 10, 12 (1), amended.

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

(a) crops until they become growing crops;

(b) fish until they are caught;

(c) the young of animals until they are conceived;

(d) minerals or hydrocarbons until they are extracted; or

(e) timber until it is cut.  R.S.O. 1980, c. 375, s. 12 (2), amended.


12. (1) A security agreement may cover after-acquired property.

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

(a) to crops that become such more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage; or

(b) to consumer goods, other than accessions, unless the debtor acquires rights in them within ten days after the secured party gives value. R.S.O. 1980, c. 375, s. 13, amended.

13. A security agreement may secure future advances. R.S.O. 1980, c. 375, s. 15, amended.

14. (1) An agreement by a debtor not to assert against an assignee any claim or defence that the debtor has against the debtor's seller or lessor is enforceable by the assignee who takes the assignment for value, in good faith and without notice, except as to such defences as may be asserted against a holder in due course of a negotiable instrument under the Bills of Exchange Act (Canada). R.S.O. 1980, c. 375, s. 16.

(2) Subsection (1) does not apply to an assignment to which section 31 of the Consumer Protection Act applies. New.

15. Where a seller retains a purchase-money security interest in goods,

(a) the Sale of Goods Act governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties; and

(b) except as provided in section 14, the conditions and warranties in a sale agreement shall not be affected by any security agreement. R.S.O. 1980, c. 375, s. 17, amended.

16. Where a security agreement provides that the secured party may accelerate payment or performance if the secured party considers that the collateral is in jeopardy or that the secured party is insecure, the agreement shall be construed to mean that the secured party may accelerate payment or per-
formance 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. R.S.O. 1980, c. 375, s. 18, amended.

17.—(1) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party’s possession, and, unless otherwise agreed, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties. R.S.O. 1980, c. 375, s. 19 (1).

(2) Unless otherwise agreed, where collateral is in the secured party’s possession,

(a) reasonable expenses, including the cost of insurance and payment of taxes and 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 where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;

(c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the obligation secured;

(d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor’s right to redeem it. R.S.O. 1980, c. 375, s. 19 (2), amended.

(3) A secured party is liable for any loss or damage caused by the secured party’s failure to meet any obligations imposed by subsection (1) or (2), but does not lose the security interest in the collateral.

(4) A secured party may use the collateral,
(a) in the manner and to the extent provided in the security agreement;

(b) for the purpose of preserving the collateral or its value; or

(c) pursuant to an order of,

(i) the court before which a question relating thereto is being heard, or

(ii) the District Court upon application by the secured party.

(5) A secured party,

(a) is liable for any loss or damage caused by the secured party’s use of the collateral otherwise than as authorized by subsection (4); and

(b) is subject to being ordered or restrained as provided in subsection 67 (1). R.S.O. 1980, c. 375, s. 19 (3-5).

18.—(1) A person who is a debtor or judgment creditor or who has an interest in the collateral or who is the authorized representative of such a person, by a notice in writing given to the secured party and containing an address for reply, may require the secured party to furnish to the person any one or more of,

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

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

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

(d) a true copy of the security agreement; or

(e) sufficient information as to the location of the security agreement or a true copy thereof so as to enable inspection of the security agreement or copy.
(2) Clauses (1) (a), (b) and (c) do not apply where the secured party is the trustee under a trust indenture.

(3) The secured party, on the reasonable request of a person entitled to receive a true copy of the security agreement under clause (1) (d), shall permit the person or the person’s authorized representative to inspect the security agreement or a true copy thereof during normal business hours at the location disclosed under clause (1) (e).

(4) If the secured party claims a security interest in all of the collateral or in all of a particular type of collateral owned by the debtor, the secured party may so indicate in lieu of approving or correcting the list of such collateral as required by clause (1) (b).

(5) Subject to the payment of any charge required under subsection (7), the secured party shall answer a notice given under subsection (1) within fifteen days after receiving it, and, if without reasonable excuse,

(a) the secured party does not answer within such fifteen-day period, the secured party is liable for any loss or damage caused thereby to any person who is entitled to receive information under this section; or

(b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer.

(6) Where the person receiving a notice under subsection (1) no longer has a security interest in the collateral, the person shall, within fifteen days after receiving the notice, disclose the name and address of the latest successor in interest known to the person, and, if without reasonable excuse the person fails to do so or the answer is incomplete or incorrect, the person is liable for any loss or damage caused thereby to any person entitled to receive information under this section.

(7) The secured party may require payment in advance of the charge prescribed for each statement or copy of the security agreement required under subsection (1), but the debtor is entitled to a statement without charge once in every six months.

(8) On an application to the District Court, the court, by order, may,
(a) exempt, in whole or in part, the secured party from complying with a notice given under subsection (1), or a request under subsection (3), if the person giving the notice, not being the debtor, does not establish to the satisfaction of the court that the person has an interest in the collateral or that the person is a judgment creditor;

(b) extend the time for complying with the notice given under subsection (1);

(c) require the secured party to comply with a notice given under subsection (1) or a request under subsection (3); or

(d) make such other order as it considers just.

(9) An order made under clause (8) (b) or (c) does not affect the liability of the secured party under subsection (5).

(10) Despite subsection (9), where the secured party applies to the District Court for an extension of time under clause (8) (b) within fifteen days of receiving a notice under subsection (1) and the court makes an order extending the time for compliance, the secured party shall answer the notice within the time as extended and not within the time as required by subsection (5) and, if without reasonable excuse,

(a) the secured party fails to answer the notice within the time as extended, the secured party is liable for any loss or damage caused thereby to any person entitled to receive information under this section; or

(b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer. R.S.O. 1980, c. 375, s. 20, amended.

PART III

PERFECTION AND PRIORITIES

19. A security interest is perfected when,

(a) it has attached; and

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

20.—(1) Except as provided in subsection (3), until perfected, a security interest,

(a) in collateral is subordinate to the interest of,

(i) a person who has a perfected security interest in the same collateral or who has a lien given under any other Act or by a rule of law or who has a priority under any other Act, or

(ii) a person who assumes control of the collateral through execution, attachment, garnishment, charging order, equitable execution or other legal process, or

(iii) all persons entitled by the Creditors' Relief Act or otherwise to participate in the distribution of the property over which a person described in subclause (ii) has assumed control, or the proceeds of such property;

(b) in collateral is not effective against a person who represents the creditors of the debtor, including an assignee for the benefit of creditors and a trustee in bankruptcy;

(c) in chattel paper, documents of title, securities, instruments or goods is not effective against a transferee thereof who takes under a transfer that does not secure payment or performance of an obligation and who gives value and receives delivery thereof without knowledge of the security interest;

(d) in intangibles other than accounts is not effective against a transferee thereof who takes under a transfer that does not secure payment or performance of an obligation and who gives value without knowledge of the security interest.

(2) The rights of a person,

(a) who has a statutory lien referred to in subclause (1) (a) (i) arise,

(i) in the case of the bankruptcy of the debtor, at the effective date of the bankruptcy, or
(ii) in any other case, when the lienholder has taken possession or otherwise done everything necessary to make the lien enforceable in accordance with the provisions of the Act creating the lien;

(b) under clause (1) (b) in respect of the collateral are to be determined as of the date from which the person’s representative status takes effect.

(3) A purchase-money security interest that is perfected by registration,

(a) in collateral, other than an intangible, before or within ten days after,

(i) the debtor obtains possession of the collateral, or

(ii) a third party, at the request of the debtor, obtains possession of the collateral,

whichever is earlier; or

(b) in an intangible before or within ten days after the attachment of the security interest in the intangible, has priority over,

(c) an interest set out in subclause (1) (a) (ii) and is effective against a person described in clause (1) (b); and

(d) the interest of a transferee of collateral that forms all or part of a sale in bulk within the meaning of the Bulk Sales Act. R.S.O. 1980, c. 375, s. 22, amended.

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

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

22. Possession or repossession of the collateral by the secured party, or on the secured party’s behalf by a person
other than the debtor or the debtor's agent, perfects a security interest in,

(a) chattel paper;

(b) goods;

(c) instruments;

(d) securities;

(e) negotiable documents of title; and

(f) money,

but only while it is actually held as collateral. R.S.O. 1980, c. 375, s. 24, amended.

23. Registration perfects a security interest in any type of collateral. *New.*

24.—(1) A security interest in instruments, securities or negotiable documents of title is a perfected security interest for the first ten days after it attaches to the extent that it arises for new value secured by a written security agreement. R.S.O. 1980, c. 375, s. 26 (1).

(2) A security interest perfected by possession in,

(a) an instrument or a security that a secured party delivers to the debtor for,

(i) ultimate sale or exchange,

(ii) presentation, collection or renewal, or

(iii) registration of transfer; or

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

(i) ultimate sale or exchange,

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

remains perfected for the first ten days after the collateral comes under the control of the debtor. R.S.O. 1980, c. 375, s. 26 (2), amended.

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

25.—(1) Where collateral gives rise to proceeds, the security interest therein,

(a) continues as to the collateral, unless the secured party expressly or impliedly authorized the dealing with the collateral; and

(b) extends to the proceeds. R.S.O. 1980, c. 375, s. 27 (1), amended.

(2) Where the security interest was perfected by registration when the proceeds arose, the security interest in the proceeds remains continuously perfected so long as the registration remains effective or, where the security interest is perfected with respect to the proceeds by any other method permitted under this Act, for so long as the conditions of such perfection are satisfied.

