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(Bill No. 16)

Securities Transfer Act

Hon. Jordan K. M. Brown
Justice and Public Safety and Attorney General

GOVERNMENT BILL

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Acting Queen's Printer
Charlottetown, Prince Edward Island



SECURITIES TRANSFER ACT

BILL NO. 16

2018

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

PART I - INTERPRETATION AND GENERAL PROVISIONS

1. Definitions

(1) In this Act

- (a) “**adverse claim**” means a claim that
 - (i) the claimant has a property interest in a financial asset, and
 - (ii) it is a violation of the rights of the claimant for another person to hold, transfer or deal with the financial asset;
- (b) “**appropriate person**” means
 - (i) with respect to an endorsement, the person specified by a security certificate or by an effective special endorsement to be entitled to the security,
 - (ii) with respect to an instruction, the registered owner of an uncertificated security,
 - (iii) with respect to an entitlement order, the entitlement holder,
 - (iv) in the case of a person referred to in subclause (i), (ii) or (iii) being deceased, that person’s successor taking under the law, other than this Act, or that person’s personal representative acting for the estate of the deceased person, or
 - (v) in the case of a person referred to in subclause (i), (ii) or (iii) lacking capacity, that person’s guardian or other similar representative who has power under the law, other than this Act, to transfer the security or other financial asset;
- (c) “**bearer form**”, in respect of a certificated security, means a form in which the security is payable to the bearer of the security certificate according to the security certificate’s terms but not by reason of an endorsement;
- (d) “**broker**” means a dealer as defined in the *Securities Act* R.S.P.E.I. 1988, Cap. S-3.1;
- (e) “**certificated security**” means a security that is represented by a certificate;
- (f) “**clearing agency**” means a person

- (i) who carries on a business or activity as a clearing agency or clearing house within the meaning of the *Securities Act* or the securities regulatory law of another province or territory in Canada,
 - (ii) who is recognized or otherwise regulated as a clearing agency or clearing house under the laws of the province or by a securities regulatory authority of another province or territory in Canada, and
 - (iii) who is a securities and derivatives clearing house for the purposes of section 13.1 of the *Payment Clearing and Settlement Act* (Canada) or whose clearing and settlement system is designated under Part I of that Act;
- (g) “**communicate**” means
- (i) send a signed writing, or
 - (ii) transmit information by any other means agreed to by the person transmitting the information and the person receiving the information;
- (h) “**control**” has the meaning set out in sections 22 to 25;
- (i) “**corporation**” means any body corporate whether or not it is incorporated under the laws of Prince Edward Island;
- (j) “**delivery**”, with respect to a certificated or uncertificated security, has the meaning set out in section 67, and “**deliver**” has a corresponding meaning;
- (k) “**effective**”, in relation to an endorsement, instruction or entitlement order, has the meaning set out in sections 28 to 31;
- (l) “**endorsement**” means a signature that, alone or accompanied by other words, is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring or redeeming the security or granting a power to assign, transfer or redeem the security;
- (m) “**entitlement holder**” means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary and includes a person who acquires a security entitlement by virtue of clause 94(1)(b) or (c);
- (n) “**entitlement order**” means a notice communicated to a securities intermediary directing the transfer or redemption of a financial asset to which the entitlement holder has a security entitlement;
- (o) “**financial asset**”, except as otherwise provided in sections 9 to 15, means
- (i) a security,
 - (ii) an obligation of a person that
 - (A) is, or is of a type, dealt in or traded on financial markets, or
 - (B) is recognized in any other market or area in which it is issued or dealt in as a medium for investment,
 - (iii) a share, participation or other interest in a person, or in property or an enterprise of a person, that
 - (A) is, or is of a type, dealt in or traded on financial markets, or
 - (B) is recognized in any other market or area in which it is issued or dealt in as a medium for investment,
 - (iv) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Act, or



- (v) a credit balance in a securities account, unless the securities intermediary has expressly agreed with the person for whom the account is maintained that the credit balance is not to be treated as a financial asset under this Act;
- (p) “**genuine**” means free of forgery or counterfeiting;
- (q) “**government**” means
 - (i) the Crown in right of Canada or in right of Prince Edward Island or another province of Canada,
 - (ii) the government of a territory in Canada,
 - (iii) a municipality in Canada, or
 - (iv) the government of a foreign country or of any political subdivision of it;
- (r) “**in collusion**” means in concert, by conspiratorial arrangement or by agreement for the purpose of violating a person’s rights in respect of a financial asset;
- (s) “**instruction**” means a notice communicated to the issuer of an uncertificated security that directs that the transfer of the security be registered or that the security be redeemed;
- (t) “**issuer**”
 - (i) with respect to a registration of a transfer of a security, means a person on whose behalf transfer books are maintained, and
 - (ii) with respect to an obligation on or a defence to a security, includes
 - (A) a person who places or authorizes the placing of the person’s name on a security certificate, other than as authenticating trustee, registrar, transfer agent or the like, to evidence
 - (I) a share, participation or other interest in the person’s property or in an enterprise, or
 - (II) the person’s duty to perform an obligation represented by the security certificate,
 - (B) a person who creates a share, participation or other interest in the person’s property or in an enterprise, or undertakes an obligation, that is an uncertificated security,
 - (C) a person who directly or indirectly creates a fractional interest in the person’s rights or property, if the fractional interest is represented by a security certificate,
 - (D) a guarantor, to the extent of the guarantor’s guarantee, whether or not the guarantor’s obligation is noted on a security certificate, and
 - (E) a person who becomes responsible for, or in place of, another person described as an issuer in this definition;
- (u) “**knowledge**” means actual knowledge, and “**know**” and “**known**” have corresponding meanings;
- (v) “**overissue**” means the issue of securities in excess of the amount that the issuer is authorized to issue;
- (w) “**person**” means
 - (i) an individual, including an individual in his or her capacity as trustee, executor, administrator or other representative,
 - (ii) a sole proprietorship,
 - (iii) a partnership,
 - (iv) an unincorporated association,

- (v) an unincorporated syndicate,
- (vi) an unincorporated organization,
- (vii) a trust, including a business trust,
- (viii) a corporation,
- (ix) a government or an agency of a government, or
- (x) any other legal or commercial entity;
- (x) “**protected purchaser**” means a purchaser of a certificated or uncertificated security, or of an interest in the security, who
 - (i) gives value,
 - (ii) does not have notice of any adverse claim to the security, and
 - (iii) obtains control of the security;
- (y) “**purchase**” means a taking by sale, discount, negotiation, mortgage, hypothec, pledge, security interest, issue or reissue, gift or any other voluntary transaction that creates an interest in property;
- (z) “**purchaser**” means a person who takes by purchase;
- (aa) “**registered form**”, in respect of a certificated security, means a form in which
 - (i) the security certificate specifies a person entitled to the security, and
 - (ii) a transfer of the security may be registered on books maintained for that purpose by or on behalf of the issuer, or the security certificate states that it may be so registered;
- (bb) “**representative**” means any person empowered to act for another, including an agent, an officer of a corporation or association and a trustee, executor or administrator of an estate;
- (cc) “**secured party**” means a secured party as defined in the *Personal Property Security Act* R.S.P.E.I. 1988, Cap. P-3.1;
- (dd) “**securities account**” means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that constitute the financial asset;
- (ee) “**securities intermediary**” means
 - (i) a clearing agency, or
 - (ii) a person, including a broker, bank or trust company, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity;
- (ff) “**security**”, except as otherwise provided in sections 9 to 15, means an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer
 - (i) that is represented by a security certificate in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer,
 - (ii) that is one of a class or series, or by its terms is divisible into a class or series, of shares, participations, interests or obligations, and
 - (iii) that
 - (A) is, or is of a type, dealt in or traded on securities exchanges or securities markets, or



- (B) is a medium for investment and by its terms expressly provides that it is a security for the purposes of this Act;
- (gg) “**security certificate**” means a certificate representing a security, but does not include a certificate in electronic form;
- (hh) “**security entitlement**” means the rights and property interest of an entitlement holder with respect to a financial asset that are specified in Part VI;
- (ii) “**security interest**” means a security interest as defined in the *Personal Property Security Act*;
- (jj) “**unauthorized**”, when used with reference to a signature or endorsement, means a signature or endorsement that is made without actual, implied or apparent authority or that is forged;
- (kk) “**uncertificated security**” means a security that is not represented by a certificate;
- (ll) “**value**” means any consideration sufficient to support a simple contract and includes an antecedent debt or liability.

Defined, financial asset

- (2) As the context requires, in this Act “financial asset” means either the interest itself or the means by which a person’s claim to it is evidenced, including a certificated or uncertificated security, a security certificate and a security entitlement.

Characterization of person or transaction for purposes of this Act

- (3) The characterization of a person, business or transaction for the purposes of this Act does not determine the characterization of the person, business or transaction for the purposes of any other statute, law, regulation or rule.

2. Meaning of valid security

A security is valid if it is issued in accordance with the applicable law described in subsection 43(2) and the constating provisions governing the issuer.

3. Notice of fact

- (1) For the purposes of this Act, a person has notice of a fact if
- (a) the person has knowledge of it;
 - (b) the person has received a notice of it; or
 - (c) information comes to the person’s attention under circumstances in which a reasonable person would take cognizance of it.

Notice, how it may be given

- (2) A person gives a notice to another person by taking such steps as may be reasonably required to inform the other person in the ordinary course, whether or not the other person comes to know of it.

Notice, when received by a person

- (3) A person receives a notice when
- (a) the notice comes to the person’s attention;
 - (b) in the case of a notice under a contract, the notice is duly delivered to the place of business through which the contract was made; or
 - (c) the notice is duly delivered to any other place held out by that person as the place for receipt of those notices.

Notice, when received by an organization

- (4) Notice, knowledge or a notice received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting the transaction and, in any event, from the time when it would have been brought to the attention of that individual if the organization had exercised due diligence.

Due diligence

- (5) For the purpose of subsection (4), an organization exercises due diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with those routines.

When communication required

- (6) For the purpose of subsection (4), due diligence does not require an individual acting for the organization to communicate information unless
- (a) that communication is part of the individual's regular duties; or
 - (b) the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

4. Definition, "good faith"

- (1) In this section "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

Obligation of good faith

- (2) Every contract to which this Act applies and every duty imposed by this Act imposes an obligation of good faith in its performance or enforcement.

5. Variation of Act provisions by agreement

- (1) Subject to subsection (2), the effect of provisions of this Act may be varied by agreement.

Obligations imposed by Act not disclaimed by agreement

- (2) The obligations of good faith, diligence, reasonableness and care imposed by this Act may not be disclaimed by agreement, but the parties may by agreement determine the standards by which the performance of such obligations is to be measured so long as such standards are not manifestly unreasonable.

6. Principles of law and equity apply

Except in so far as they are inconsistent with this Act, the principles of law and equity supplement this Act and continue to apply, including

- (a) the law merchant;
- (b) the law relating to the capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion and mistake; and
- (c) other validating or invalidating rules of law.

7. Clearing agency rules prevail

A rule adopted by a clearing agency governing rights and obligations between the clearing agency and its participants or between participants in the clearing agency is effective even if



the rule conflicts with this Act or the *Personal Property Security Act* and affects another person who does not consent to the rule.

8. Existing legal proceedings, Act's application

This Act does not affect a legal proceeding that was commenced before the commencement of this section.

**PART II - GENERAL MATTERS CONCERNING SECURITIES AND OTHER
FINANCIAL ASSETS**

Division A - Classification of Obligations and Interests

9. Share or similar equity interest

A share or similar equity interest issued by a corporation, business trust or similar entity is a security.

10. Definitions

(1) In this section

- (a) “**mutual fund security**” means a share, unit or similar equity interest issued by an open-end mutual fund, but does not include an insurance policy, endowment policy or annuity contract issued by an insurance company;
- (b) “**open-end mutual fund**” means an entity that makes a distribution to the public of its shares, units or similar equity interests and that carries on the business of investing the consideration it receives for the shares, units or similar equity interests it issues, all or substantially all of which shares, units or similar equity interests are redeemable on the demand of their holders or owners.

Mutual fund security

(2) A mutual fund security is a security.

11. Definition, “limited liability corporation”

(1) In this section, “**limited liability corporation**” means an unincorporated association, other than a partnership, formed under the laws of another jurisdiction, that grants to each of its members limited liability with respect to the liabilities of the association.

Interest in partnership or limited liability corporation, when a security

- (2) An interest in a partnership or limited liability corporation is not a security unless
 - (a) that interest is dealt in or traded on securities exchanges or in securities markets;
 - (b) the terms of that interest expressly provide that the interest is a security for the purposes of this Act; or
 - (c) that interest is a mutual fund security within the meaning of section 10.