(3) A security interest in proceeds is a continuously perfected security interest if the interest in the collateral was perfected when the proceeds arose.

(4) If a security interest in collateral was perfected otherwise than by registration, the security interest in the proceeds becomes unperfected ten days after the debtor acquires an interest in the proceeds unless the security interest in the proceeds is perfected under this Act.

(5) Where a motor vehicle, as defined in the regulations, is proceeds, a person who buys or leases the vehicle as consumer goods in good faith takes it free of any security interest therein that extends to it under clause (1) (b) even though it is perfected under subsection (2) unless the secured party has registered a financing change statement that sets out the vehicle identification number in the designated place. New.
26.—(1) A security interest in goods in the possession of a bailee who has issued a negotiable document of title covering them is perfected by perfecting a security interest in the document, and any security interest in them otherwise perfected while they are so covered is subject thereto. R.S.O. 1980, c. 375, s. 28 (1).

(2) A security interest in collateral in the possession of a person, other than the debtor, the debtor’s agent or a bailee mentioned in subsection (1), is perfected by,

(a) issuance of a document of title in the name of the secured party;
(b) possession on behalf of the secured party; or
(c) registration. R.S.O. 1980, c. 375, s. 28 (2), amended.

27.—(1) Where a debtor sells or leases goods that are subject to a security interest, the security interest in the goods reattaches to the goods, if,

(a) the buyer or lessee has taken free of the security interest under clause 25 (1) (a) or subsection 28 (1) or (2);
(b) the goods are returned to or repossessed by the debtor; and
(c) the obligation secured remains unpaid or unperformed.

(2) Where a security interest in goods reattaches under subsection (1), then any question as to,

(a) whether or not the security interest in the goods is perfected; and
(b) the time of its perfection or registration,

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

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

(a) the account or chattel paper is transferred to a secured party; and
(b) the goods are returned to or repossessed by the seller or lessor,

the transferee has a security interest in the goods.

(4) A security interest in goods arising under subsection (3) is perfected if the security interest in the account or chattel paper was also perfected but becomes unperfected on the expiration of ten days after the return or repossession of the goods unless the transferee registers a financing statement in respect of the security interest in, or takes possession of, the goods before the expiry of that period.

(5) Where a transferee of an account has a perfected security interest in goods under subsections (3) and (4), for the purpose of determining the transferee’s priority as to the goods, the transferee shall be deemed to have perfected a security interest in the goods at the time the transferee’s security interest in the account was perfected.

(6) Where a transferee of chattel paper has a perfected security interest in goods under subsections (3) and (4),

(a) as between the transferee and the holder of a perfected security interest that attached under subsection (1), the person who had priority as to the chattel paper also has priority as to the goods; and

(b) as between the transferee and a person other than the holder of a perfected security interest that attached under subsection (1), for the purpose of determining the transferee’s priority as to the goods, the transferee shall be deemed to have perfected a security interest in the goods at the time the transferee’s security interest in the chattel paper was perfected. R.S.O. 1980, c. 375, s. 29, amended.

28.—(1) A buyer of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by the seller even though it is perfected and the buyer knows of it, unless the buyer also knew that the sale constituted a breach of the security agreement.

(2) A lessee of goods from a lessor who leases the goods in the ordinary course of business holds the goods, to the extent of the lessee’s rights under the lease, free from any security interest therein given by the lessor even though it is perfected.
and the lessee knows of it, unless the lessee also knew that the lease constituted a breach of the security agreement.

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

(a) that was perfected by registration if the purchaser did not know at the time of taking possession that the chattel paper was subject to a security interest; or

(b) that has attached to proceeds of inventory under section 25, whatever the extent of the purchaser's knowledge.

(4) A purchaser of collateral that is an instrument or negotiable document of title has priority over any security interest therein perfected by registration or temporarily perfected under section 23 or 24 if the purchaser,

(a) gave value for the interest purchased;

(b) purchased the collateral without knowledge that it was subject to a security interest; and

(c) has taken possession of the collateral.

(5) Where a motor vehicle, as defined in the regulations, is sold other than in the ordinary course of business of the seller and the motor vehicle is classified as equipment of the seller, the buyer takes it free from any security interest therein given by the seller even though it is perfected by registration unless the vehicle identification number of the motor vehicle is set out in the designated place on a registered financing statement or financing change statement or unless the buyer knew that the sale constituted a breach of the security agreement.

(6) A bona fide purchaser of a security, whether in the form of a security certificate or an uncertificated security, who has taken possession of it, has priority over any security interest in it perfected by registration or temporarily perfected under section 23 or 24.

(7) A purchaser of a security, whether in the form of a security certificate or an uncertificated security, who purchases the security in the ordinary course of business and has taken possession of it, has priority over any security interest in it perfected by registration or temporarily perfected under sec-
tion 23 or 24, even though the purchaser knows of the security interest, if the purchaser did not know the purchase constituted a breach of the security agreement.

(8) For the purposes of subsections (6) and (7), "bona fide purchaser", "purchaser", "security", "security certificate" and "uncertificated security" have the same meaning as in sections 53 and 85 of the Business Corporations Act, 1982.

New.

29. The rights of a person who is,

(a) a holder in due course of a bill, note or cheque within the meaning of the Bills of Exchange Act (Canada); or

(b) a transferee from the debtor of money,

are to be determined without regard to this Act. R.S.O. 1980, c. 375, s. 31 (1), amended.

30.—(1) If no other provision of this Act is applicable, the following priority rules apply to security interests in the same collateral:

1. Where priority is to be determined between security interests perfected by registration, priority shall be determined by the order of registration regardless of the order of perfection.

2. Where priority is to be determined between a security interest perfected by registration and a security interest perfected otherwise than by registration,

   i. the security interest perfected by registration has priority over the other security interest if the registration occurred before the perfection of the other security interest, and

   ii. the security interest perfected otherwise than by registration has priority over the other security interest, if the security interest perfected otherwise than by registration was perfected before the registration of a financing statement related to the other security interest.

3. Where priority is to be determined between security interests perfected otherwise than by registration,
priority shall be determined by the order of perfection.

4. Where priority is to be determined between unperfected security interests, priority shall be determined by the order of attachment. R.S.O. 1980, c. 375, s. 35 (1), amended.

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

(3) Subject to subsection (4), where future advances are made while a security interest is perfected, the security interest has the same priority with respect to each future advance as it has with respect to the first advance.

(4) A future advance under a perfected security interest is subordinate to the rights of persons mentioned in subclauses 20 (1) (a) (ii) and (iii) if the advance was made after the secured party received written notification of the interest of any such person unless,

(a) the secured party makes the advance for the purpose of paying reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral and its preservation; or

(b) the secured party is bound to make the advance, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the obligation.

(5) For the purpose of subsection (1), the date for registration or perfection as to collateral is also the date for registration or perfection as to proceeds.

(6) Where a security interest that is perfected by registration becomes unperfected and is again perfected by registration, the security interest shall be deemed to have been continuously perfected from the time of first perfection except that if a person acquired rights in all or part of the collateral during the period when the security interest was unperfected, the registration shall not be effective as against the person who acquired the rights during such period. New.
(7) A security interest in an account or inventory and its proceeds is subordinate to the interest of a person who is the beneficiary of a deemed trust arising under the Employment Standards Act or under the Pension Benefits Act, 1987.

(8) Subsection (7) does not apply to a perfected purchase-money security interest in inventory or its proceeds.

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

32.—(1) A perfected security interest in crops or their proceeds, given not more than six months before the crops become growing crops by planting or otherwise, to enable the debtor to produce the crops during the production season, has priority over an earlier perfected security interest in the same collateral to the extent that the earlier interest secures obligations that were due more than six months before the crops become growing crops by planting or otherwise even though the person giving value has notice of the earlier security interest.

(2) Where more than one perfected security interest is given priority by subsection (1), each ranks equally according to the ratio that the amount advanced with respect to each bears to the total amount advanced. R.S.O. 1980, c. 375, s. 34 (1), amended.

33.—(1) A purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor, if,

(a) the purchase-money security interest was perfected at the time,

(i) the debtor obtained possession of the inventory, or

(ii) a third party, at the request of the debtor, obtained or held possession of the inventory, whichever is earlier;

(b) before the debtor receives possession of the inventory, the purchase-money secured party gives notice...
in writing to every other secured party who has registered a financing statement in which the collateral is classified as inventory before the date of registration by the purchase-money secured party; and

(c) the notice referred to in clause (b) states that the person giving it has or expects to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by item or type.

(2) Except where the collateral or its proceeds is inventory or its proceeds, a purchase-money security interest in collateral or its proceeds has priority over any other security interest in the same collateral given by the same debtor if the purchase-money security interest,

(a) in the case of collateral, other than an intangible, was perfected before or within ten days after,

(i) the debtor obtained possession of the collateral as a debtor, or

(ii) a third party, at the request of the debtor, obtained or held possession of the collateral, whichever is earlier; or

(b) in the case of an intangible, was perfected before or within ten days after the attachment of the purchase-money, security interest in the intangible.

R.S.O. 1980, c. 375, s. 34 (2, 3), amended.