Interest in a partnership or limited liability corporation, when a financial asset

(3) An interest in a partnership or limited liability corporation is a financial asset if it is held in a securities account.

12. Bill of exchange or promissory note, when a financial asset

A bill of exchange or promissory note to which the *Bills of Exchange Act* (Canada) applies is not a security, but is a financial asset if it is held in a securities account.

13. Depository bill or depository note, when a financial asset

A depository bill or depository note to which the *Depository Bills and Notes Act* (Canada) applies is not a security, but is a financial asset if it is held in a securities account.

14. Definition, “clearing house option”

(1) In this section, “**clearing house option**” means a clearing house option as defined in the *Personal Property Security Act*.

Clearing house option, a financial asset

(2) A clearing house option or similar obligation is not a security, but is a financial asset.

15. Definition, “futures contract”

(1) In this section, “**futures contract**” means a futures contract as defined in the *Personal Property Security Act*.

Futures contract not a security or financial asset

(2) A futures contract is not a security or a financial asset.

Division B - Acquisition of Financial Assets or Interests in Them

16. Acquisition of security or an interest in a security

- (1) A person acquires a security or an interest in a security under this Act if
- (a) the person is a purchaser to whom a security is delivered under section 67; or
 - (b) the person acquires a security entitlement to the security under section 94.

Acquisition of a financial asset or interest in a financial asset

(2) A person acquires a financial asset, other than a security, or an interest in such a financial asset under this Act if the person acquires a security entitlement to the financial asset.

Person acquiring security entitlement, rights and purchaser status

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part VI, but is a purchaser of any security, security entitlement or other financial asset held by a securities intermediary only to the extent provided in section 96.

Requirement in law to transfer, deliver or surrender security or other financial asset, when met

(4) Unless the context of another statute, law, regulation, rule or agreement shows that a different meaning is intended, a person who is required by that statute, law, regulation, rule or agreement to transfer, deliver, present, surrender, exchange or otherwise put in the possession of another person a security or other financial asset satisfies that requirement by causing the other person to acquire an interest in the security or other financial asset as set out in subsection (1) or (2).



Division C - Notice of Adverse Claims

17. What constitutes notice of adverse claim

A person has notice of an adverse claim if

- (a) the person knows of the adverse claim;
- (b) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or
- (c) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists and the investigation, if carried out, would establish the existence of the adverse claim.

18. Knowledge of transfer imposes no duty of inquiry and is not notice

- (1) Having knowledge that a financial asset, or an interest in a financial asset, is being or has been transferred by a representative does not impose any duty of inquiry into the rightfulness of the transaction and is not notice of an adverse claim.

Exception

- (2) Despite subsection (1), a person has notice of an adverse claim if that person knows that
 - (a) a representative has transferred a financial asset, or an interest in a financial asset, in a transaction; and
 - (b) the transaction is, or the proceeds of the transaction are being used,
 - (i) for the individual benefit of the representative, or
 - (ii) otherwise in breach of a duty owed by the representative.

19. Delayed transfer, act or event constituting notice

An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate, or that sets a date on or after which a security certificate is to be presented or surrendered for redemption or exchange, does not by itself constitute notice of an adverse claim except in the case of a transfer that takes place more than

- (a) one year after a date set for presentation or surrender for redemption or exchange; or
- (b) six months after a date set for payment of money against presentation or surrender of the security certificate, if money was available for payment on that date.

20. Purchaser of certificated security, notice of adverse claim

- (1) A purchaser of a certificated security has notice of an adverse claim if the security certificate
 - (a) whether in bearer form or registered form, has been endorsed “for collection” or “for surrender” or for some other purpose not involving a transfer; or
 - (b) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor.

Exception

- (2) For the purposes of clause (1)(b), the mere writing of a name on a security certificate does not by itself constitute an unambiguous statement that the security certificate is the property of a person other than the transferor.

21. Registration of financing statement under *Personal Property Security Act*, not notice

The registration of a financing statement under the *Personal Property Security Act* is not notice of an adverse claim.

Division D - Control of Financial Assets

22. Purchaser's control of certificated security in bearer form

- (1) A purchaser has control of a certificated security that is in bearer form if the certificated security is delivered to the purchaser.

Purchaser's control of certificated security in registered form

- (2) A purchaser has control of a certificated security that is in registered form if the certificated security is delivered to the purchaser and
- (a) the security certificate is endorsed to the purchaser or in blank by an effective endorsement; or
 - (b) the security certificate is registered in the name of the purchaser at the time of the original issue or registration of transfer by the issuer.

23. Purchaser's control of uncertificated security

- (1) A purchaser has control of an uncertificated security if
- (a) the uncertificated security is delivered to the purchaser; or
 - (b) the issuer has agreed that the issuer will comply with instructions that are originated by the purchaser without the further consent of the registered owner.

What purchaser's control includes

- (2) A purchaser to whom subsection (1) applies in relation to an uncertificated security has control of the uncertificated security even if the registered owner retains the right
- (a) to make substitutions for the uncertificated security;
 - (b) to originate instructions to the issuer; or
 - (c) to otherwise deal with the uncertificated security.

24. Purchaser's control of security entitlement

- (1) A purchaser has control of a security entitlement if
- (a) the purchaser becomes the entitlement holder;
 - (b) the securities intermediary has agreed that it will comply with entitlement orders that are originated by the purchaser without the further consent of the entitlement holder; or
 - (c) another person has control of the security entitlement on behalf of the purchaser or, having previously obtained control of the security entitlement, acknowledges that the person has control on behalf of the purchaser.

What purchaser's control includes

- (2) A purchaser to whom subsection (1) applies in relation to a security entitlement has control of the security entitlement even if the entitlement holder retains the right
- (a) to make substitutions for the security entitlement;



- (b) to originate entitlement orders to the securities intermediary; or
- (c) to otherwise deal with the security entitlement.

25. Securities intermediary's control of security entitlement

Where an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control of the security entitlement.

26. Issuer not to enter agreement for control of uncertificated security without consent

- (1) An issuer shall not enter into an agreement of the kind referred to in clause 23(1)(b) without the consent of the registered owner.

Agreement, confirmation by issuer

- (2) An issuer that has entered into an agreement of the kind referred to in clause 23(1)(b) is not required to confirm the existence of the agreement to another person unless requested to do so by the registered owner.

Issuer not required to enter agreement

- (3) An issuer is not required to enter into an agreement of the kind referred to in clause 23(1)(b) even if the registered owner so requests.

27. Securities intermediary not to enter agreement for control of security entitlement without consent

- (1) A securities intermediary shall not enter into an agreement of the kind referred to in clause 24(1)(b) without the consent of the entitlement holder.

Agreement, confirmation by securities intermediary

- (2) A securities intermediary that has entered into an agreement of the kind referred to in clause 24(1)(b) is not required to confirm the existence of the agreement to another person unless requested to do so by the entitlement holder.

Securities intermediary not required to enter agreement

- (3) A securities intermediary is not required to enter into an agreement of the kind referred to in clause 24(1)(b) even if the entitlement holder so requests.

Division E - Endorsements, Instructions and Entitlement Orders

28. Effectiveness of endorsement, instruction or entitlement order

An endorsement, instruction or entitlement order is effective if

- (a) it is made by the appropriate person;
- (b) it is made by a person who, in the case of an endorsement or instruction, has the power under the law of agency to transfer the security, or in the case of an entitlement order, has the power under the law of agency to transfer the financial asset, on behalf of the appropriate person, including,
 - (i) in the case of an instruction referred to in clause 23(1)(b), the person who has control of the uncertificated security, or

- (ii) in the case of an entitlement order referred to in clause 24(1)(b), the person who has control of the security entitlement; or
- (c) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

29. Effectiveness of endorsement, instruction or entitlement order made by representative

An endorsement, instruction or entitlement order made by a representative is effective even if

- (a) the representative has failed to comply with a controlling instrument or with the law of the jurisdiction governing the representative's rights and duties, including any law requiring the representative to obtain court approval of the transaction; or
- (b) the representative's action in making the endorsement, instruction or entitlement order or using the proceeds of the transaction is otherwise a breach of duty owed by the representative.

30. Continuing effect of endorsement, instruction or entitlement order made by representative

Where a security is registered in the name of or specially endorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an endorsement, instruction or entitlement order made by the person is effective even if the person is no longer serving in that capacity.

31. Date when effectiveness is determined

- (1) The effectiveness of an endorsement, instruction or entitlement order is determined as of the date that the endorsement, instruction or entitlement order is made.

Change of circumstances, effect

- (2) An endorsement, instruction or entitlement order does not become ineffective by reason of any later change of circumstances.

Division F - Warranties Applicable to Direct Holdings

32. Warranties to purchaser on transfer of certificated security

A person who transfers a certificated security to a purchaser for value warrants to the purchaser and, where the transfer is by endorsement, also warrants to any subsequent purchaser, that

- (a) the security certificate is genuine and has not been materially altered;
- (b) the transferor does not know of any fact that might impair the validity of the security;
- (c) there is no adverse claim to the security;
- (d) the transfer does not violate any restriction on transfer;
- (e) the endorsement is made by the appropriate person or, if the endorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
- (f) the transfer is otherwise effective and rightful.



33. Warranties to purchaser on instruction to transfer uncertificated security

- (1) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that
- (a) the instruction is made by the appropriate person or, where the instruction is made by an agent, the agent has actual authority to act on behalf of the appropriate person;
 - (b) the security is valid;
 - (c) there is no adverse claim to the security; and
 - (d) at the time that the instruction is presented to the issuer,
 - (i) the purchaser will be entitled to the registration of transfer,
 - (ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction,
 - (iii) the transfer will not violate any restriction on transfer, and
 - (iv) the transfer will otherwise be effective and rightful.

Warranties to purchaser on transfer of uncertificated security without instruction

- (2) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants to the purchaser that
- (a) the security is valid;
 - (b) there is no adverse claim to the security;
 - (c) the transfer does not violate any restriction on transfer; and
 - (d) the transfer is otherwise effective and rightful.

34. Warranties to issuer on endorsement of security certificate

A person who endorses a security certificate warrants to the issuer that

- (a) there is no adverse claim to the security; and
- (b) the endorsement is effective.

35. Warranties to issuer on instruction to register transfer

A person who originates an instruction for the registration of transfer of an uncertificated security warrants to the issuer that

- (a) the instruction is effective; and
- (b) at the time that the instruction is presented to the issuer, the purchaser will be entitled to the registration of transfer.

36. Warranty to issuer on presentation of certificated security

A person who presents a certificated security for the registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants to the issuer only that the person has no knowledge of any unauthorized signature in a necessary endorsement.

37. Warranties to purchaser by agent delivering certificated security

Where

- (a) a person acts as agent of another person in delivering a certificated security to a purchaser;
- (b) the identity of the principal was known to the person to whom the security certificate was delivered; and
- (c) the security certificate delivered by the agent was received by the agent from the principal or from another person at the direction of the principal,

the person delivering the security certificate warrants, to the purchaser, only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

38. Warranties on redelivery of security certificate

A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent set out in section 37.

39. Broker's warranties to issuer and purchaser

- (1) Except as otherwise provided in section 37, a broker acting for a customer makes to the issuer and a purchaser the warranties set out in sections 32 to 36.

Broker's warranties to customer and rights as a purchaser

- (2) A broker that delivers a security certificate to the broker's customer makes to the customer the warranties set out in section 32 and has the rights and privileges of a purchaser provided under sections 32, 37 and 38.

Broker's warranties to customer and rights as a purchaser

- (3) A broker that causes the broker's customer to be registered as the owner of an uncertificated security makes to the customer the warranties set out in section 33 and has the rights and privileges of a purchaser provided under section 33.

Warranties additional

- (4) The warranties of and in favour of the broker acting as an agent are in addition to applicable warranties given by and in favour of the customer.

Division G - Warranties Applicable to Indirect Holdings

40. Warranties to securities intermediary on origination of entitlement order

A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary

- (a) that the entitlement order is made by the appropriate person or, if the entitlement order is made by an agent, that the agent has actual authority to act on behalf of the appropriate person; and
- (b) that there is no adverse claim to the security entitlement.



41. Warranties to securities intermediary on delivery of security certificate

- (1) A person who delivers a security certificate to a securities intermediary for credit to a securities account makes to the securities intermediary the warranties set out in section 32.

Warranties to securities intermediary on origination of instructions

- (2) A person who originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties set out in section 33.

42. Securities intermediary's warranties on delivery of security certificate

- (1) Where a securities intermediary delivers a security certificate to its entitlement holder, the securities intermediary makes to the entitlement holder the warranties set out in section 32.

Securities intermediary's warranties to entitlement holder on registration

- (2) Where a securities intermediary causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties set out in section 33.

Division H - Conflict of Laws

43. Definition, "issuer's jurisdiction"

- (1) In this section, "issuer's jurisdiction" means
- (a) where the issuer is incorporated under a law of Canada, the province or territory in Canada in which the issuer has its registered or head office or, where permitted by the law of Canada, another jurisdiction specified by the issuer;
 - (b) where the issuer is the Crown in right of Canada, the jurisdiction specified by the issuer;
 - (c) where the issuer is the Crown in right of a province in Canada, the province or, where permitted by the law of that province, another jurisdiction specified by the issuer;
 - (d) where the issuer is the Commissioner of a territory in Canada, the territory or, where permitted by the law of that territory, another jurisdiction specified by the issuer; and
 - (e) where any other case, the jurisdiction under which the issuer is incorporated or otherwise organized or, where permitted by the law of that jurisdiction, another jurisdiction specified by the issuer.

Laws governing validity of a security

- (2) The validity of a security is governed by the following laws:
- (a) where the issuer is incorporated under a law of Canada, the law, other than the conflict of law rules, of Canada;
 - (b) where the issuer is the Crown in right of Canada, the law, other than the conflict of law rules, of Canada;
 - (c) where the issuer is the Crown in right of a province in Canada, the law, other than the conflict of law rules, of the province;
 - (d) where the issuer is the Commissioner of a territory in Canada, the law, other than the conflict of law rules, of the territory;
 - (e) in any other case, the law, other than the conflict of law rules, of the jurisdiction under which the issuer is incorporated or otherwise organized.

Law of issuer's jurisdiction, matters governed by

- (3) The law, other than the conflict of law rules, of the issuer's jurisdiction governs
- (a) the rights and duties of the issuer with respect to the registration of transfer;
 - (b) the effectiveness of the registration of transfer by the issuer;
 - (c) whether the issuer owes any duties to an adverse claimant to a security; and
 - (d) whether an adverse claim can be asserted against a person
 - (i) to whom the transfer of a certificated or uncertificated security is registered,
or
 - (ii) who obtains control of an uncertificated security.

Issuer's jurisdiction, exceptions

- (4) The following issuers may specify the law of another jurisdiction as the law governing the matters referred to in clauses (3)(a) to (d):
- (a) an issuer incorporated or otherwise organized under the law of Prince Edward Island;
 - (b) the Crown in right of Prince Edward Island.

Laws determining enforceability of a security against an issuer

- (5) Whether a security is enforceable against an issuer despite a defence or defect described in sections 56 to 58 is governed by the following laws:
- (a) where the issuer is incorporated under a law of Canada, the law, other than the conflict of law rules, of the province or territory in Canada in which the issuer has its registered or head office;
 - (b) where the issuer is the Crown in right of Canada, the law, other than the conflict of law rules, of the issuer's jurisdiction;
 - (c) where the issuer is the Crown in right of a province in Canada, the law, other than the conflict of law rules, of the province;
 - (d) where the issuer is the Commissioner of a territory in Canada, the law, other than the conflict of law rules, of the territory;
 - (e) in any other case, the law, other than the conflict of law rules, of the jurisdiction under which the issuer is incorporated or otherwise organized.

44. Definition, "securities intermediary's jurisdiction"

- (1) In this section "securities intermediary's jurisdiction" means the jurisdiction determined in accordance with the following rules:
- (a) where an agreement between a securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for the purposes of the law of that jurisdiction, this Act or any provision of this Act, the jurisdiction expressly provided for is the securities intermediary's jurisdiction;
 - (b) where clause (a) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction;
 - (c) where neither clause (a) nor (b) applies and an agreement between a securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction;



- (d) where none of the preceding clauses applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located;
- (e) where none of the preceding clauses applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

Determination of securities intermediary's jurisdiction, matters not to be considered

- (2) In determining a securities intermediary's jurisdiction, the following matters are not to be taken into account:
 - (a) the physical location of certificates representing financial assets;
 - (b) where an entitlement holder has a security entitlement with respect to a financial asset, the jurisdiction in which the issuer of the financial asset is incorporated or otherwise organized;
 - (c) the location of facilities for data processing or other record keeping concerning the securities account.

Law of the securities intermediary's jurisdiction, matters governed by

- (3) The law, other than the conflict of law rules, of the securities intermediary's jurisdiction governs
 - (a) acquisition of a security entitlement from the securities intermediary;
 - (b) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
 - (c) whether the securities intermediary owes any duty to a person who has an adverse claim to a security entitlement; and
 - (d) whether an adverse claim may be asserted against a person who
 - (i) acquires a security entitlement from the securities intermediary, or
 - (ii) purchases a security entitlement, or interest in it, from an entitlement holder.

45. Adverse claim governed by law of jurisdiction in which security certificate located

The law, other than the conflict of law rules, of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim may be asserted against a person to whom the security certificate is delivered.

Division I - Seizure of Interests of Judgment Debtors

46. Seizure governed by laws respecting civil enforcement of judgments

Subject to any necessary modifications for the purposes of permitting the operation of sections 47 to 50, the laws governing the civil enforcement of judgments apply to seizures described in those sections.

47. Seizure of interest in certificated security

- (1) Except as otherwise provided in subsection (2) and in section 50, the interest of a judgment debtor in a certificated security may be seized only by actual seizure of the security certificate by a sheriff.

Service of notice of seizure on issuer

- (2) A certificated security for which the security certificate has been surrendered to the issuer may be seized by a sheriff serving a notice of seizure on the issuer at the issuer's chief executive office.

48. Seizure of interest in uncertificated security, service of notice on issuer

Except as otherwise provided in section 50, the interest of a judgment debtor in an uncertificated security may be seized only by a sheriff serving a notice of seizure on the issuer at the issuer's chief executive office.

49. Seizure of interest in security entitlement, service of notice on securities intermediary

Except as otherwise provided in section 50, the interest of a judgment debtor in a security entitlement may be seized only by a sheriff serving a notice of seizure on the securities intermediary with whom the judgment debtor's securities account is maintained.

50. Service of notice of seizure on secured party

The interest of a judgment debtor in any of the following may be seized by a sheriff serving a notice of seizure on the secured party:

- (a) a certificated security for which the security certificate is in the possession of a secured party;
- (b) an uncertificated security registered in the name of a secured party;
- (c) a security entitlement maintained in the name of a secured party.

Division J - Enforceability of Contracts and Rules of Evidence

51. Enforceability of contracts

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is some writing signed or record authenticated by a person against whom enforcement is sought.

52. Definitions

- (1) In this section

- (a) **“defendant”** includes respondent;
- (b) **“plaintiff”** means a person attempting to recover on a security certificate in a legal proceeding, whether described in that proceeding as a plaintiff, appellant, claimant, petitioner, applicant or any other term.

Rules of evidence, application

- (2) The evidentiary rules set out in this section apply to a legal proceeding on a certificated security against the issuer of that security.

Signatures on security certificate, admission

- (3) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary endorsement is admitted.



Signatures on security certificate, presumption

- (4) A signature on a security certificate is presumed to be genuine and authorized but, if the effectiveness of the signature is put in issue, the burden of establishing that it is genuine and authorized is on the party claiming under the signature.

Signatures on security certificate, effect of admission or establishment

- (5) Where signatures on a security certificate are admitted or established, the production of the security certificate entitles a holder to recover on the security certificate unless the defendant establishes a defence or defect that goes to the validity of the security.

Plaintiff's burden if defence or defect respecting validity of security

- (6) Where it is shown that a defence or defect that goes to the validity of the security exists, the plaintiff has the burden of establishing that the defence or defect cannot be asserted against
- (a) the plaintiff; or
 - (b) a person under whom the plaintiff claims.

**Division K - Securities Intermediaries —
Liability and Status as Purchasers for Value**

53. Securities intermediary's liability to adverse claimant on transfer of financial asset

- (1) Subject to subsection (3), a securities intermediary that has transferred a financial asset in accordance with an effective entitlement order is not liable to a person having an adverse claim to, or a security interest in, the financial asset.

Broker's liability to adverse claimant on dealing with financial asset

- (2) Subject to subsection (3), a broker or other agent or bailee who has dealt with a financial asset at the direction of a customer or principal is not liable to a person having an adverse claim to, or a security interest in, the financial asset.

Liability of securities intermediary and broker to adverse claimant, circumstances

- (3) A securities intermediary referred to in subsection (1) or a broker or other agent or bailee referred to in subsection (2) is liable to a person having an adverse claim to, or a security interest in, the financial asset if the securities intermediary, broker or other agent or bailee, as the case may be, did one or more of the following:
- (a) took the action described in subsection (1) or (2) after having been served with an injunction, restraining order or other legal process issued by a court of competent jurisdiction enjoining the securities intermediary, broker or other agent or bailee, as the case may be, from doing so and after having had a reasonable opportunity to obey or otherwise abide by the injunction, restraining order or other legal process;
 - (b) acted in collusion with the wrongdoer in violating the rights of the person who has the adverse claim or the person who has the security interest;
 - (c) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

54. Securities intermediary as purchaser for value of financial asset

- (1) A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favour of an entitlement holder is a purchaser for value of the financial asset.

Acquisition of security entitlement to financial asset for value

- (2) A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favour of an entitlement holder.

PART III - ISSUE AND ISSUER**55. Terms of certificated security**

- (1) Even against a purchaser for value and without notice, the terms of a certificated security include
- (a) the terms stated on the security certificate; and
 - (b) any terms made part of the security by reference on the security certificate to another instrument, indenture or other document or to a statute, regulation, rule, order or the like, to the extent that those terms do not conflict with the terms stated on the security certificate.

Reference on security certificate is not notice of defect

- (2) A reference described in clause (1)(b) does not by itself constitute notice to a purchaser for value of a defect that goes to the validity of the security, even if the security certificate expressly states that a person accepting it admits notice.

Terms of uncertificated security

- (3) The terms of an uncertificated security include those stated in any instrument, indenture or other document or in a statute, regulation, rule, order or the like under which the security is issued.

56. Enforcement of security

- (1) An unauthorized signature placed on a security certificate before or in the course of issue is ineffective except that the signature is effective in favour of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by
- (a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security certificate or of any similar security certificate or with the immediate preparation for signing of any of those security certificates; or
 - (b) an employee of the issuer, or of any persons referred to in clause (a), entrusted with responsible handling of the security certificate.

Enforcement if defect respecting validity

- (2) Except as provided in subsection (3), a security issued with a defect going to its validity is enforceable against the issuer if held by a purchaser for value and without notice of the defect.

Application of subsection (2) respecting government security

- (3) Subsection (2) does not apply to a security issued by a government or agency of it unless
- (a) there has been substantial compliance with the legal requirements governing the issue; or



- (b) the issuer has received all or a substantial part of the consideration for the issue as a whole or for the particular security and the purpose of the issue is one for which the issuer has power to borrow money or issue the security.

57. Lack of genuineness of certificated security

Except as otherwise provided in section 56, lack of genuineness of a certificated security is a complete defence, even against a purchaser for value and without notice of the lack of genuineness.

58. Other defences

All other defences of the issuer of a security that are not referred to in sections 55 to 57, including non-delivery and conditional delivery of a security, are ineffective against a purchaser for value who has taken the security without notice of the particular defence.

59. Right to cancel contract

Nothing in sections 55 to 58 affects the right of a party to a “when, as and if issued” contract or a “when distributed” contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement under which the security is to be issued or distributed.

60. Staleness deemed to be notice of defect or defence

- (1) After an act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is deemed to have notice of any defect in the security’s issue or of any defence of the issuer
 - (a) if
 - (i) the act or event requires that, on presentation or surrender of the security certificate, money be paid, a certificated security be delivered or a transfer of an uncertificated security be registered,
 - (ii) the money or security is available on the date set for payment or exchange, and
 - (iii) the purchaser takes delivery of the security more than one year after the date referred to in subclause (ii); or
 - (b) if
 - (i) the act or event is not one to which clause (a) applies, and
 - (ii) the purchaser takes delivery of the security more than two years after the date on which performance became due or the date set for presentation or surrender.

Application of subsection (1)

- (2) Subsection (1) does not apply to a call that has been revoked.

61. Effectiveness of issuer’s restriction on transfer

A restriction on the transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless

- (a) the security is a certificated security and the restriction is noted conspicuously on the security certificate; or
- (b) the security is an uncertificated security and the registered owner has been given a notice of the restriction by a person required to give such notice in order to make the restriction effective.