(3) Where more than one purchase-money security interest is given priority by subsections (1) and (2), the purchase-money security interest, if any, of the seller has priority over any other purchase-money security interest given by the same debtor. New.

34.—(1) A security interest in goods that attached,

(a) before the goods became a fixture, has priority as to the fixture over the claim of any person who has an interest in the real property; or

(b) after the goods became a fixture, has priority as to the fixture over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered interest in the real property at the time the security interest in the goods attached and who has not con-
presented in writing to the security interest or disclaimed an interest in the fixture.

Exceptions

(2) A security interest mentioned in subsection (1) is subordinate to the interest of,

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

(b) a creditor with a prior encumbrance of record on the real property to the extent that the creditor makes subsequent advances,

if the subsequent purchase or subsequent advance under a prior encumbrance of record is made or contracted for without knowledge of the security interest and before notice of it is registered in accordance with section 54.

Removal of collateral

(3) If a secured party has an interest in a fixture that has priority over the claim of a person having an interest in the real property, the secured party may, on default and subject to the provisions of this Act respecting default, remove the fixture from the real property if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury but excluding diminution in the value of the real property caused by the absence of the fixture or by the necessity for replacement.

Security

(4) A person entitled to reimbursement under subsection (3) may refuse permission to remove the fixture until the secured party has given adequate security for the reimbursement. R.S.O. 1980, c. 375, s. 36 (1-4), amended.

Notice

(5) A secured party who has the right to remove a fixture from real property shall serve, on each person who appears by the records of the proper land registry office to have an interest in the real property, a notice in writing of the secured party's intention to remove the fixture containing,

(a) the name and address of the secured party;

(b) a description of the fixture to be removed sufficient to enable it to be identified;

(c) the amount required to satisfy the obligation secured by the security interest of the secured party;
(d) a description of the real property to which the fixture is affixed sufficient to enable the real property to be identified; and

(e) a statement of intention to remove the fixture unless the amount secured is paid on or before a specified day that is not less than ten days after service of the notice.

(6) The notice mentioned in subsection (5) shall be served in accordance with section 68 or by registered mail addressed to the person to whom notice is to be given at the address furnished under section 166 of the Land Titles Act or section 37 of the Registry Act, or where no such address has been furnished, addressed to the solicitor whose name appears on the registered instrument by which the person appears to have an interest. New.

(7) A person having an interest in real property that is subordinate to a security interest in a fixture may, before the fixture has been removed from the real property by the secured party in accordance with subsection (3), retain the fixture upon payment to the secured party of the amount owing in respect of the security interest having priority over the person’s interest. R.S.O. 1980, c. 375, s. 36 (5), amended.

35.—(1) Subject to subsections (2) and (3) of this section and section 37, a security interest in goods that attached,

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

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

(2) A security interest referred to in subsection (1),

(a) is subordinate to the interest of,

(i) a subsequent buyer of an interest in the whole, and

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Retention of collateral
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(ii) a creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advances,

if the subsequent sale or subsequent advance under the prior perfected security interest is made or contracted for before the security interest is perfected; and

(b) is subordinate to the interest of a creditor of the debtor who assumes control of the whole through execution, attachment, garnishment, charging order, equitable execution or other legal process, if control is assumed before the security interest is perfected. R.S.O. 1980, c. 375, s. 37 (1, 2), amended.

(3) Despite clause (2) (b), a purchase-money security interest in an accession that is perfected before or within ten days after the debtor obtains possession of the accession has priority over the interest of a creditor referred to in that clause. New.

(4) If a secured party has an interest in an accession that has priority over the claim of any person having an interest in the whole, the secured party may, on default and subject to the provisions of this Act respecting default, remove the accession from the whole if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the whole who is not the debtor for the cost of repairing any physical injury excluding diminution in value of the whole caused by the absence of the accession or by the necessity for replacement.

(5) A person entitled to reimbursement under subsection (4) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement. R.S.O. 1980, c. 375, s. 37 (3), amended.

(6) The secured party who has the right to remove an accession from the whole shall serve, on each person known to the secured party as having an interest in the other goods and on any person with a security interest in such other goods perfected by registration against the name of the debtor or against the vehicle identification number of such other goods, if such number is required for registration, a notice in writing of the secured party’s intention to remove the accession containing,

(a) the name and address of the secured party;
(b) a description of the accession to be removed sufficient to enable it to be identified;

(c) the amount required to satisfy the obligations secured by the security interest of the secured party;

(d) a description of the other goods sufficient to enable them to be identified; and

(e) a statement of intention to remove the accession from the whole unless the amount secured is paid on or before a specified day that is not less than ten days after service of the notice.

(7) The notice mentioned in subsection (6) shall be served in accordance with section 68 at least ten days before the accession is removed. New.

(8) A person having an interest in the whole that is subordinate to a security interest in the accession may, before the accession has been removed by the secured party in accordance with subsection (3), retain the accession upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest. R.S.O. 1980, c. 375, s. 37 (4), amended.

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

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

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

38. A secured party may, in the security agreement or otherwise, subordinate the secured party’s security interest to any other security interest and such subordination is effective according to its terms. R.S.O. 1980, c. 375, s. 39, amended.

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

40.—(1) Unless a person obligated on an account or on chattel paper has made an enforceable agreement not to assert defences or claims arising out of a contract, the rights of an assignee are subject to,

(a) all the terms of the contract between the person and the assignor and any defence or claim arising therefrom; and

(b) any other defence or claim of the person against the assignor that accrued before the person received notice of the assignment.

(2) A person obligated on an account or on chattel paper may pay the assignor until the person receives notice, reasonably identifying the relevant rights, that the account or chattel paper has been assigned, and, if requested by the person, the assignee shall furnish proof within a reasonable time that the assignment has been made, and, if the assignee does not do so, the person may pay the assignor. R.S.O. 1980, c. 375, s. 40 (1, 2), amended.

(3) To the extent that the right to payment or part payment under an assigned contract has not been earned by performance, and despite notice of the assignment, any modification of or substitution for the contract, made in good faith and in accordance with reasonable commercial standards and without material adverse effect upon the assignee’s right under or the assignor’s ability to perform the contract, is effective against an assignee unless the person obligated on the account or chattel paper has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract. New.
PART IV
REGISTRATION

41.—(1) A registration system, including a central office and branch offices, shall be maintained for the purposes of this Act and the Repair and Storage Liens Act, 1989. R.S.O. 1980, c. 375, s. 41 (1), amended.

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

(3) Branch offices of the registration system shall be established at such places as are designated by the regulations. R.S.O. 1980, c. 375, s. 41 (2, 3).

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

(2) The registrar shall be the public servant designated as registrar by the Minister of Consumer and Commercial Relations.

(3) The branch registrars shall be those public servants designated by name or position as branch registrars by the registrar.

(4) The registrar shall have a seal of office in such form as the Lieutenant Governor in Council may by order approve. R.S.O. 1980, c. 375, s. 42, amended.

(5) No action or other proceeding for damages shall be instituted against the registrar or any person employed in the Ministry of Consumer and Commercial Relations for any act done in good faith in the execution or intended execution of the person's duty under this Act or the Repair and Storage Liens Act, 1989 or for any alleged neglect or default in the execution in good faith of the person's duty thereunder.

(6) Despite subsections 5 (2) and (4) of the Proceedings Against the Crown Act but subject to subsection 44 (18), subsection (5) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (5) to which it would otherwise be subject.

(7) The registrar and each branch registrar may designate one or more public servants to act on his or her behalf. R.S.O. 1980, c. 375, s. 43.
43.—(1) Upon the request of any person for a search of
the individual debtor name index, business debtor name index
or motor vehicle identification number index and upon pay-
ment of the prescribed fee, the registrar shall issue a certifi-
cate stating,

(a) whether, at the time mentioned in the certificate,
there is registered a financing statement or a financ-
ing change statement the registration of which is
recorded in the central file of the registration sys-
tem in which the name or number with respect to
which the inquiry is made is shown in the design-
nated place on the financing statement or financing
change statement as a debtor or as a motor vehicle
identification number, as the case may be, and, if
there is, the registration number of it and any other
recorded information;

(b) whether, at the time mentioned in the certificate,
there is entered in the central file of the registration
system any information required or permitted to be
entered by section 78 in which the name with
respect to which the inquiry is made is shown as
dealer; and

(c) whether, at the time mentioned in the certificate,
there is registered a claim for lien or a change state-
ment under the Repair and Storage Liens Act, 1989
the registration of which is recorded in the central
file of the registration system in which the name or
number with respect to which the inquiry is made is
shown in the designated place on the claim for lien
or change statement as an owner or as a motor
vehicle identification number, as the case may be,
and, if there is, the registration number of it and
any other recorded information.

(2) A certificate issued under subsection (1) is prima facie
proof of the contents thereof.

(3) A certificate issued under subsection (1) may include
information relating to a registered financing statement or
financing change statement recorded in the central file of the
registration system which sets out in the designated place a
dealer name or vehicle identification number which is similar,
in the opinion of the registrar, to the name or number with
respect to which the inquiry is made.

(4) Upon the request of any person and upon payment of
the prescribed fee, the registrar shall furnish the person with a
certified copy of a registered financing statement or a registered financing change statement.

(5) A certified copy furnished under subsection (4) is *prima facie* proof of the contents of the document so certified. R.S.O. 1980, c. 375, s. 44, amended.