62. Completion of security certificate

- (1) Where a security certificate contains the signatures necessary to the security's issue or transfer but is incomplete in any other respect,
 - (a) any person may complete the security certificate by filling in the blanks in accordance with the person's authority; and
 - (b) even if any of the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took the security certificate for value and without notice of the incorrectness.

Enforcement of improperly altered security certificate

- (2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

63. Rights and duties of issuer respecting registered owners

- (1) Before due presentation for registration of transfer of a certificated security in registered form or the receipt of an instruction requesting registration of transfer of an uncertificated security, an issuer or indenture trustee may treat the registered owner as the person exclusively entitled
 - (a) to vote;
 - (b) to receive notices;
 - (c) to receive any interest, dividend or other payments; and
 - (d) to otherwise exercise all the rights and powers of an owner.

Registered owner of security, liability for call or assessment

- (2) Nothing in this Act affects the liability of the registered owner of a security for a call, an assessment or the like.

64. Warranties by person signing security certificate

- (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect in respect of that security, that
 - (a) the security certificate is genuine;
 - (b) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and
 - (c) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

Responsibility of person signing security certificate

- (2) Unless otherwise agreed, a person signing a security certificate under subsection (1) does not assume responsibility for the validity of the security in any respect other than that set out in subsection (1).



65. Issuer's lien

A lien in favour of an issuer on a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

66. Enforcement provisions, application if overissue results

- (1) Except as otherwise provided in subsections (2) and (3), the provisions of this Act that make a security enforceable against an issuer despite a defence or defect or that compel a security's issue or reissue do not apply to the extent that the application of such provision would result in an overissue.

Identical security, purchase and delivery if not overissue

- (2) Where an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue of a security, or a person entitled to enforce a security against an issuer despite a defence or defect as provided under section 56, 57 or 58 or under a similar law of another jurisdiction, may compel the issuer to purchase the security and deliver it, if certificated, or register its transfer, if uncertificated, against surrender of any security certificate the person holds.

Price recovery if identical security not available

- (3) Where an identical security not constituting an overissue is not reasonably available for purchase, a person entitled to issue of a security, or a person entitled to enforce a security against an issuer despite a defence or defect as provided under section 56, 57 or 58 or under a similar law of another jurisdiction, may recover from the issuer the price that the last purchaser for value paid for the security with interest from the date of the person's demand.

Overissue deemed not to have occurred if cured

- (4) An overissue is deemed not to have occurred if appropriate action has cured the overissue.

PART IV - TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES**Division A - Delivery and Rights of Purchaser****67. Delivery of certificated security to purchaser**

- (1) Delivery of a certificated security to a purchaser occurs when
- (a) the purchaser acquires possession of the security certificate;
 - (b) another person, other than a securities intermediary, either
 - (i) acquires possession of the security certificate on behalf of the purchaser, or
 - (ii) having previously acquired possession of the security certificate, acknowledges that the person holds the security certificate for the purchaser;or
 - (c) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, the security certificate is in registered form and the security certificate is
 - (i) registered in the name of the purchaser,
 - (ii) payable to the order of the purchaser, or

- (iii) specially endorsed to the purchaser by an effective endorsement and has not been endorsed to the securities intermediary or in blank.

Delivery of uncertificated security to purchaser

- (2) Delivery of an uncertificated security to a purchaser occurs when
 - (a) the issuer registers the purchaser as the registered owner, on the original issue or the registration of transfer; or
 - (b) another person, other than a securities intermediary, either
 - (i) becomes the registered owner of the uncertificated security on behalf of the purchaser, or
 - (ii) having previously become the registered owner, acknowledges that the person holds the uncertificated security for the purchaser.

68. Rights of purchaser of certificated or uncertificated security

- (1) Except as otherwise provided in subsections (2) and (3), a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

Rights of purchaser of limited interest

- (2) A purchaser of a limited interest in a security acquires rights only to the extent of the interest purchased.

Rights of purchaser of a certificated security

- (3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve that purchaser's position by virtue of taking from a protected purchaser.

69. Protected purchaser free from adverse claims

A protected purchaser, in addition to acquiring the rights of a purchaser, also acquires the purchaser's interest in the security free of any adverse claim.

Division B - Endorsements and Instructions

70. Form of endorsement

- (1) An endorsement may be in blank or special.

Endorsement in blank

- (2) An endorsement in blank includes an endorsement to bearer.

Special endorsement

- (3) For an endorsement to be a special endorsement, the endorsement must specify to whom the security is to be transferred or who has power to transfer the security.

Conversion of endorsement in blank to special endorsement

- (4) A holder may convert an endorsement in blank to a special endorsement.



71. Endorsement of part of security certificate, effect

An endorsement of a security certificate, if the endorsement purports to be in respect of only some of the units represented by the certificate, is effective to the extent of the endorsement if the units are intended by the issuer to be separately transferable.

72. When endorsement of security certificate constitutes transfer

An endorsement of a security certificate, whether special or in blank, does not constitute a transfer of the security

- (a) until the delivery of the security certificate on which the endorsement appears; or
- (b) where the endorsement is on a separate document, until the delivery of both the security certificate and the document on which the endorsement appears.

73. Endorsement missing

Where a security certificate in registered form has been delivered to a purchaser without a necessary endorsement, the purchaser may become a protected purchaser only when the endorsement is supplied, but against the transferor, the transfer is complete on delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

74. Notice of adverse claim on endorsement

A purported endorsement of a security certificate in bearer form may constitute notice of an adverse claim to the security certificate, but the purported endorsement does not otherwise affect any right that the holder has.

75. Obligations of endorser

Unless otherwise agreed, a person making an endorsement makes only the warranties set out in sections 32 and 34 and does not warrant that the security will be honoured by the issuer.

76. Completion of instruction

Where an instruction has been originated by the appropriate person but is incomplete in any other respect, any person may complete the instruction in accordance with the person's authority and the issuer may rely on the instruction as completed, even if it has been completed incorrectly.

77. Obligations of person originating an instruction

Unless otherwise agreed, a person originating an instruction makes only the warranties set out in sections 33 and 35 and does not warrant that the security will be honoured by the issuer.

Division C - Signature Guarantees and Other Requisites for Registration of Transfer

78. Warranties by guarantor of endorser's signature

A person who guarantees a signature of an endorser of a security certificate warrants that, at the time of signing,

- (a) the signature was genuine;

- (b) the signer was the appropriate person to endorse or, if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and
- (c) the signer had legal capacity to sign.

79. Warranties by guarantor of signature of originator of instruction

- (1) A person who guarantees a signature of the originator of an instruction warrants that, at the time of signing,
- (a) the signature was genuine;
 - (b) where the person specified in the instruction as being the registered owner was, in fact, the registered owner, the signer was the appropriate person to originate the instruction or, where the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and
 - (c) the signer had legal capacity to sign.

Exception

- (2) A person who guarantees a signature of the originator of an instruction does not by that guarantee warrant that the person who is specified in the instruction as the registered owner is in fact the registered owner.

80. Warranties by special guarantor of signature of originator of instruction

A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under section 79 and also warrants that, at the time that the instruction is presented to the issuer,

- (a) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and
- (b) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction.

81. Warranty *re* rightfulness of transfer by guarantor

- (1) A guarantor under section 78 or 79 or a special guarantor under section 80 does not otherwise warrant the rightfulness of the transfer.

Warranties of guarantor of an endorsement

- (2) A person who guarantees an endorsement of a security certificate makes the warranties of a signature guarantor under section 78 and also warrants the rightfulness of the transfer in all respects.

Warranties of guarantor of instruction respecting transfer

- (3) A person who guarantees an instruction that requests the transfer of an uncertificated security makes the warranties of a special guarantor under section 80 and also warrants the rightfulness of the transfer in all respects.

82. Guarantee may not be condition to registration of transfer

An issuer shall not require a special guarantee of signature, a guarantee of endorsement or a guarantee of instruction as a condition to the registration of transfer.



83. Liability of guarantor

- (1) The warranties under sections 78 to 81 are made to a person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to the person for any loss resulting from any breach of those warranties.

Liability of endorser or originator of an instruction

- (2) An endorser or an originator of an instruction whose signature, endorsement or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor resulting from any breach of the warranties of the guarantor.

84. Purchaser's right to requisites for registration of transfer

- (1) Unless otherwise agreed, the transferor of a security shall, on demand, supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security.

Exception

- (2) Despite subsection (1), where the transfer is not for value, a transferor need not comply with a demand made under subsection (1) unless the purchaser pays the necessary expenses.

When purchaser may reject or rescind transfer

- (3) Where the transferor fails within a reasonable time to comply with the demand made under subsection (1), the purchaser may reject or rescind the transfer.

PART V - REGISTRATION**85. Duty of issuer to register transfer**

- (1) Where a certificated security in registered form is presented to an issuer with a request to register a transfer of the certificated security or an instruction is presented to an issuer with a request to register a transfer of an uncertificated security, the issuer shall register the transfer as requested if
 - (a) under the terms of the security, the proposed transferee is eligible to have the security registered in that person's name;
 - (b) the endorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;
 - (c) reasonable assurance is given that the endorsement or instruction is genuine and authorized;
 - (d) any applicable law relating to the collection of taxes has been complied with;
 - (e) the transfer does not violate any restriction on transfer imposed by statute or by the issuer in accordance with section 61;
 - (f) in the case of a demand made under section 87 that the issuer not register a transfer,
 - (i) the demand has not become effective under section 87, or
 - (ii) the issuer has complied with section 88, but legal process has not been obtained or an indemnity bond has not been provided to the issuer in accordance with section 89; and
 - (g) the transfer is rightful or is to a protected purchaser.

Issuer's liability on failure to register transfer of security

- (2) Where, under subsection (1), an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration, or to that person's principal, for any loss resulting from unreasonable delay in registration or the failure or refusal to register the transfer.

86. Definitions

- (1) In this section

- (a) **“appropriate evidence of appointment or incumbency”** means
- (i) in the case of a fiduciary appointed or qualified by a court, a document issued by or under the direction or supervision of the court or an officer of the court and dated within 60 days before the date of presentation for transfer, and
 - (ii) in any other case,
 - (A) a copy of a document showing the appointment,
 - (B) a certificate certifying the appointment issued by or on behalf of a person reasonably believed by the issuer to be a responsible person, or
 - (C) in the absence of a document or certificate referred to in paragraph (A) or (B), other evidence that the issuer reasonably considers appropriate;
- (b) **“fiduciary”** means any person acting in a fiduciary capacity, and includes a personal representative acting for the estate of a deceased person;
- (c) **“guarantee”** means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be a responsible person.

Standards respecting responsibility, adoption by issuer

- (2) For the purposes of the definition “guarantee” in subsection (1), an issuer may adopt any standards with respect to responsibility so long as those standards are not manifestly unreasonable.

Assurances that may be required respecting necessary endorsements or instructions

- (3) An issuer may require the following assurances that each necessary endorsement or each instruction is genuine and authorized:
- (a) in all cases, a guarantee of the signature of the person making the endorsement or originating the instruction, including, in the case of an instruction, reasonable assurance of identity;
 - (b) where the endorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to act;
 - (c) where the endorsement is made or the instruction is originated by a fiduciary or successor referred to in subclause 1(1)(b)(iv) or (v), appropriate evidence of appointment or incumbency;
 - (d) where there is more than one fiduciary or successor referred to in subclause 1(1)(b)(iv) or (v), reasonable assurance that all who are required to sign have done so;
 - (e) where the endorsement is made or the instruction is originated by a person not referred to in clause (b), (c) or (d), assurance appropriate to the case corresponding as nearly as may be to the assurance required by clause (b), (c) or (d).



Issuer may elect to require further reasonable assurance

- (4) An issuer may elect to require reasonable assurance beyond that specified in this section.

87. Demand that issuer not register transfer

- (1) A person who is the appropriate person to make an endorsement or to originate an instruction may demand that the issuer not register a transfer of a security by communicating a notice to the issuer setting out
- (a) the identity of the registered owner;
 - (b) the issue of which the security is a part; and
 - (c) an address of the person making the demand to which communications may be sent.

When demand effective

- (2) A demand made under subsection (1) becomes effective when the issuer has had a reasonable opportunity to act on the demand, having regard to the time and manner of receipt of the demand by the issuer.

88. Duty of issuer respecting demand not to register transfer

- (1) Where, after a demand made under section 87 becomes effective, a certificated security in registered form is presented to an issuer with a request to register a transfer or an instruction is presented to an issuer with a request to register a transfer of an uncertificated security, the issuer shall promptly give a notice as described in subsection (2) to the following persons:
- (a) the person who initiated the demand, at the address provided in the demand;
 - (b) the person who presented the security for the registration of transfer or originated the instruction requesting the registration of transfer.