**44.—(1)** The account in the Consolidated Revenue Fund known as “The Personal Property Security Assurance Fund” is hereby continued.

(2) The prescribed portion of the fees received under this Act shall be paid into the Assurance Fund. R.S.O. 1980, c. 375, s. 45 (1), amended.

(3) Interest shall be credited to the Assurance Fund out of the Consolidated Revenue Fund at a rate to be determined from time to time by the Lieutenant Governor in Council, and such interest shall be made up at the close of each fiscal year upon the balance in the Assurance Fund at the end of the previous calendar year. R.S.O. 1980, c. 375, s. 45 (2).

(4) Any person who suffers loss or damage as a result of the person’s reliance upon a certificate of the registrar issued under section 43 that is incorrect because of an error or omission in the operation of the system of registration, recording and production of information under this Part or section 78 or under the *Repair and Storage Liens Act, 1989* is entitled to be paid compensation out of the Assurance Fund so far as the Assurance Fund is sufficient for that purpose, having regard to any claims which have been approved but have not been paid.

(5) A person claiming to be entitled to payment of compensation out of the Assurance Fund shall file an application with the registrar, setting out the person’s name and address and particulars of the claim.

(6) A claim against the Assurance Fund must be made within one year from the time that the loss or damage giving rise to the claim came to the claimant’s knowledge.

(7) For the purposes of this section, where the holders of debt obligations issued, guaranteed or provided for under a security agreement are represented by a trustee or other person and the trustee or other person has relied upon a certificate of the registrar issued under section 43, all of the holders of the debt obligations shall be deemed to have relied on the certificate, and where a claim is made against the Assurance
Duty of registrar

(8) The registrar shall determine a claim against the Assurance Fund within ninety days of receiving an application for compensation and,

(a) where the registrar determines that the claim should not be paid, the registrar shall forthwith advise the claimant of the decision; or

(b) where the registrar determines that the claimant is entitled to a payment out of the Assurance Fund, the registrar shall make an offer of settlement in satisfaction of the claim,

and the decision or offer of settlement shall be deemed to be confirmed thirty days after the mailing thereof to the claimant unless the claimant requests a hearing under subsection (9).

Hearing

(9) Where the registrar makes a decision under clause (8) (a) or an offer of settlement under clause (8) (b) that is for less than the full amount of the claim, the claimant, within thirty days from the day that the decision or offer is mailed to the claimant, may request the Director of Titles appointed under the Land Titles Act to hold a hearing to determine the claimant's entitlement to compensation and the request shall be in writing.

Idem

(10) As soon as possible after receiving a request under subsection (9), the Director of Titles or, where a person has been appointed under subsection (11), the person so appointed shall hold a hearing and decide the claimant's entitlement to compensation and, if he or she considers it appropriate, award costs.

Delegation

(11) The Director of Titles may appoint a person to act on his or her behalf in the hearing of a claim for compensation under this section.

Confirmation of decision

(12) A decision under subsection (10) shall be deemed to be confirmed at the expiration of thirty days from the date of the mailing of the decision to the claimant, unless a notice of an application under subsection (14) is served on the Director of Titles within that time.

Application to District Court

(13) Where the registrar fails to determine a claim for compensation under subsection (8) within ninety days, the District Court, on the application of the claimant made within sixty
days of the expiry of the ninety-day period, may order the payment of such compensation as is set out in the order.

(14) Where the claimant is dissatisfied with a decision under subsection (10), the District Court, on the application of the claimant made within thirty days of the mailing of the decision to the claimant, may order that the decision under subsection (10) be set aside and may order the payment of such compensation as may be set out in the order.

(15) When an offer of settlement has been accepted or the time for an application under subsection (13) or (14) has expired or, where an application has been made, it is disposed of and it is finally determined that the claimant is entitled to payment of compensation out of the Assurance Fund, the registrar shall certify to the Treasurer of Ontario the sum found to be payable, including any costs awarded to the claimant, and the Treasurer shall pay the sum to the claimant out of the Assurance Fund.

(16) Where compensation is paid to a claimant under this section, the registrar is subrogated to the rights of the claimant to the amount so paid against any person indebted to the claimant and whose debt to the claimant was the basis of the loss or damage in respect of which the claimant was paid, and the registrar may enforce those rights by action in court or otherwise in the name of Her Majesty in right of Ontario.

(17) The registrar may require a claimant to exhaust the claimant's remedies against the collateral, the debtor and any guarantor and, where the registrar does so, the Assurance Fund is liable for the reasonable costs of the claimant, including solicitor and client costs.

(18) No action or other proceeding for damages shall be instituted against the Crown with respect to any matter in relation to which a claim against the Assurance Fund has been filed.

(19) No claim shall be filed against the Assurance Fund with respect to any matter in relation to which an action or other proceeding for damages has been commenced in any court against the Crown.

(20) The maximum amount that may be paid out of the Assurance Fund with respect to claims related to any one security agreement shall not exceed $1,000,000 in total.

(21) If the total of all claims against the Assurance Fund in respect of a security agreement exceeds $1,000,000, payments
to claimants shall be made in accordance with the ratio that the amount of the claimant's loss bears to the total amount of the losses of all claimants. *New.*

45.—(1) In order to perfect a security interest by registration under this Act, a financing statement shall be registered. R.S.O. 1980, c. 375, s. 47 (1), *amended.*

(2) Where the collateral is consumer goods, the financing statement referred to in subsection (1) shall not be registered before the security agreement is signed by the debtor and, where a financing statement is registered in contravention of this subsection, the registration of the financing statement does not constitute registration or perfection under this Act.

(3) Where the collateral is not consumer goods, the financing statement referred to in subsection (1) may be registered before or after the security agreement is signed by the debtor.

(4) Except where the collateral is consumer goods, one financing statement may perfect one or more security interests created or provided for in one or more security agreements between the parties. *New.*

46.—(1) A financing statement or financing change statement to be registered under this Act may be tendered for registration,

(a) by delivery to any branch office; or

(b) by mail addressed to an address fixed by the regulations. R.S.O. 1980, c. 375, s. 46, *amended.*

(2) Every financing statement and financing change statement to be registered under this Act shall be in the prescribed form.

(3) Except with respect to rights to proceeds, where a financing statement or financing change statement sets out a classification of collateral and also contains words that appear to limit the scope of the classification, then, unless otherwise indicated in the financing statement or financing change statement, the secured party may claim a security interest perfected by registration only in the class as limited. *New.*

(4) A financing statement or financing change statement is not invalidated nor is its effect impaired by reason only of an error or omission therein or in its execution or registration unless a reasonable person is likely to be misled materially by
the error or omission. R.S.O. 1980, c. 375, ss. 4, 47 (5), amended.

(5) Registration of a financing statement or financing change statement,

(a) does not constitute constructive notice or knowledge to or by third parties of the existence of the financing statement or financing change statement or of the contents thereof; and

(b) does not create a presumption that this Act applies to the transaction to which the registration relates.

(6) Where a financing statement or financing change statement is registered, the secured party shall deliver to the debtor within thirty days after the date of registration,

(a) a copy of the registered financing statement or financing change statement; or

(b) a copy of a verification statement in the prescribed form.

(7) Where the secured party without reasonable excuse fails to deliver a copy required under subsection (6), the secured party shall pay $500 to the debtor which sum is recoverable in the Provincial Court (Civil Division). New.

47.—(1) A financing change statement may be registered where a security interest is perfected by registration and the secured party has assigned the secured party’s interest in all or part of the collateral. R.S.O. 1980, c. 375, s. 48 (1), amended.

(2) Where a security interest has not been perfected by registration and the secured party has assigned the secured party’s interest, a financing statement referred to in section 46 may be registered,

(a) naming the assignor as the secured party and subsection (1) applies; or

(b) naming the assignee as the secured party and subsection (1) does not apply. R.S.O. 1980, c. 375, s. 48 (2), amended.

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

48.—(1) Where a security interest is perfected by registration and the debtor, with the prior consent of the secured party, transfers the debtor’s interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected fifteen days after the transfer is made unless the secured party registers a financing change statement within such fifteen days. R.S.O. 1980, c. 375, s. 49 (1), amended.

(2) Where a security interest is perfected by registration and the debtor, without the prior consent of the secured party, transfers the debtor’s interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected thirty days after the later of,

(a) the transfer, if the secured party had prior knowledge of the transfer and if the secured party had, at the time of the transfer, the information required to register a financing change statement; and

(b) the day the secured party learns the information required to register a financing change statement,

unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days.

(3) Where a security interest is perfected by registration and the secured party learns that the name of the debtor has changed, the security interest in the collateral becomes unperfected thirty days after the secured party learns of the change of name and the new name of the debtor unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days. R.S.O. 1980, c. 375, s. 49 (2), amended.

(4) Where the debtor’s interest in all or part of the collateral is transferred by the debtor without the consent of the secured party and there is one or more subsequent transfers of the collateral without the consent of the secured party before the secured party learns of the name of the transferee who has possession of the collateral, the secured party shall be deemed to have complied with subsection (2) if the secured party registers a financing change statement within thirty days of learning of the name of the transferee who has possession of the collateral and the information required to register a financing change statement and the secured party need not register financing change statements with respect to any intermediate transferee. New.
(5) A security interest that becomes unperfected under subsection (1), (2) or (3) may be perfected again by registering a financing change statement at any time during the remainder of the unexpired registration period of the financing statement or any renewal thereof. R.S.O. 1980, c. 375, s. 49 (3), amended.

(6) Where the Registrar General notifies the registrar that a debtor has changed his or her name and provides the registrar with particulars of a registration under this Act in which the debtor’s former name appears as debtor, the registrar shall amend the debtor’s name as shown in the central file of the registration system related to the registration.

(7) Subsection (3) does not apply if the registrar, under subsection (6), amends the central file of the registration system,

(a) before the secured party learns of the new name of the debtor; or

(b) within thirty days of the day the secured party learns of the new name of the debtor.

(8) If the registrar, under subsection (6), amends the central file of the registration system more than thirty days after the day the secured party learns of the new name of the debtor, the registrar’s amendment shall be deemed to be a financing change statement registered by the secured party at the time the amendment was made. New.

49. A financing change statement may be registered at any time during the registration period of a financing statement,

(a) to correct an error or omission in the registered financing statement or any financing change statement related thereto; or

(b) to amend the registered financing statement or any financing change statement related thereto where the amendment is not otherwise provided for in this Part. New.

50. Where a security interest is perfected by registration and the interest of the secured party has been subordinated by the secured party to any other security interest in the collateral, a financing change statement may be registered at any time during the period that the registration of the subordinated interest is effective. R.S.O. 1980, c. 375, s. 51.
51.—(1) A financing statement may be registered for a perpetual period or for such period of years as is set out in the financing statement.

(2) The registration period of a financing statement may be reduced by the registration of a financing change statement under section 49 or extended by the registration of a financing change statement under subsection 52 (1).

(3) The registration period for a financing statement begins with the time assigned to its registration by the registrar or branch registrar and ends on the earlier of,

(a) the time the registration is discharged; or

(b) at the end of the registration period as set out in the financing statement or as changed by subsequent financing change statements.

(4) A financing statement is effective only during its registration period.

(5) Despite subsection (1), a financing statement that indicates that the collateral is or includes consumer goods shall be deemed to have a registration period of five years, unless a shorter registration period is indicated on the financing statement or unless the registration period is extended by the registration of a financing change statement under subsection 52 (1).

(6) Every financing change statement extending the registration period of a financing statement described in subsection (5) shall be deemed to extend the registration period for a five year period that begins at the time of its registration unless a shorter extension is indicated on the financing change statement.

52.—(1) Where a security interest has been perfected by registration, the registration may be extended before the registration ceases to be effective by the registration of a financing change statement.

(2) Where a security interest has been perfected by registration and the registration has ceased to be effective, the security interest may be perfected again by the registration of a financing statement. R.S.O. 1980, c. 375, s. 52, amended.

53. The registration of a financing change statement is effective from the time assigned to its registration by the registrar or branch registrar and is effective so long as the registra-
tion of the financing statement to which it relates is effective. New.

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

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

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

(2) Where the collateral is consumer goods, a notice registered under clause (1) (a) or an extension notice registered under subsection (3), as the case may be, shall set out an expiration date, which date shall not be later than the fifth anniversary of the date of registration and the notice or extension notice is effective until the end of the expiration date.

(3) A registration to which subsection (2) applies may be extended before the end of the registration period by the registration of an extension notice.

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

(5) Where a notice has been registered under subsection (1), every person dealing with the collateral shall be deemed for the purposes of subsection 34 (2) to have knowledge of the security interest. R.S.O. 1980, c. 375, s. 54 (2, 3), amended.

(6) Where the collateral is consumer goods and the expiration date set out in a notice registered under clause (1) (a) has passed and an extension notice has not been registered or has expired, the land described in the notice is not affected by any claim under the notice but this subsection does not prevent the registration of a new notice under clause (1) (a). New.

55. A registration may be discharged or partially discharged by the registration of a financing change statement discharging or partially discharging the registration. R.S.O. 1980, c. 375, s. 55 (1), amended.
56.—(1) Where a financing statement or notice of security interest is registered under this Act, and,

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

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

any person having an interest in the collateral covered by the security agreement may deliver a written notice to the secured party demanding a financing change statement referred to in section 55 or a certificate of discharge or partial discharge referred to in subsection 54 (4), or both, and the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge or partial discharge, or both, as the case may be.

(2) Where a financing statement or notice of security interest is registered under this Act and the person named in the financing statement or notice as the secured party has not acquired a security interest in the property to which the financing statement or notice relates, any person having an interest in the property may deliver a written notice to the person named as the secured party demanding a financing change statement referred to in section 55 or a certificate of discharge referred to in subsection 54 (4), or both, and the person named as the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge, or both, as the case may be.

(3) For the purposes of subsections (4) and (5), "secured party" includes a person named in a financing statement or notice of security interest as the secured party to whom subsection (2) applies.

(4) Where the secured party, without reasonable excuse, fails to deliver the financing change statement or certificate of discharge or partial discharge, or both, as the case may be, required under subsection (1) or (2) within ten days after receipt of a demand therefor, the secured party shall pay $500 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.
(5) Upon application to the District Court, the court may,

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

(b) order upon any ground that the court considers proper that,

(i) the registrar amend the information recorded in the central file of the registration system to indicate that the registration of the financing statement has been discharged or partially discharged, as the case may be, or

(ii) the land registrar delete any entry in the books of the land registry office related to the notice of security interest or that the land registrar amend the books of the land registry office to indicate that the security interest has been discharged or partially discharged, as the case may be.

(6) Where the person receiving a notice under clause (1) (a) did not have a security interest in the collateral immediately before all the obligations under the security agreement to which it relates were performed, the person shall, within fifteen days after receiving the notice, disclose the name and address of the latest successor in interest known to the person, and, if without reasonable excuse, the person fails to do so or the answer is incomplete or incorrect, the person shall pay $500 to the person making the demand and any damages resulting from the failure which sum and damages are recoverable in any court of competent jurisdiction. New.

57.—(1) Within thirty days after all the obligations under a security agreement that creates a security interest in consumer goods have been performed or forgiven, the secured party shall register,

(a) a financing change statement discharging the registration if the security interest has been perfected by registration; and

(b) a certificate of discharge, if a notice of security interest has been registered under section 54.
(2) Where a secured party fails to comply with subsection (1), the secured party shall, on written notice from the debtor, pay the debtor $500 and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

(3) Subsections (1) and (2) do not affect any rights under section 56 of the debtor or of any other person having an interest in the collateral.  New.

PART V

DEFAULT—RIGHTS AND REMEDIES

58. The rights and remedies mentioned in this Part are cumulative.  R.S.O. 1980, c. 375, s. 56 (1).

59.—(1) Where the debtor is in default under a security agreement, the secured party has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part and, when in possession of the collateral, the rights, remedies and duties provided in section 17.

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

(3) Where the debtor is in default under a security agreement, the debtor has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part and in section 17.

(4) Subject to subsection (5), a security agreement may set out the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as those standards are not manifestly unreasonable having regard to the nature of the rights and duties.

(5) Despite subsection (1), the provisions of section 17, and sections 63 to 66, to the extent that they give rights to the debtor and impose duties upon the secured party, shall not be waived or varied except as provided by this Act.  R.S.O. 1980, c. 375, s. 56 (2-5), amended.
(6) Where a security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or may proceed as to both the real and the personal property in accordance with the secured party's rights, remedies and duties in respect of the real property, with all necessary modifications, as if the personal property were real property, in which case this Part does not apply. R.S.O. 1980, c. 375, s. 56 (6).

(7) A security agreement does not merge merely because the claim has been reduced to judgment by the secured party or because the secured party has levied execution thereunder on the collateral. R.S.O. 1980, c. 375, s. 56 (7), amended.

60.—(1) Nothing in this Act prevents,

(a) the parties to a security agreement from agreeing that the secured party may appoint a receiver or receiver and manager and, except as provided by this Act, determining the rights and duties of the receiver or receiver and manager by agreement; or

(b) a court of competent jurisdiction from appointing a receiver or receiver and manager and determining rights and duties of the receiver or receiver and manager by order.

(2) Upon application of the secured party, the debtor or any other person with an interest in the collateral, and after notice to any other person that the court directs, the Supreme Court, with respect to a receiver or receiver and manager however appointed, may,

(a) remove, replace or discharge the receiver or receiver and manager;

(b) give directions on any matter relating to the duties of the receiver or receiver and manager;

(c) approve the accounts and fix the remuneration of the receiver or receiver and manager;

(d) make any order with respect to the receiver or receiver and manager that it thinks fit in the exercise of its general jurisdiction over a receiver or receiver and manager. New.

61.—(1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled,
(a) to notify any person obligated on an account or on chattel paper or any obligor on an instrument to make payment to the secured party whether or not the assignor was theretofore making collections on the collateral; and

(b) to take control of any proceeds to which the secured party is entitled under section 25.

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

62. Upon default under a security agreement,

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

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

(c) the secured party may dispose of collateral on the debtor’s premises in accordance with section 63. R.S.O. 1980, c. 375, s. 57, amended.

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

(a) the reasonable expenses of the secured party, including the cost of insurance and payment of taxes and other charges incurred in retaking, holding, repairing, processing and preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement, any other reasonable expenses incurred by the secured party; and
(b) the satisfaction of the obligation secured by the security interest of the party making the disposition, and the surplus, if any, shall be dealt with in accordance with section 64. R.S.O. 1980, c. 375, s. 59 (1), amended.