Notice of demand not to register transfer, contents

- (2) A notice given by an issuer under subsection (1) shall state
- (a) that the certificated security has been presented for the registration of transfer or the instruction for the registration of transfer of the uncertificated security has been received;
 - (b) that a demand that the issuer not register a transfer had previously been received; and
 - (c) that the issuer will withhold registration of transfer for a period of time stated in the notice in order to provide the person who initiated the demand an opportunity to obtain legal process or to provide an indemnity bond referred to in section 89.

Period of time registration may be withheld

- (3) The period of time that may be provided for under clause (2)(c) shall not exceed 30 days from the date the notice was given and the issuer may specify a shorter period of time in the notice so long as the shorter period of time being specified is not manifestly unreasonable.

89. Issuer's liability respecting demand not to register transfer

- (1) An issuer is not liable, to a person who initiated a demand under section 87 that the issuer not register a transfer, for any loss that the person suffers as a result of the registration of a transfer in accordance with an effective endorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's notice given under section 88, either

- (a) obtain an appropriate restraining order, injunction or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or
- (b) provide the issuer with an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved from any loss that those persons may suffer by refusing to register the transfer.

Issuer's liability for registering transfer with ineffective endorsement or instruction

- (2) Nothing in subsection (1) or in section 87 or 88 relieves an issuer from liability for registering a transfer under an endorsement or instruction that was not effective.

90. Issuer liable for wrongful registration of transfer, circumstances

- (1) Except as otherwise provided in section 92, an issuer is liable for wrongful registration of transfer if
 - (a) the issuer has registered a transfer of a security to a person not entitled to the security; and
 - (b) the transfer was registered by the issuer
 - (i) under an ineffective endorsement or instruction,
 - (ii) after a demand that the issuer not register a transfer became effective under section 87 and the issuer did not comply with section 88,
 - (iii) after the issuer had been served with an injunction, restraining order or other legal process referred to in section 90 enjoining the issuer from registering the transfer and the issuer had a reasonable opportunity to obey or otherwise abide by the injunction, restraining order or other legal process, or
 - (iv) acting in collusion with the wrongdoer.

Issuer's extent of liability on wrongful registration

- (2) An issuer that is liable for the wrongful registration of transfer under subsection (1) shall, on demand, provide the person entitled to the security with
 - (a) a like certificated or uncertificated security, as the case may be; and
 - (b) any payments or distributions that the person did not receive as a result of the wrongful registration.

Issuer's liability when overissue

- (3) Where the provision of a security under subsection (2) would result in an overissue, the issuer's liability to provide the person with a like security is governed by section 66.

Issuer not liable to owner respecting loss on registration

- (4) Except as otherwise provided in subsection (1) or in any applicable law of Canada or of any province or territory of Canada relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of transfer of a security if the registration was made under an effective endorsement or instruction.

91. Replacement of security certificate by issuer, circumstances

- (1) Where an owner of a certificated security, whether in registered form or bearer form, claims that the security certificate has been lost, destroyed or wrongfully taken, the issuer shall issue a new security certificate if the owner



- (a) so requests before the issuer has notice that the lost, destroyed or wrongfully taken security certificate has been acquired by a protected purchaser;
- (b) provides the issuer with an indemnity bond sufficient in the issuer's judgment to protect the issuer from any loss that the issuer may suffer by issuing a new certificate; and
- (c) satisfies any other reasonable requirements imposed by the issuer.

Presentation of original security certificate after issuance of replacement

- (2) Where, after the issue of a new security certificate, a protected purchaser of the original security certificate presents the original security certificate for the registration of transfer, the issuer
 - (a) shall register the transfer unless the registration would result in an overissue, in which case the issuer's liability is governed by section 66;
 - (b) may exercise the rights the issuer may have under the indemnity bond referred to in clause (1)(b); and
 - (c) may recover the new security certificate from a person to whom it was issued or from any person, other than a protected purchaser, taking under that person.

92. Obligation to notify issuer

An owner of a security may not assert against the issuer a claim for wrongful registration of transfer under section 90 or a claim to a new security certificate under section 91 if

- (a) a security certificate has been lost, apparently destroyed or wrongfully taken and the owner fails to give a notice to the issuer of that fact within a reasonable time after the owner has notice of it; and
- (b) the issuer registers a transfer of the security before receiving a notice of the loss, apparent destruction or wrongful taking of the security certificate.

93. Obligation of trustee, registrar, transfer agent or other agent

A person acting as authenticating trustee, registrar, transfer agent or other agent for an issuer in the registration of a transfer of the issuer's securities, in the issue of new security certificates or uncertificated securities or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular function performed as the issuer has in regard to that function.

PART VI - SECURITY ENTITLEMENTS

94. Acquisition of security entitlement

- (1) Except as otherwise provided in subsections (3) and (4), a person acquires a security entitlement if a securities intermediary
 - (a) indicates by book entry that a financial asset has been credited to the person's securities account;
 - (b) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or
 - (c) becomes obligated under another statute, law, regulation or rule to credit a financial asset to the person's securities account.

Security entitlement without holding financial asset

- (2) Where a condition of subsection (1) has been met, a person has a security entitlement even if the securities intermediary does not itself hold the financial asset.

Financial asset held directly, circumstances

- (3) A person is to be treated as holding a financial asset directly rather than as having a security entitlement with respect to the financial asset if a securities intermediary holds the financial asset for that person and the financial asset
- (a) is registered in the name of, payable to the order of or specially endorsed to that person; and
 - (b) has not been endorsed to the securities intermediary or in blank.

Security entitlement not established by issuance of security

- (4) Issuance of a security is not establishment of a security entitlement.

95. Protection of entitlement holders from adverse claim

A legal proceeding based on an adverse claim to a financial asset, however framed, may not be brought against a person who acquires a security entitlement under section 94 for value and without notice of the adverse claim.

96. Property interest of entitlement holders in interests held by securities intermediary

- (1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary
- (a) are held by the securities intermediary for the entitlement holders;
 - (b) are not the property of the securities intermediary; and
 - (c) are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 104.

Proportionate property interest of entitlement holder in financial asset

- (2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) is a proportionate property interest in all interests in that financial asset held by the securities intermediary, without regard to
- (a) the time that the entitlement holder acquired the security entitlement; or
 - (b) the time that the securities intermediary acquired the interest in that financial asset.

Enforcement of property interest against securities intermediary

- (3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against the securities intermediary only by the exercise of the entitlement holder's rights under sections 98 to 101.

Enforcement of property interest against purchaser

- (4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against a purchaser of the financial asset, or interest in it, only if
- (a) bankruptcy or insolvency proceedings have been initiated by or against the securities intermediary;



- (b) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;
- (c) the securities intermediary violated its obligations under section 97 by transferring the financial asset, or interest in it, to the purchaser; and
- (d) the purchaser is not protected under subsection (7).

Enforcement by trustee or liquidator against purchaser

- (5) For the purposes of subsection (4), a trustee or other liquidator acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset may recover the financial asset, or interest in it, from the purchaser.

Enforcement by entitlement holder against purchaser

- (6) Where the trustee or other liquidator elects not to pursue the right provided under subsection (5), an entitlement holder whose security entitlement remains unsatisfied has the right to recover the entitlement holder's interest in the financial asset from the purchaser.

Purchaser exempt from enforcement proceedings

- (7) A legal proceeding based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1), however framed, may not be brought against any purchaser of a financial asset, or interest in it, who
 - (a) gives value;
 - (b) obtains control or possession; and
 - (c) does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 97.

97. Duty of securities intermediary respecting financial asset

- (1) A securities intermediary shall promptly obtain and then maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements that the securities intermediary has established in favour of its entitlement holders with respect to that financial asset.

Direct or indirect maintenance of financial asset by securities intermediary

- (2) The securities intermediary may maintain the financial asset referred to in subsection (1) directly or through one or more other securities intermediaries.

Security interests in financial asset, restriction on granting

- (3) Except to the extent otherwise agreed to by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain under subsection (1).

Satisfaction of duty imposed under subsection (1)

- (4) A securities intermediary satisfies the duty imposed under subsection (1) if
 - (a) the securities intermediary acts with respect to the duty as agreed to by the entitlement holder and the securities intermediary; or
 - (b) in the absence of an agreement referred to in clause (a), the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

Application of section to clearing agency

- (5) This section does not apply to a clearing agency that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

98. Duty of securities intermediary respecting payments and distributions

- (1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset.

Obligation for payment or distribution

- (2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

Satisfaction of obligation

- (3) A securities intermediary satisfies the duty imposed under subsection (1) if
- (a) the securities intermediary acts with respect to the duty as agreed to by the entitlement holder and the securities intermediary; or
 - (b) in the absence of an agreement referred to in clause (a), the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

99. Duty of securities intermediary to exercise rights on direction

- (1) A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder.

Satisfaction of duty imposed under subsection (1)

- (2) A securities intermediary satisfies the duty imposed under subsection (1) if
- (a) the securities intermediary acts with respect to the duty as agreed to by the entitlement holder and the securities intermediary; or
 - (b) in the absence of an agreement referred to in clause (a), the securities intermediary either
 - (i) places the entitlement holder in a position to exercise the rights directly, or
 - (ii) exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

100. Duty of securities intermediary to comply with entitlement order

- (1) A securities intermediary shall comply with an entitlement order if
- (a) the entitlement order is originated by the appropriate person;
 - (b) the securities intermediary has had a reasonable opportunity to assure itself that the entitlement order is genuine and authorized; and
 - (c) the securities intermediary has had a reasonable opportunity to comply with the entitlement order.

Duties of securities intermediary on transfer under ineffective entitlement order

- (2) Where a securities intermediary transfers a financial asset under an ineffective entitlement order, the securities intermediary shall
- (a) re-establish a security entitlement in favour of the person entitled to it; and



- (b) pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer.

Liability

- (3) Where a securities intermediary does not re-establish a security entitlement in accordance with subsection (2), the securities intermediary is liable to the entitlement holder for damages.

Satisfaction of duty imposed under subsection (1)

- (4) A securities intermediary satisfies the duty imposed under subsection (1) if
 - (a) the securities intermediary acts with respect to the duty as agreed to by the entitlement holder and the securities intermediary; or
 - (b) in the absence of an agreement referred to in clause (a), the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

101. Duty of securities intermediary respecting entitlement holder's direction

- (1) A securities intermediary shall act at the direction of an entitlement holder
 - (a) to change a security entitlement into another available form of holding for which the entitlement holder is eligible; or
 - (b) to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary.

Satisfaction of duty imposed under subsection (1)

- (2) A securities intermediary satisfies the duty imposed under subsection (1) if
 - (a) the securities intermediary acts with respect to the duty as agreed to by the entitlement holder and the securities intermediary; or
 - (b) in the absence of an agreement referred to in clause (a), the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

102. Duties of securities intermediary and compliance with other statutes, regulations or rules

- (1) Where the substance of a duty imposed on a securities intermediary under section 97, 98, 99, 100 or 101 is the subject of another statute, regulation or rule, compliance with that other statute, regulation or rule satisfies the duty.

Securities intermediary's rights, effect on duties

- (2) The obligation of a securities intermediary to perform the duties imposed under sections 97 to 101 is subject to
 - (a) the rights of the securities intermediary arising out of a security interest, whether that security interest arises under a security agreement with the entitlement holder or otherwise; and
 - (b) the rights of the securities intermediary under another statute, law, regulation, rule or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

Actions prohibited by another statute, regulation or rule

- (3) Nothing in sections 97 to 101 requires a securities intermediary to take any action that is prohibited by another statute, regulation or rule.

Standards of performance for securities intermediary and entitlement holder

- (4) To the extent that specific standards for the performance of any duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by another statute, regulation or rule or by agreement between the securities intermediary and the entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise the entitlement holder's rights in a commercially reasonable manner.

103. Purchaser of security entitlement exempt from adverse claim

- (1) In a case not covered by the priority rules under the *Personal Property Security Act* or the rules set out in subsection (3), a legal proceeding based on an adverse claim to a financial asset or a security entitlement, however framed, may not be brought against a person who purchases a security entitlement, or interest in it, from an entitlement holder if that purchaser
- (a) gives value;
 - (b) does not have notice of the adverse claim; and
 - (c) obtains control.

Purchaser of security entitlement exempt from adverse claim

- (2) Where a legal proceeding based on an adverse claim could not have been brought against an entitlement holder under section 95, a legal proceeding based on the adverse claim may not be brought against a person who purchases a security entitlement, or interest in it, from the entitlement holder.