(2) Collateral may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, subject to subsection (4), may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable. R.S.O. 1980, c. 375, s. 59 (3).

(3) Subject to subsection 65 (1), the secured party may delay disposition of all or part of the collateral for such period of time as is commercially reasonable. R.S.O. 1980, c. 375, s. 59 (4), amended.

(4) Subject to subsection (6), the secured party shall give not less than fifteen days notice in writing of the matters described in subsection (5) to,

(a) the debtor who owes payment or performance of the obligation secured;

(b) every person who is known by the secured party, before the date that the notice is served on the debtor, to be an owner of the collateral or an obligor who may owe payment or performance of the obligation secured;

(c) every person who has a security interest in the collateral and whose interest,

(i) was perfected by possession, the continuance of which was prevented by the secured party who has taken possession of the collateral, or

(ii) is perfected by registration before the date the notice is served on the debtor;

(d) every person with an interest in the collateral who has delivered a written notice to the secured party of the interest in the collateral before the date that the notice is served on the debtor.

(5) The notice mentioned in subsection (4) shall set out,

(a) a brief description of the collateral;
(b) the amount required to satisfy the obligation secured by the security interest;

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

(d) a statement that upon receipt of payment the payor will be credited with any rebates or allowances to which the debtor is entitled by law or under the agreement;

(e) a statement that upon payment of the amounts due under clauses (b) and (c), any person entitled to receive notice may redeem the collateral;

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

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

(6) If the notice to the debtor under clause (4) (a) is mailed, then the relevant date for the purpose of clause (4) (b), subclause (4) (c) (ii) and clause (4) (d) shall be the date of mailing and not the date of service.

(7) The notice mentioned in subsection (4) is not required where,

(a) the collateral is perishable;

(b) the secured party believes on reasonable grounds that the collateral will decline speedily in value;

(c) the collateral is of a type customarily sold on a recognized market;

(d) the cost of care and storage of the collateral is disproportionately large relative to its value;

(e) for any reason not otherwise provided for in this subsection, the District Court, on an application made without notice to any other person, is satisfied that a notice is not required;
(f) after default, every person entitled to receive a notice of disposition under subsection (4) consents in writing to the immediate disposition of the collateral; or

(g) a receiver and manager disposes of collateral in the course of the debtor's business.  *New.*

(8) The secured party may buy the collateral or any part thereof only at a public sale unless the District Court, on application, orders otherwise.  *R.S.O. 1980, c. 375, s. 59 (7), amended.*

(9) Where collateral is disposed of in accordance with this section, the disposition discharges the security interest of the secured party making the disposition and, if the disposition is made to a buyer who buys in good faith for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

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

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

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

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

(11) A person who is liable to a secured party under a guaranty, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to the secured party's rights has thereafter the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral.  *R.S.O. 1980, c. 375, s. 59 (8-10).*

64.—(1) Where the secured party has dealt with the collateral under section 61 or has disposed of it, the secured party shall account for and, subject to subsection (4), pay over any surplus consecutively to,
(a) any person who has a security interest in the collateral that is subordinate to that of the secured party and whose interest,

(i) was perfected by possession, the continuance of which was prevented by the secured party who took possession of the collateral, or

(ii) was, immediately before the dealing or disposition, perfected by registration;

(b) any other person with an interest in the surplus who has delivered a written notice to the secured party of the interest before the distribution of the proceeds; and

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

but the priority of the claim of any person referred to in clauses (a), (b) and (c) against the recipient of the surplus shall not be prejudiced thereby. R.S.O. 1980, c. 375, s. 60, amended.

(2) The secured party may require any person mentioned in subsection (1) to furnish proof of that person's interest, and, unless the proof is furnished within ten days after demand by the secured party, the secured party need not pay over any portion of the surplus to the person.

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

(4) Where there is a question as to who is entitled to receive payment under subsection (1), the secured party may pay the surplus into the District Court and the surplus shall not be paid out except upon an application under section 67 by a person claiming an entitlement thereto. New.
action for damages or loss sustained. R.S.O. 1980, c. 375, s. 61 (1).

(2) In any case other than that mentioned in subsection (1), a secured party may, after default, propose to accept the collateral in satisfaction of the obligation secured and shall serve a notice of the proposal on the persons mentioned in clauses 63 (4) (a) to (d). R.S.O. 1980, c. 375, s. 61 (2), amended.

(3) If any person entitled to notification under subsection (2), whose interest in the collateral would be adversely affected by the secured party's proposal, delivers to the secured party a written objection within thirty days after service of the notice, the secured party shall dispose of the collateral in accordance with section 63. R.S.O. 1980, c. 375, s. 61 (3), part, amended.

(4) 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 demand by the secured party, the secured party may proceed as if no objection had been made.

(5) Upon application to the District Court by the secured party, and after notice to every person who has made an objection to the proposal, the court may order that an objection to the proposal of the secured party is ineffective because,

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

(b) the fair market value of the collateral is less than the total amount owing to the secured party and the estimated expenses recoverable under clause 63 (1) (a). New.

(6) If no effective objection is made, the secured party is, at the expiration of the thirty-day period mentioned in subsection (3), deemed to have irrevocably elected to accept the collateral in full satisfaction of the obligation secured, and thereafter is entitled to the collateral free from all rights and interests therein of any person entitled to notification under subsection (2) whose interest is subordinate to that of the secured party and who was served with such notice. R.S.O. 1980, c. 375, s. 61 (3), part, amended.
(7) When a secured party disposes of the collateral after expiration of the period mentioned in subsection (6) to a buyer who buys in good faith for value and who takes possession of it or, in the case of an intangible, receives an assignment of it, the buyer acquires the collateral free from any interest of the secured party and the debtor and free from every interest subordinate to that of the secured party, whether or not the requirements of this section have been complied with by the secured party. *New.*

66.—(1) At any time before the secured party, under section 63, has disposed of the collateral or contracted for such disposition or before the secured party under subsection 65 (6) shall be deemed to have irrevocably elected to accept the collateral, any person entitled to receive notice under subsection 63 (4) may, unless the person has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral together with a sum equal to the reasonable expenses referred to in clause 63 (1) (a) incurred by the secured party, but if more than one person elects to redeem, the priority of their rights to redeem shall be the same as the priority of their respective interests.


(2) Where the collateral is consumer goods, at any time before the secured party, under section 63 has disposed of the collateral or contracted for such disposition or before the secured party under subsection 65 (6) shall be deemed to have irrevocably elected to accept the collateral, the debtor may reinstate the security agreement by paying,

(a) the sum actually in arrears, exclusive of the operation of any acceleration clause, and by curing any other default which entitles the secured party to dispose of the collateral; and

(b) a sum equal to the reasonable expenses referred to in clause 63 (1) (a) incurred by the secured party.

(3) The right to reinstate under subsection (2) may not be exercised more than once during the term of the security agreement, unless the District Court, on the application of the debtor, orders otherwise. *New.*

PART VI

MISCELLANEOUS

67.—(1) Upon application to the Supreme Court or to the District Court by a debtor, a creditor of a debtor, a secured
party, an obligor who may owe payment or performance of the obligation secured or any person who has an interest in collateral which may be affected by an order under this section, the court may,

(a) make any order, including binding declarations of right and injunctive relief, that is necessary to ensure compliance with Part V, section 17 or subsection 34 (3) or 35 (4);

(b) give directions to any party regarding the exercise of the party's rights or the discharge of the party's obligations under Part V, section 17 or subsection 34 (3) or 35 (4);

(c) make any order necessary to determine questions of priority or entitlement in or to the collateral or its proceeds;

(d) relieve any party from compliance with the requirements of Part V, section 17 or subsection 34 (3) or 35 (4), but only on terms that are just for all parties concerned;

(e) make any order necessary to ensure protection of the interests of any person in the collateral, but only on terms that are just for all parties concerned; and

(f) make an order requiring a secured party to make good any default in connection with the secured party's custody, management or disposition of the collateral of the debtor or to relieve the secured party from any default on such terms as the court considers just, and to confirm any act of the secured party. R.S.O. 1980, c. 375, s. 63 (1), amended.

(2) Where a person fails to discharge any duties or obligations imposed upon the person by Part V, section 17 or subsection 34 (3) or 35 (4), the person to whom the duty or obligation is owed has a right to recover compensation for any loss or damage suffered because of the failure and which was reasonably foreseeable, and, where the collateral is consumer goods, the debtor has a right to recover in any event an amount equal to the greater of $500 or the actual loss or damages. R.S.O. 1980, c. 375, s. 63 (2), amended.

(3) Except as otherwise provided in this Act, any provision in any security agreement which purports to exclude any duty or obligation imposed under this Act or to exclude or limit lia-
bility for failure to discharge duties or obligations imposed by this Act is void. *New.*

4) Where an application under subsection (1) is made to the District Court, a respondent, by notice served on the applicant and on the other respondents, if any, and filed with proof of service with the local registrar of the District Court at least two days before the hearing date of the application, may require the application to be removed into the Supreme Court. R.S.O. 1980, c. 375, c. 63 (3), amended.