Priority of purchaser

- (3) In a case not covered by the priority rules under the *Personal Property Security Act*, the following rules apply:
- (a) a purchaser for value of a security entitlement, or interest in it, who obtains control has priority over a purchaser of a security entitlement, or interest in it, who does not obtain control;
 - (b) except as otherwise provided in subsection (4), purchasers who have control rank according to priority in time of
 - (i) the purchaser's becoming the person for whom the securities account in which the security entitlement is carried is maintained, if the purchaser obtained control under clause 24(1)(a),
 - (ii) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under clause 24(1)(b), or
 - (iii) if the purchaser obtained control through another person under clause 24(1)(c), the time on which priority would be based under this subsection if the other person were the purchaser.

Priority of securities intermediary

- (4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

104. Priority of entitlement holders to financial asset

- (1) Except as otherwise provided in subsections (2) and (3), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both the securities



intermediary's obligations to entitlement holders who have security entitlements to that financial asset and the securities intermediary's obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

Priority of creditor of securities intermediary

- (2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

Priority of creditor of clearing agency

- (3) Where a clearing agency does not have sufficient financial assets to satisfy both the clearing agency's obligations to entitlement holders who have security entitlements with respect to a financial asset and the clearing agency's obligation to a creditor of the clearing agency who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

PART VII - CONSEQUENTIAL AMENDMENTS AND COMMENCEMENT

105. Judgment and Execution Act

- (1) This section amends the *Judgment and Execution Act* R.S.P.E.I. 1988, Cap. J-2.
- (2) Subsections 23(2) to (6) of the Act are repealed.
- (3) The Act is amended by the addition of the following after section 23:

SECURITIES AND SECURITY ENTITLEMENTS

23.1 Definitions

In sections 23.2 to 23.7, “appropriate person”, “endorsement”, “entitlement order”, “instruction”, “issuer”, “securities intermediary”, “security” and “security entitlement” have the same meanings as in the *Securities Transfer Act* R.S.P.E.I. 1988, Cap. S-3.2.

23.2 Seizure under order for seizure and sale

- (1) Subject to subsection (2), a sheriff with whom a judgment creditor has filed an order for seizure and sale may, at the request of the judgment creditor, seize the interest of a judgment debtor in a security or a security entitlement in accordance with sections 46 to 50 of the *Securities Transfer Act*.

Seizure by service of notice of seizure by sheriff

- (2) Notwithstanding section 47 of the *Securities Transfer Act*, where the jurisdiction that governs the validity of a certificated security under section 43 of the *Securities Transfer Act* is Prince Edward Island, a sheriff may seize the interest of a judgment debtor in the certificated security by serving a notice of seizure on the issuer at the issuer's chief executive office, even if the security certificate has not been surrendered to the issuer.

Seizure, when effective

- (3) Where a seizure under this section is by notice of seizure to an issuer or securities intermediary, the seizure becomes effective when the issuer or securities intermediary has had a reasonable opportunity to act on the seizure, having regard to the time and manner of receipt of the notice.

23.3 Sheriff appropriate person to deal with or dispose of seized property

- (1) Where a judgment debtor's interest in a security or security entitlement is seized by a sheriff, the sheriff is the appropriate person under the *Securities Transfer Act* for the purposes of dealing with or disposing of the seized property and, for the duration of the seizure, the judgment debtor is not the appropriate person under that Act for the purposes of dealing with or disposing of the seized property.

What sheriff may do on seizure

- (2) On seizure of a judgment debtor's interest in a security or a security entitlement, the sheriff may
- (a) do any act or thing that could otherwise have been done by the judgment debtor in relation to the security or security entitlement;
 - (b) execute or endorse any document that could otherwise have been executed or endorsed by the judgment debtor; and
 - (c) realize the value of the security by any means permitted under the terms of the security.

Certificate of sheriff provided to issuer or securities intermediary

- (3) Where the sheriff makes or originates an endorsement, instruction or entitlement order as the appropriate person under subsection (1), the sheriff shall provide the issuer or securities intermediary with a certificate of the sheriff stating that the sheriff has the authority under this Act to make that endorsement, instruction or entitlement order.

23.4 Obligations of issuer served with notice of seizure

An issuer that has been served with a notice of seizure regarding a security of which the judgment debtor is the registered holder shall

- (a) on the request of the sheriff, send to the sheriff any information or documents and allow the sheriff to inspect any records that the judgment debtor is entitled to receive or inspect;
- (b) on the request of the sheriff, pay to the sheriff any distribution, dividend or other payment in respect of the security that would otherwise be payable by the issuer to the judgment debtor; and
- (c) comply with any direction given by the sheriff regarding the security where the issuer would be required to comply with the direction if that direction were given by the judgment debtor while the security was not under seizure.

23.5 Obligations of securities intermediary served with notice of seizure

Where a sheriff has seized a judgment debtor's interest in a security entitlement by serving a notice of seizure on a securities intermediary whose securities intermediary's jurisdiction within the meaning of the *Securities Transfer Act* is Prince Edward Island, the securities intermediary shall

- (a) on the request of the sheriff, send to the sheriff any information or documents and allow the sheriff to inspect any records that the judgment debtor is entitled to receive or inspect;
- (b) on the request of the sheriff, pay to the sheriff any distribution, dividend or other payment in respect of the security entitlement that would otherwise be payable by the securities intermediary to the judgment debtor; and
- (c) comply with any direction given by the sheriff regarding the security entitlement where the securities intermediary would be required to comply with the direction if that direction were given by the judgment debtor while the security entitlement was not under seizure.

23.6 Release of seized property by notice from sheriff

Where the interest of a judgment debtor in a security or security entitlement has been seized by a sheriff serving a notice of seizure, the sheriff may release the seized property or a portion of the seized property from seizure by serving a notice to that effect on the person on whom the notice of seizure was served.

23.7 Definitions

- (1) In this section
 - (a) “**seized security**” means the interest of a judgment debtor in a security that is seized;
 - (b) “**unanimous shareholder agreement**” means a unanimous shareholder agreement as defined in clause 1(1)(hh) of the *Business Corporations Act* R.S.P.E.I. 1988, Cap. B-6.01.

Application of section to seizures

- (2) This section applies if the interest of a judgment debtor in a security is seized by a sheriff and the jurisdiction that governs the validity of the security under section 43 of the *Securities Transfer Act* is Prince Edward Island.

Sheriff bound by restrictions

- (3) Subject to subsection (5), where the transfer of the seized security is restricted by the terms of the security, by a restriction imposed by the issuer or by a unanimous shareholder agreement, the sheriff is bound by the restriction.

Person entitled to acquire or redeem security

- (4) Subject to subsection (5), where a person would otherwise be entitled to acquire or redeem the seized security for a predetermined price or at a price fixed by reference to a predetermined formula, the person is entitled to acquire or redeem the security.

Order by Supreme Court regarding seized security

- (5) On application by the sheriff or the judgment creditor who made the request under subsection 23.2(1), where the Supreme Court, having taken into account the interests of the judgment creditor and of other persons affected, considers that a restriction on the transfer of the seized security, or a person’s entitlement to acquire or redeem the seized security, is unfairly prejudicial to the judgment creditor, the Supreme Court may make any order that it considers appropriate regarding the seized security, including an order doing one or more of the following:
 - (a) directing the sale or the method or terms of sale of the seized security, or the method of realizing the value of the seized security other than through sale;

- (b) directing the issuer to pay dividends, distributions or interest to the sheriff;
- (c) directing the issuer to register the transfer of the seized security to a person despite a restriction on the transfer of the security described in subsection (3) or the entitlement of another person to acquire or redeem the security described in subsection (4);
- (d) directing that all or part of a unanimous shareholder agreement does not apply to a person who acquires or takes a seized security from the sheriff;
- (e) directing that the issuer be dissolved and its proceeds disposed of according to law.

Application to court under *Business Corporations Act*

- (6) The sheriff may bring an application under section 136 of the *Business Corporations Act* as if he or she were a shareholder under that section, whether or not an application is brought under subsection (5) of this section.

Application may be joined

- (7) An application under subsection (5) may be joined with an application under section 136 of the *Business Corporations Act*.

Person with seized security deemed to be a party to unanimous shareholder agreement

- (8) Unless otherwise ordered by the Supreme Court under subsection (5), a person who acquires or takes a seized security from the sheriff is deemed to be a party to any unanimous shareholder agreement or any agreement under subsection 116(1) of the *Business Corporations Act* to which the judgment debtor was a party at the time of the seizure, if the agreement contains provisions intended to preclude the judgment debtor from transferring the security except to a person who agrees to be a party to that agreement.

Person with seized security not liable for corporation's debts or obligations

- (9) Notwithstanding subsection (8) and any provision in a unanimous shareholder agreement to the contrary, a person who acquires or takes a seized security from the sheriff is not liable to make any financial contribution to the corporation or provide any guarantee or indemnity of the corporation's debts or obligations.

106. Personal Property Security Act

- (1) **This section amends the *Personal Property Security Act* R.S.P.E.I. 1988, Cap. P-3.1.**

- (2) **Section 1 of the Act is amended**

- (a) **by renumbering it as subsection 1(1);**
- (b) **in subsection (1),**
 - (i) **by the repeal of clause (b) and the substitution of the following:**
 - (b) **“account” means a monetary obligation not evidenced by chattel paper, a security or an instrument, whether or not the obligation has been earned by performance, but does not include investment property;**
 - (ii) **by the addition of the following after clause (c):**
- (c.1) **“broker” means a broker as defined in the *Securities Transfer Act* R.S.P.E.I. 1988, Cap. S-3.2;**



(iii) by the addition of the following after clause (e):

- (e.1) **“certificated security”** means a certificated security as defined in the *Securities Transfer Act*;

(iv) by the addition of the following after clause (f):

- (f.1) **“clearing house”** means an organization through which trades in options or standardized futures are cleared and settled;
- (f.2) **“clearing house option”** means an option, other than an option on futures, issued by a clearing house to its participants;

(v) by the addition of the following after clause (o.1):

- (o.2) **“entitlement holder”** means an entitlement holder as defined in the *Securities Transfer Act*;
- (o.3) **“entitlement order”** means an entitlement order as defined in the *Securities Transfer Act*;

(vi) by the addition of the following after clause (p.1):

- (p.2) **“financial asset”** means a financial asset as defined in the *Securities Transfer Act*;

(vii) by the addition of the following after clause (t):

- (t.1) **“futures account”** means an account maintained by a futures intermediary in which a futures contract is carried for a futures customer;
- (t.2) **“futures contract”** means a standardized future or an option on futures, other than a clearing house option, that is
- (i) traded on or subject to the rules of a futures exchange recognized or otherwise regulated under the laws of the province or by a securities regulatory authority of another province or territory of Canada, or
 - (ii) traded on a foreign futures exchange and carried on the books of a futures intermediary for a futures customer;
- (t.3) **“futures customer”** means a person for whom a futures intermediary carries a futures contract on its books;
- (t.4) **“futures exchange”** means an association or organization operated to provide the facilities necessary for the trading of standardized futures or options on futures;
- (t.5) **“futures intermediary”** means a person who
- (i) is registered as a dealer permitted to trade in futures contracts, whether as principal or agent, under the securities laws or commodity futures laws of a province or territory of Canada, or
 - (ii) is a clearing house recognized or otherwise regulated under the laws of the province or by a securities regulatory authority of another province or territory of Canada;

(viii) in clause (u), by the deletion of the words “a security” and the substitution of the words “investment property”,

- (ix) **in subclause (v)(iv), by the deletion of the words “a security” and the substitution of the words “investment property”,**
- (x) **in clause (w), by the deletion of the words “a security” and the substitution of the words “investment property”,**
- (xi) **by the addition of the following after clause (x):**
 - (x.1) **“investment property”** means a security, whether certificated or uncertificated, security entitlement, securities account, futures contract or futures account;
- (xii) **by the addition of the following after clause (bb):**
 - (bb.1) **“option”** means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement at or by a time established by the agreement:
 - (i) receive an amount of cash determinable by reference to a specified quantity of the underlying interest of the option,
 - (ii) purchase a specified quantity of the underlying interest of the option,
 - (iii) sell a specified quantity of the underlying interest of the option;
 - (bb.2) **“option on futures”** means an option the underlying interest of which is a standardized future;
- (xiii) **in clause (dd), by the deletion of the words “a security” and the substitution of the words “investment property”,**
- (xiv) **by the repeal of clause (gg) and the substitution of the following:**
 - (gg) **“proceeds”** means
 - (i) identifiable or traceable personal property that is derived directly or indirectly from any dealing with collateral or proceeds of collateral and in which the debtor acquires an interest,
 - (ii) an insurance or other payment that represents indemnity or compensation for loss of or damage to collateral or proceeds of collateral, or a right to such a payment,
 - (iii) a payment made in total or partial discharge or redemption of chattel paper, investment property, an instrument or an intangible, and
 - (iv) rights arising out of, or property collected on, or distributed on account of, collateral that is investment property;
- (xv) **in subclauses (ii)(i) and (ii), by the deletion of the words “in collateral” and the substitution of the words “in collateral, other than investment property,”,**
- (xvi) **by the addition of the following after clause (oo):**
 - (oo.1) **“securities account”** means a securities account as defined in the *Securities Transfer Act*;



(oo.2) “**securities intermediary**” means a securities intermediary as defined in the *Securities Transfer Act*;

(xvii) by the repeal of clause (pp) and the substitution of the following:

(pp) “**security**” means a security as defined in the *Securities Transfer Act*;

(xviii) by the addition of the following after clause (qq):

(qq.1) “**security certificate**” means a security certificate as defined in the *Securities Transfer Act*;

(qq.2) “**security entitlement**” means a security entitlement as defined in the *Securities Transfer Act*;

(xix) by the repeal of clause (ss),

(xx) by the addition of the following after clause (tt):

(tt.1) “**standardized future**” means an agreement traded on a futures exchange pursuant to standardized conditions contained in the bylaws, rules or regulations of the futures exchange, and cleared and settled by a clearing house, to do one or more of the following at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

- (i) make or take delivery of the underlying interest of the agreement,
- (ii) settle the obligation in cash instead of delivery of the underlying interest;

(xxi) by the addition of the following after clause (uu):

(uu.1) “**uncertificated security**” means an uncertificated security as defined in the *Securities Transfer Act*;

(c) by the addition of the following after subsection (1):

Control imputed, when

(2) For the purposes of this Act,

- (a) a secured party has control of a certificated security if the secured party has control in the manner provided for in section 22 of the *Securities Transfer Act*;
- (b) a secured party has control of an uncertificated security if the secured party has control in the manner provided for in section 23 of the *Securities Transfer Act*;
- (c) a secured party has control of a security entitlement if the secured party has control in the manner provided for in section 24 or 25 of the *Securities Transfer Act*;
- (d) a secured party has control of a futures contract if
 - (i) the secured party is the futures intermediary with which the futures contract is carried, or
 - (ii) the futures customer, the secured party and the futures intermediary have agreed that the futures intermediary will apply any value distributed on account of the futures contract as directed by the secured party without further consent by the futures customer; and

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

(3) Subsection 2(4) of the Act is repealed.

(4) Section 4 of the Act is amended

- (a) in clause (b), by the deletion of the words “contract of annuity or”;
- (b) by the addition of the following after clause (b):
 - (b.1) a transfer of an interest or claim in or under a contract of annuity, other than a contract of annuity held by a securities intermediary for another person in a securities account;
- (c) in clause (f), by the deletion of the words “a security” and substitution of the words “investment property”.

(5) Section 5 of the Act is amended

- (a) in clause (1)(b), by the deletion of the words “a security,”; and
- (b) by the repeal of subsection (2).

(6) Section 7 of the Act is amended

- (a) in subsection (1), in the words preceding clause (a) by the deletion of the words “purposes of this section” and the substitution of the words “purposes of this section and section 7.1”;
- (b) in clause (2)(c), by the deletion of the words “a security,”; and
- (c) in clause (4)(b), by the deletion of the words “a security,”.

(7) The Act is amended by the addition of the following after section 7:

7.1 Conflict of laws, investment property

- (1) The validity of a security interest in investment property is governed by the law, at the time the security interest attaches,
 - (a) of the jurisdiction where the certificate is located if the collateral is a certificated security;
 - (b) of the issuer’s jurisdiction if the collateral is an uncertificated security;
 - (c) of the securities intermediary’s jurisdiction if the collateral is a security entitlement or a securities account; or
 - (d) of the futures intermediary’s jurisdiction if the collateral is a futures contract or a futures account.

Governing law

- (2) Except as otherwise provided in subsection (5), the perfection, effect of perfection or non-perfection and priority of a security interest in investment property is governed by the law
- (a) of the jurisdiction where the certificate is located if the collateral is a certificated security;
 - (b) of the issuer's jurisdiction if the collateral is an uncertificated security;
 - (c) of the securities intermediary's jurisdiction if the collateral is a security entitlement or a securities account; or
 - (d) of the futures intermediary's jurisdiction if the collateral is a futures contract or a futures account.

Determinations of location and jurisdiction

- (3) For the purposes of this section,
- (a) the location of a debtor is determined by subsection 7(1);
 - (b) the issuer's jurisdiction is determined by subsection 43(1) of the *Securities Transfer Act*; and
 - (c) the securities intermediary's jurisdiction is determined by subsection 44(1) of the *Securities Transfer Act*.

Applicable rules

- (4) For the purposes of this section, the following rules determine a futures intermediary's jurisdiction:
- (a) where an agreement between the futures intermediary and futures customer governing the futures account expressly provides that a particular jurisdiction is the futures intermediary's jurisdiction for the purposes of the law of that jurisdiction, this Act or any provision of this Act, the jurisdiction expressly provided for is the futures intermediary's jurisdiction;
 - (b) where clause (a) does not apply and an agreement between the futures intermediary and futures customer governing the futures account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the futures intermediary's jurisdiction;
 - (c) where neither clause (a) nor (b) applies and an agreement between the futures intermediary and futures customer governing the futures account expressly provides that the futures account is maintained at an office in a particular jurisdiction, that jurisdiction is the futures intermediary's jurisdiction;
 - (d) where none of the preceding clauses applies, the futures intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the futures customer's account is located; and
 - (e) where none of the preceding clauses applies, the futures intermediary's jurisdiction is the jurisdiction in which the chief executive office of the futures intermediary is located.

Governing law, exception

- (5) The law of the jurisdiction in which the debtor is located governs
- (a) perfection of a security interest in investment property by registration;
 - (b) perfection of a security interest in investment property granted by a broker or securities intermediary where the secured party relies on attachment of the security interest as perfection; and

- (c) perfection of a security interest in a futures contract or futures account granted by a futures intermediary where the secured party relies on attachment of the security interest as perfection.

Perfection continues

- (6) A security interest perfected under the law of the jurisdiction designated in subsection (5) remains perfected until the earliest of
 - (a) sixty days after the day the debtor relocates to another jurisdiction;
 - (b) fifteen days after the day the secured party knows the debtor has relocated to another jurisdiction; and
 - (c) the day that perfection ceases under the previously applicable law.

Perfection of a security interest in investment property continues

- (7) A security interest in investment property that is perfected under the law of the issuer's jurisdiction, the securities intermediary's jurisdiction or the futures intermediary's jurisdiction, as applicable, remains perfected until the earliest of
 - (a) sixty days after a change of the applicable jurisdiction to another jurisdiction;
 - (b) fifteen days after the day the secured party knows of the change of the applicable jurisdiction to another jurisdiction; and
 - (c) the day that perfection ceases under the previously applicable law.

7.2 Law of a jurisdiction

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

(8) Section 8 of the Act is amended

- (a) **by the repeal of subsection (1) and the substitution of the following:**

8. Law governing procedural and substantive issues involved in enforcement of secured party's rights

- (1) Notwithstanding sections 5, 6, 7 and 7.1,
 - (a) procedural issues involved in the enforcement of the rights of a secured party against collateral are governed by the law of the jurisdiction in which the enforcement rights are exercised; and
 - (b) substantive issues involved in the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.
- (b) **in subsection (2), in the words immediately preceding clause (a), by the deletion of the words "sections 5, 6 and 7" and the substitution of the words "sections 5, 6, 7 and 7.1".**

(9) Section 10 of the Act is amended

- (a) **by the repeal of subsection (1) and the substitution of the following:**



10. Enforceability of security interest against third party

- (1) Subject to section 12.1, a security interest is enforceable against a third party only if
- (a) the collateral is
 - (i) not a certificated security and is in the possession of the secured party or another person on the secured party's behalf,
 - (ii) a certificated security in registered form and the security certificate has been delivered to the secured party under section 67 of the *Securities Transfer Act* pursuant to the debtor's security agreement, or
 - (iii) investment property and the secured party has control under subsection 1(2) pursuant to the debtor's security agreement; or
 - (b) the debtor has signed a security agreement that contains
 - (i) a description of the collateral by item or kind or by reference to one or more of the following: "goods", "document of title", "chattel paper", "investment property", "instrument", "money" or "intangible",
 - (ii) a description of collateral that is a security entitlement, securities account, or futures account if it describes the collateral by those terms or as "investment property" or if it describes the underlying financial asset or futures contract,
 - (iii) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property, or
 - (iv) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property except specified items or kinds of personal property or except one or more of the following: "goods", "document of title", "chattel paper", "investment property", "instrument", "money" or "intangible".
- (b) **in subsection (2), by the deletion of the words "clause (1)(a)" and the substitution of the following words "subclause (1)(a)(i)"; and**
- (c) **in subsection (3), by the deletion of the words "subclause (1)(b)(iii)" and the substitution of the words "subclause (1)(b)(iv)".**

(10) Section 12 of the Act is amended

- (a) **by the repeal of clause (1)(b) and the substitution of the following:**
- (b) the debtor has rights in the collateral or power to transfer rights in the collateral to a secured party; and
- (b) **by the addition of the following after subsection (4):**

Attachment, security interest in securities account

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

Attachment, security interest in futures account

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

(11) The Act is amended by the addition of the following after section 12:

12.1 Security interest on purchase or delivery

- (1) A security interest in favour of a securities intermediary attaches to a person's security entitlement if
- (a) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and
 - (b) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

Secures obligation to pay

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

Attachment of security interest

- (3) A security interest in favour of a person who delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if
- (a) the security or other financial asset is
 - (i) in the ordinary course of business transferred by delivery with any necessary endorsement or assignment, and
 - (ii) delivered under an agreement between persons in the business of dealing with such securities or financial assets; and
 - (b) the agreement calls for delivery against payment.

Secures obligation to pay

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

(12) Subsection 17(2) of the Act is amended by the deletion of the words “, a security”.

(13) The Act is amended by the addition of the following after section 17:

17.1 Investment property in secured party's control, rights and obligations

- (1) Unless otherwise agreed by the parties and notwithstanding section 17, a secured party having control under subsection 1(2) of investment property as collateral
- (a) may hold as additional security any proceeds received from the collateral;
 - (b) shall either apply money or funds received from the collateral to reduce the secured obligation or remit that money or those funds to the debtor; and
 - (c) may create a security interest in the collateral.

Effect of security agreement

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

(14) The Act is amended by the addition of the following after section 19:



19.1 Perfection of security interest in securities account, effect

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

Perfection of security interest in futures account, effect

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

19.2 Perfection on attachment

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

Security interest in investment property perfected on attachment

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

Security interest in futures contract or futures account perfected on attachment

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

(15) Section 20 of the Act is amended

(a) in clause (2)(b), by the deletion of the words “*Winding-up Act (Canada)*” and the substitution of the words “*Winding-up and Restructuring Act (Canada)*”;

(b) in subsection (3), in the words immediately preceding clause (a) by the deletion of the words “in collateral” and the substitution of the words “in collateral that is not investment property”; and

(c) in subsection (4), by the deletion of the words “or a security”.

(16) Section 24 of the Act is amended

(a) by the repeal of clause (1)(d); and

(b) by the addition of the following after subsection (2):

Perfection of security interest in certificated security by taking delivery

- (3) Subject to section 19, a secured party may perfect a security interest in a certificated security by taking delivery of the certificated security under section 67 of the *Securities Transfer Act*.

Perfection by delivery

- (4) Subject to section 19, a security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 67 of the *Securities Transfer Act* and remains perfected by delivery until the debtor obtains possession of the security certificate.

(17) The Act is amended by the addition of the following after section 24:

24.1 Perfection of interest in investment property

- (1) Subject to section 19, a security interest in investment property may be perfected by control of the collateral under subsection 1(2).