5) Upon the filing of the notice with proof of service, the local registrar of the District Court shall forthwith transmit the papers to the local registrar of the Supreme Court in the county or district in which the application was commenced, and the application shall continue as if it had commenced in the Supreme Court. R.S.O. 1980, c. 375, s. 63 (4, 5), amended.

68.—(1) Where under this Act, a notice or any other document may be or is required to be given or delivered to or served on,

(a) a secured party named in a registered financing statement or financing change statement, the notice or document may be given to or served on the secured party by personal service or by registered mail at the most recent address of the secured party as shown in the financing statement or financing change statement; and

(b) a debtor by a secured party, the notice or document may be given to or served on the debtor by personal service or by registered mail at the last address of the debtor known to the secured party.

2) Where under this Act, a notice or any document may be or is required to be given or delivered to or served on a person, other than a person to whom subsection (1) applies, the notice or document may be given to or served on,

(a) an individual, by personal service or by registered mail addressed to the individual at his or her residence or place of business and, if the individual has more than one residence or place of business, at any one of the residences or places of business;

(b) a partnership,

(i) by personal service,
(A) upon any one or more of the partners, or

(B) upon any person having control or management of the partnership business at the principal place of business of the partnership, or

(ii) by registered mail addressed to,

(A) the partnership,

(B) any one or more of the general partners,

(C) any person having control or management of the partnership business,

at the principal address of the partnership;

(c) a municipal corporation by delivery or registered mail addressed to its head of council or chief administrative officer at its principal office;

(d) a local board, as defined in the Municipal Affairs Act, by delivery or registered mail addressed to its chairman or chief administrative officer at its principal office;

(e) a corporation, other than a municipal corporation or a local board thereof,

(i) by serving any officer, director, or any agent thereof, or the manager or person in charge of any office or other place where the corporation carries on business, or

(ii) by registered mail addressed to the address of its registered or head office;

(f) upon Her Majesty in right of Ontario, unless the regulations otherwise provide, by delivery or registered mail addressed to the registrar at the central office of the registration system.

(3) Where an individual, partnership or body corporate resides or has its principal office or its registered or head office out of Ontario but is carrying on business in Ontario, a notice or document referred to in subsection (2) may be given, delivered or served by serving any person carrying on the business in Ontario and in the case of an extra-provincial com-
pany, by serving the attorney for service in Ontario and such service may be by personal service or by registered mail at the address of the person or attorney.

(4) A notice or document given or served by registered mail shall be deemed to have been given, delivered or served when the addressee actually receives the notice or document, or, except for the purposes of subsection 33 (1), upon the expiry of ten days after the day of registration, whichever is earlier.

(5) Any notice or other document to be served on any person in relation to a proceeding in a court shall be served in accordance with the rules of the court and subsections (1) to (4) do not apply to any such notice. New.

69. For the purposes of this Act, a person learns or knows or has notice or is notified when service is effected in accordance with section 68 or the regulations or when,

(a) in the case of an individual, information comes to his or her attention under circumstances in which a reasonable person would take cognizance of it;

(b) in the case of a partnership, information has come to the attention of one or more of the general partners or of a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;

(c) in the case of a corporation, other than a municipal corporation or local board thereof, information has come to the attention of a senior employee of the corporation with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it. New.

70. Where in this Act, other than in sections 5, 6, 7 and 12 and in Parts III and IV and in this Part, a time prescribed within which or before which any act or thing must be done, the District Court, on an application without notice to any other person, may extend or abridge the time for compliance on terms that the court considers just. New.

71.—(1) The registrar may authorize the destruction of books, documents, records or paper, including those related to a prior law as defined in Part VII,
The registrar, upon receipt of a court order requiring the registrar to amend the information recorded in the central file of the registration system to indicate the discharge of a financing statement filed or a financing change statement, R.S.O. 1980, c. 375, s. 68 (2), amended.

According to subsection (1), the registrar may remove from the central file of the registration system information related to a financing statement:

(a) if the financing statement is no longer effective;
(b) upon the receipt of a financing change statement discharging the registration of a financing statement, R.S.O. 1980, c. 375, s. 68 (1), amended.

72. Except in so far as they are inconsistent with the express provisions of this Act, the principles of law and equity and validating or invalidating rules of law, shall continue to apply.

New.

73. Where there is conflict between a provision of this Act and a provision of the Consumer Protection Act, the provision of the Consumer Protection Act prevails, and where there is a conflict between this Act and any other Act, the provisions of this Act shall continue to apply.
conflict between a provision of this Act and a provision of any general or special Act, other than the *Consumer Protection Act*, the provision of this Act prevails. R.S.O. 1980, c. 375, s. 69.

**74.** The Lieutenant Governor in Council may make regulations,

(a) designating branch offices;

(b) prescribing the duties of the registrar and branch registrars;

(c) prescribing business hours for the offices of the registration system or any of them;

(d) respecting the registration system and searches thereof;

(e) requiring the payment of fees and prescribing the amounts thereof;

(f) prescribing the amount of any charge to which a secured party is entitled for any statement or copy provided pursuant to section 18;

(g) prescribing forms, the information to be contained in forms, the manner of recording the information, including the manner of setting out names, and the persons who shall sign forms;

(h) requiring that the forms to be used shall be those provided or approved by the registrar;

(i) governing the time assigned to the registration of financing statements and financing change statements;

(j) prescribing abbreviations, expansions or symbols that may be used in a financing statement or financing change statement or in the recording or production of information by the registrar;

(k) fixing the address to which financing statements and financing change statements shall be addressed when tendered by mail for registration;

(l) prescribing additional methods of serving notices and other documents for the purposes of section 68 and prescribing methods of serving notices and
other documents on persons not referred to in section 68;

(m) prescribing the portion of the fees received under this Act that shall be paid into The Personal Property Security Assurance Fund;

(n) defining “motor vehicle”;

(o) prescribing a lexicon of French-English terms to be used in connection with prescribed forms and deeming the corresponding forms of expression in the lexicon to have the same effect in law. R.S.O. 1980, c. 375, s. 70 (1); 1981, c. 58, s. 5 (1), amended.

PART VII

APPLICATION, TRANSITION, AMENDMENTS, REPEALS, COMMENCEMENT

75. In this Part, “prior law” means,

(a) the law related to a security agreement made before the 1st day of April, 1976, where the security agreement was one to which The Assignment of Book Debts Act, The Bills of Sale and Chattel Mortgages Act or The Conditional Sales Act, being chapters 33, 45 and 76, respectively, of the Revised Statutes of Ontario, 1970, or the predecessors thereof, applied;

(b) the law related to a security agreement made before the day this section comes into force where the security agreement was one to which the Corporation Securities Registration Act, being chapter 94 of the Revised Statutes of Ontario, 1980, or predecessor thereof, applied;

(c) the law related to a security agreement made before the 1st day of April, 1976, where the security agreement is not a security agreement described in clause (a) or (b). New.

76.—(1) Except as otherwise provided in this Part, this Act applies,

(a) to every security agreement made on or after the day this section comes into force; and
(b) to every security agreement made on or after the 1st day of April, 1976 if the security agreement was one to which the Personal Property Security Act, being chapter 375 of the Revised Statutes of Ontario, 1980, applied immediately before the repeal of that Act.

(2) Except as otherwise provided in this Part, this Act does not apply,

(a) to a security agreement to which a prior law applied at the time of its making including any advance or extension of credit, delivery of goods or other event occurring pursuant thereto whether before or after this section comes into force; or

(b) to a transfer of chattel paper or an account, other than a transfer of a book debt, made before the coming into force of this section which does not secure payment or performance of an obligation.

(3) This Act does not affect the rights acquired by any person from a judgment or order of any court given or made before the day this Act comes into force, or affect the outcome of any litigation commenced on or before that day.

(4) Priority between security interests under security agreements described in clause (1) (b) shall be determined in accordance with the law as it existed immediately before this section came into force if the security interests have been continuously perfected since this section came into force. New.

.77.—(1) Every security agreement to which the prior law as described in clause 75 (a) applied at the time of its making continues to have such force and effect as if the Acts referred to in that clause had not been repealed if the security interest was covered by an unexpired registration under the Personal Property Security Act, being chapter 375 of the Revised Statutes of Ontario, 1980, immediately before the coming into force of this section.

(2) Where a security interest under a security agreement described in subsection (1) was not covered under an unexpired registration immediately before the coming into force of this section, the security interest may be perfected by the registration of a financing statement.

(3) Part IV applies to the perfection, continuation of perfection and reperfection of a security interest under a security agreement to which subsection (1) or (2) applies.
(4) Where before the coming into force of this section, a secured party under a security agreement to which the prior law as described in clause 75 (a) applied at the time of its making failed to register a financing change statement after learning of the transfer of collateral and the information required to register a financing change statement or after learning of the change of name and the new name of the debtor, the secured party shall register a financing change statement recording the transfer or the new name of the debtor, as the case may be, within twenty-four months of the coming into force of this section.

(5) Where a secured party fails to register a financing change statement under subsection (4) by the end of the period referred to in that subsection, the security interest created by the security agreement shall be subordinate to the interest of any person without knowledge of the security interest who has subsequently acquired rights in the collateral and has relied upon a search made in the central file of the registration system in the name of the transferee or the changed name of the debtor, as the case may be. New.

78.—(1) A mortgage, charge or assignment, the registration of which was provided for in the Corporation Securities Registration Act, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, (collectively referred to in this section as the former Act) that was registered under the former Act before the coming into force of this section, continues to have such force and effect as if the former Act had not been repealed and except as provided in this section and sections 43 and 44, this Act does not apply to any such mortgage, charge or assignment.

(2) Where a mortgage, charge or assignment, the registration of which was provided for in the former Act, was made before the coming into force of this section but was not registered under that Act,

(a) this Act shall be deemed always to have applied to the mortgage, charge or assignment; and

(b) the security interest created by the mortgage, charge or assignment may be perfected under this Act.

(3) The registrar shall, with respect to each mortgage, charge and assignment, and each assignment thereof, registered under the former Act for which no certificate of discharge has been registered as of the day this section comes
into force, enter into the central file of the registration system established for the purposes of this Act,

(a) the name of the debtor as shown in the registration under the former Act;

(b) the registration number under the former Act; and

(c) the following notation:

This registration was made under the Corporation Securities Registration Act (R.S.O. 1980, c. 94) or a predecessor thereof. A copy of the instrument is available for inspection in the offices of the Ministry of Consumer and Commercial Relations located at ...........................................

(address of appropriate office)

Discharged registrations

(4) Mortgages, charges and assignments, and assignments thereof, registered under the former Act for which a certificate of discharge has been registered before the coming into force of this section shall not be entered into the registration system established for the purposes of this Act.

Registration period

(5) A registration entered into the central file of the registration system under subsection (3) expires when it is discharged in accordance with this section.

Change of name of debtor

(6) Where before the coming into force of this section and after the original registration under the former Act the debtor changed its name and the secured party learned of the change before the coming into force of this section, the secured party shall register a financing change statement recording the change of name within twenty-four months of the coming into force of this section.

Effect of failure to comply

(7) Where a secured party fails to register a financing change statement under subsection (6) by the end of the period referred to in that subsection, the security interest created by the mortgage, charge or assignment shall be subordinate to the interest of any person without knowledge of the security interest who has subsequently acquired rights in the collateral and has relied upon a search made in the central file of the registration system in the changed name of the debtor.

Discharge

(8) A secured party may discharge in whole or in part a mortgage, charge or assignment or any assignment thereof entered into the central file of the registration system under
subsection (3) by the registration of a financing change statement.

(9) The debtor or any person having an interest in the collateral may make an application to the District Court for an order discharging or partially discharging a mortgage, charge or assignment or any assignment thereof entered into the central file of the registration system under subsection (3).

(10) Upon hearing an application made under subsection (9) and upon being satisfied that no security interest was created or that the security interest is released or partially released, the court may order,

(a) that the registration be discharged where no security interest was ever created or the security interest has been released; or

(b) that a financing change statement be registered where the security interest is partially released.

(11) The registrar may remove from the registration system information related to a registration, upon receipt of,

(a) a financing change statement under subsection (8) that wholly discharges the registration entered into the central file of the registration system under subsection (3); or

(b) a certified copy of an order made under clause (10) (a).

(12) Subsection 30 (6) and sections 47, 48, 49 and 50, except subsections 48 (1) and (2), apply to the perfection, continuation of perfection and reperfection of a security interest under a mortgage, charge or assignment entered into the central file of the registration system under subsection (3).

(13) Where there is a default under a mortgage, charge or assignment entered into the central file of the registration system under subsection (3), the secured party may elect to enforce the security agreement in accordance with Part V by stating in the notice referred to in subsection 63 (4) or 65 (2) that the secured party has elected to be bound by Part V.

(14) Subsections (6) and (12) do not apply so as to require a trustee under a trust indenture to file a financing change statement recording the change of a debtor's name unless after the coming into force of this section the trust indenture is amended. New.
79.—(1) A mortgage, charge or assignment, the registration of which was provided for in the Corporation Securities Registration Act, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, shall not be invalid by reason only that it was not registered under that Act, if the security interest created by the mortgage, charge or assignment was perfected by registration in compliance with the Personal Property Security Act, being chapter 375 of the Revised Statutes of Ontario, 1980, and the said Personal Property Security Act shall be deemed to have applied to the security interest so created from its creation and upon the coming into force of this Act, this Act applies to the security interest. 1981, c. 2, s. 1, amended.

(2) Subsection (1) applies even if after the perfection of a security interest by registration under the Personal Property Security Act, being chapter 375 of the Revised Statutes of Ontario, 1980, the mortgage, charge or assignment was registered under the Corporation Securities Registration Act, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof. New.

(3) Despite subsections (1) and (2), where,

(a) a security agreement created or provided for both,

   (i) a security interest in any class or classes of collateral and the security interest was a mortgage, charge or assignment, the registration of which was provided for in the Corporation Securities Registration Act, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, and

   (ii) a security interest in collateral other than collateral described in subclause (i) and the security interest was not a mortgage, charge or assignment, the registration of which was provided for in the said Corporation Securities Registration Act, or a predecessor thereof; and

(b) regardless of which occurred first,

   (i) the mortgage, charge or assignment described in subclause (a) (i) was registered under the said Corporation Securities Registration Act, or a predecessor thereof, and
(ii) a financing statement was registered under a predecessor of this Act in relation to the security interest described in subclause (a) (ii) and the financing statement and the financing change statements, if any, in relation thereto, do not claim a security interest in the collateral described in subclause (a) (i),

the said Corporation Securities Registration Act and this Act, except subsections (1) and (2) applies to the security interest described in subclause (a) (i) and the predecessor of this Act and this Act applies to the security interest described in subclause (a) (ii). New.

80.—(1) Upon the request of any person and upon payment of the prescribed fee, a document registered under a prior law shall be provided for inspection unless the document has been destroyed.

(2) Upon the request of any person and upon payment of the prescribed fee, the registrar shall furnish the person with a certified copy of a document registered under a prior law unless the document has been destroyed. R.S.O. 1980, c. 375, s. 66 (2), amended.

(3) A certified copy provided under subsection (2) is prima facie proof of the contents of the document so certified. New.

81. Except as provided in subsections 78 (7) and (12), the order of priorities between a security interest created under a prior law and any other security interest shall be determined without regard to the priority rules set out in this Act. New.

82.—(1) A financing statement or financing change statement prepared in accordance with the Personal Property Security Act, being chapter 375 of the Revised Statutes of Ontario, 1980 and the regulations thereunder, as they read immediately before the repeal of that Act, shall be accepted for registration if it is received by the registrar or a branch registrar within thirty days of the day this section comes into force.

(2) Every financing statement or financing change statement received by the registrar or a branch registrar before the repeal of the Personal Property Security Act, being chapter 375 of the Revised Statutes of Ontario, 1980, or received under subsection (1) expires on the expiry of the third anniversary of its registration or, in the case of a financing change statement that does not extend a period of registration, with
the expiry of the financing statement to which it relates and may be renewed under this Act. New.

83. Section 26 of the Execution Act, being chapter 146 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

26.—(1) Where an execution debtor is a secured party and the security interest is perfected by registration under the Personal Property Security Act, upon payment of the proper fees, a sheriff may seize the security interest by registering a financing change statement under that Act in the form prescribed thereunder recording the seizure of the security interest and the sheriff, after registering the financing change statement, may sell the execution debtor's security interest.

(2) Upon the registration of the financing change statement referred to in subsection (1), the security interest of the execution debtor is bound by the execution, and the registration is notice of the execution and seizure to all persons who may thereafter acquire an interest in the security agreement or the property subject to the security interest and the rights of the sheriff and the execution creditor have priority over the rights of all persons who subsequently acquire an interest in the security agreement.

(3) The debtor under a security agreement is not affected by a seizure under this section unless a notice of the seizure has been served upon the debtor, and any payment made by the debtor under the security agreement to the secured party before such service shall be valid.

(4) After the debtor has been served with a notice of seizure under subsection (3), the debtor shall pay to the sheriff all money then payable and, as it becomes due, all money that may become payable under the security agreement so far as may be necessary to satisfy the execution.

(5) Any payment made to the secured party after service of the notice of seizure under subsection (3) or after actual knowledge of the seizure is void as against the sheriff and the execution creditor.

(6) Where a financing change statement has been registered under subsection (2) and the execution has expired or is satisfied, set aside or withdrawn, the sheriff shall register a financing change statement under the Personal Property Security Act in the form prescribed thereunder recording the fact that the seizure of the security interest is no longer effective.
(7) In addition to the remedies provided in this Act, upon seizure of the security interest, the sheriff has all the rights and remedies of the execution debtor under the security agreement and the Personal Property Security Act, and the sheriff is entitled to a bond of indemnity sufficient to indemnify against all costs and expenses to be incurred by the sheriff in the enforcement of the security agreement.

(8) On and after the day sections 68 and 69 of the Personal Property Security Act, 1989 come into force, the references to the Personal Property Security Act in subsections (1), (6) and (7) shall be deemed to be references to the Personal Property Security Act, 1989.

84.—(1) The following Acts are repealed:


3. The Personal Property Security Amendment Act, 1981 (No. 2), being chapter 58.


(2) No sale of goods to which the Bills of Sale Act applied before its repeal shall be void for failure to comply with that Act.

(3) Subsection (2) does not affect the rights acquired by any person from a judgment or order of any court before the day this Act comes into force or affect the outcome of any litigation commenced on or before the 8th day of June, 1988.

85. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

86. The short title of this Act is the Personal Property Security Act, 1989.