Perfection by control

- (2) Subject to section 19, a security interest in investment property is perfected by control under subsection 1(2) from the time the secured party obtains control and remains perfected by control until
- (a) the secured party does not have control; and
 - (b) one of the following occurs:
 - (i) where the collateral is a certificated security, the debtor has or acquires possession of the security certificate,
 - (ii) where the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner, or
 - (iii) where the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

- (18) **Subsection 26(1) of the Act is amended by the deletion of the words “Where a security interest in an instrument or a security is perfected by possession pursuant to section 24 and the secured party delivers the instrument or security to the debtor for the purpose of” and the substitution of the words “Where a security interest in an instrument or a certificated security is perfected under section 24 and the secured party delivers the instrument or certificated security to the debtor for the purpose of”.**

- (19) **Section 28 of the Act is amended by the addition of the following after subsection (2):**

Limit to market value, exception

- (2.1) The limitation of the amount secured by a security interest as provided in subsection (2) does not apply if the collateral is investment property.

- (20) **The Act is amended by the addition of the following after section 30:**

30.1 Priority of purchaser of investment property

- (1) A purchaser of a security, other than a secured party, who
- (a) gives value;
 - (b) does not know that the transaction constitutes a breach of a security agreement granting a security interest in the security to a secured party who does not have control of the security; and
 - (c) obtains control of the security,
- acquires the security free from the security interest.

Objection of purchaser

- (2) A purchaser referred to in subsection (1) is not required to determine whether a security interest has been granted in the security or whether the transaction constitutes a breach of a security agreement.



No action may be brought

- (3) An action based on a security agreement creating a security interest in a financial asset, however framed, may not be brought against a person who acquires a security entitlement under section 94 of the *Securities Transfer Act* for value and did not know that there has been a breach of the security agreement.

Obligation of person who acquires security entitlement

- (4) A person who acquires a security entitlement under section 94 of the *Securities Transfer Act* is not required to determine whether a security interest has been granted in a financial asset or whether there has been a breach of the security agreement.

No action may be brought

- (5) Where an action based on a security agreement creating a security interest in a financial asset could not be brought against an entitlement holder under subsection (3), it may not be asserted against a person who purchases a security entitlement, or an interest in it, from the entitlement holder.

(21) Section 31 of the Act is amended**(a) in subsection (3),**

- (i) in the words immediately preceding clause (a), by the deletion of the words “or a security has priority over a security interest in the instrument or security” and the substitution of the words “has priority over a security interest in the instrument”,**
- (ii) in clause (a), by the deletion of the words “or security” and a substitution of a semicolon, and**
- (iii) in clauses (b) and (c), by the deletion of the words “or security”; and**

(b) in subsection (5), by the deletion of the words “or a security”.**(22) The Act is amended by the addition of the following after section 31:****31.1 Rights of protected purchaser under *Securities Transfer Act***

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

Interest of protected purchaser takes priority

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

***Securities Transfer Act* protection prevails**

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

(23) Subclause 35(1)(a)(iii) of the Act is amended by the deletion of the words “sections 5, 7, 26,” and the substitution of the words “sections 5, 7, 7.1, 26,”.**(24) The Act is amended by the addition of the following after section 35:**

35.1 Rules govern priorities affecting investment property

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

Security interests of secured parties in investment property, priority

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

Security interest in certificated security, priority

- (3) A security interest in a certificated security in registered form that is perfected by taking delivery under subsection 24(3) and not by control under section 24.1 has priority over a conflicting security interest perfected by a method other than control.

Conflicting security interests, rank according to priority in time of obtaining control

- (4) Except as otherwise provided in subsections (5) and (6), conflicting security interests of secured parties each of whom has control under subsection 1(2) rank according to priority in time of
- (a) where the collateral is a security, obtaining control;
 - (b) where the collateral is a security entitlement carried in a securities account,
 - (i) the secured party's becoming the person for whom the securities account is maintained, if the secured party obtained control under clause 24(1)(a) of the *Securities Transfer Act*,
 - (ii) the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account, if the secured party obtained control under clause 24(1)(b) of the *Securities Transfer Act*, or
 - (iii) where the secured party obtained control through another person under clause 24(1)(c) of the *Securities Transfer Act*, when the other person obtained control, or
 - (c) where the collateral is a futures contract carried with a futures intermediary, the satisfaction of the requirement for control specified in subclause 1(2)(d)(ii) with respect to futures contracts carried or to be carried with the futures intermediary.

Security interests in security entitlement or securities account

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

Security interests in futures contract or futures account

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

Conflicting security interests without control rank equally

- (7) Conflicting security interests granted by a broker, securities intermediary or futures intermediary that are perfected without control under subsection 1(2) rank equally.



Priority in other cases

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

(25) Section 50 of the Act is amended by the addition of the following after subsection (10):

Written record releases securities intermediary or futures intermediary from obligation

(11) Where there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations or otherwise give value, a secured party having control of investment property under clause 24(1)(b) of the *Securities Transfer Act* or subclause 1(2)(d)(ii) of this Act shall, within 10 days after receipt of a written demand by the debtor, send to the securities intermediary or futures intermediary with which the security entitlement or futures contract is maintained a written record that releases the securities intermediary or futures intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party.

(26) Section 56 of the Act is amended

(a) in subsection (2),

(i) in clause (b), by the deletion of the word “and” after the semicolon,

(ii) by the repeal of clause (c) and the substitution of the following:

(c) when in possession of collateral other than investment property, the rights and remedies provided in section 17; and

(iii) by the addition of the following after clause (c):

(d) when in control of collateral that is investment property, the rights and remedies provided in section 17.1.

(b) in clause (3)(c), by the deletion of the words “section 17” and the substitution of the words “section 17 or 17.1”; and

(c) by the repeal of subsection (4) and the substitution of the following:

Waiver or variation of sections 17, 17.1, 57 to 66

(4) Except as provided in sections 17, 17.1, 59, 60 and 62, no provision of section 17 or 17.1 or sections 57 to 66, to the extent that the provision gives rights and remedies to the debtor or imposes obligations on the secured party, can be waived or varied by agreement or otherwise.

(27) Clause 57(2)(a) of the Act is amended by the deletion of the words “or security”.

(28) Section 66 of the Act is amended

(a) in subsection (5), by the deletion of the words “section 17, 18, 59 or 60” and the substitution of the words “section 17, 17.1, 18, 59 or 60”; and

(b) in subsection (6), in the words immediately preceding clause (a), by the deletion of the words “section 17, 18, 59 or 60” and the substitution of the words “section 17, 17.1, 18, 59 or 60”.

(29) The Act is amended by the addition of the following after section 74:

74.1 *Securities Transfer Act* does not affect preceding proceedings

- (1) The provisions of the *Securities Transfer Act*, including amendments made to this Act by section 106 of the *Securities Transfer Act*, do not affect an action or proceeding commenced before the commencement of this section.

***Securities Transfer Act* does not require action to continue preceding perfection**

- (2) No further action is required to continue perfection of a security interest in a security if
- (a) the security interest in the security was a perfected security interest immediately before the commencement of this section; and
 - (b) the action by which the security interest was perfected would suffice to perfect the security interest under this Act.

Perfection continued for four months, then action required to continue

- (3) A security interest in a security remains perfected for a period of four months after the commencement of this section and continues to be perfected after that four-month period if appropriate action to perfect the security interest under this Act is taken within that period, if
- (a) the security interest in the security was a perfected security interest immediately before the commencement of this section; but
 - (b) the action by which the security interest was perfected would not suffice to perfect the security interest under this Act.

Registration of financing statement or financing change statement to continue or effect perfection

- (4) A financing statement or financing change statement may be registered within the four-month period referred to in subsection (3) to continue that perfection, or after that four-month period to perfect the security interest, if
- (a) the security interest was a perfected security interest immediately before the commencement of this section; and
 - (b) the security interest can be perfected by registration under this Act.

107. Commencement

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.



EXPLANATORY NOTES

SECTION 1 defines terms for the purposes of the Act.

SECTION 2 provides when a security is valid.

SECTION 3 provides when a person has notice of a fact, and how notice is given and received.

SECTION 4 provides that contracts and duties under the Act impose an obligation of good faith performance and good faith enforcement.

SECTION 5 provides that provisions of the Act may be varied by agreement, but the good faith, diligence, reasonableness and care imposed by the Act cannot be disclaimed; only reasonable standards by which they are measured may be determined by agreement.

SECTION 6 provides for the application of the principles of law and equity.

SECTION 7 provides that a rule adopted by a clearing agency may prevail over the Act.

SECTION 8 provides that the Act does not affect legal proceedings commenced before the section's commencement.

SECTION 9 provides that a share or similar equity interest is a security.

SECTION 10 provides that a mutual fund security, as defined in the section, is a security.

SECTION 11 provides when an interest in a partnership or limited liability corporation is a security or a financial asset.

SECTION 12 provides that a bill of exchange or promissory note is not a security but may be a financial asset.

SECTION 13 provides that a depository bill or depository note is not a security but may be a financial asset.

SECTION 14 provides that a clearing house option or similar option is not a security but may be a financial asset.

SECTION 15 provides that a futures contract is not a security or a financial asset.

SECTION 16 deals with how a person acquires a security, an interest in a security, a financial asset or an interest in a financial asset, under the Act.

SECTIONS 17 to 21 deal with how notice of an adverse claim is obtained.

SECTIONS 22 to 24 set out when a purchaser has control of a financial asset.

SECTION 25 sets out when a securities intermediary has control of a financial asset.

SECTIONS 26 and 27 restrict the entering into of agreements by issuers and securities intermediaries.

SECTIONS 28 to 31 deal with when an endorsement, instruction or entitlement order is effective.

SECTIONS 32 to 42 set out the warranties that apply to various securities-related transactions.

SECTIONS 43 to 45 set out the conflict of laws rules that apply for determining which jurisdiction's laws are applicable to securities-related transactions involving activities in more than one jurisdiction.

SECTIONS 46 to 50 deal with how a judgment debtor's interest in a financial asset may be seized by or for a judgment creditor.

SECTIONS 51 and 52 deal with the enforceability of contracts for the sale or purchase of a security, and what evidentiary rules apply.

SECTION 53 deals with the liability of a securities intermediary, broker or other agent or bailee who has transferred a financial asset.

SECTION 54 provides when a securities intermediary is a purchaser for value.

SECTION 55 deals with the terms of a security.

SECTIONS 56 to 58 deal with enforcement of a security against the issuer.

SECTION 59 deals with cancelling a security-related contract.

SECTION 60 deals with enforcement of a security against the issuer and deemed notice of defects or defences.

SECTION 61 deals with the effectiveness of an issuer's restrictions on transfers of a security.

SECTION 62 provides that an incomplete security certificate that contains the required signatures may be completed and enforced.

SECTION 63 deals with how an issuer or indenture trustee may treat the registered owner of a certificated security before a transfer is registered.



SECTION 64 deals with the warranties made by a person who signs a security certificate as authenticating trustee, registrar, transfer agent or the like.

SECTION 65 deals with the validity of an issuer's lien on a certificated security.

SECTION 66 deals with the situations that could result upon an overissue of a security.

SECTIONS 67 and 68 deal with how delivery of a security to a purchaser occurs and the purchaser's rights on transfer.

SECTION 69 deals with protected purchasers' additional rights on transfer.

SECTIONS 70 to 75 deal with endorsements of security certificates and their effect.

SECTIONS 76 and 77 deal with instructions respecting uncertificated securities issued by the appropriate persons and their effect.

SECTIONS 78 to 83 provide what a person who guarantees a signature, endorsement or instruction warrantees.

SECTION 84 provides what a transferor must supply as proof of authority to transfer or as proof of other requisites to registration.

SECTIONS 85 to 90 deal with an issuer's duty with respect to registering transfers of certificated securities.

SECTIONS 91 and 92 deal with an issuer's and an owner's obligations when a security certificate has been lost, destroyed or wrongfully taken.

SECTION 93 sets out the obligation of a person acting as authenticating trustee, registrar, transfer agent or other agent for an issuer.

SECTION 94 sets out how a person acquires a security entitlement.

SECTION 95 protects a person who acquires a security entitlement from an adverse claim when the acquisition was for value and without knowledge of the claim.

SECTION 96 deals with property interests of entitlement holders with respect to financial assets and how they may be enforced.

SECTIONS 97 to 102 set out the duties of a securities intermediary.

SECTIONS 103 and 104 set out the priorities amongst competing claims respecting security entitlements and financial assets.

SECTION 105 makes consequential amendments to the *Judgment and Execution Act*.

SECTION 106 makes consequential amendments to the *Personal Property Security Act*.

SECTION 107 provides for the commencement of the Act.



(Bill No. 16)

Securities Transfer Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	April 10, 2018
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Francis (Buck) Watts, Speaker

Charles H. MacKay, Clerk

Hon. Jordan K. M. Brown
Justice and Public Safety and Attorney General

GOVERNMENT BILL

2018
3rd SESSION, 65th GENERAL ASSEMBLY