REFORM OF PERSONAL PROPERTY SECURITY LAW
IN SASKATCHEWAN

Background Paper

LAW REFORM COMMISSION OF SASKATCHEWAN
SASKATOON, SASKATCHEWAN

May, 1975
REFORM OF PERSONAL PROPERTY SECURITY LAW
IN SASKATCHEWAN

Background Paper

LAW REFORM COMMISSION OF SASKATCHEWAN
SASKATOON, SASKATCHEWAN

May, 1975

The Commissioners are:

BRIAN A. GROSMAN, CHAIRMAN

THE HONOURABLE MR. JUSTICE E.D. BAYDA

GEORGE J.D. TAYLOR, Q.C.

Ellen C. Schmeiser is the Research Director.

The Legal Research Officer is Diane Pask. The secretaries are Sandra Hookway and Linda Mahl.

Professor R.C.C. Cuming, of the College of Law, University of Saskatchewan in Saskatoon, is consultant to the Commission on the Personal Property Security Law project.

The Commission offices are located at Suite 403, 402 - 21st Street East, Saskatoon, Saskatchewan, Canada, S7K 0C3.

This paper is being circulated by the Commission for purposes of public information, comment and discussion.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. WHAT IS A PERSONAL PROPERTY SECURITY TRANSACTION?</td>
<td>1</td>
</tr>
<tr>
<td>II. WHAT IS WRONG WITH EXISTING LAW?</td>
<td>2</td>
</tr>
<tr>
<td>III. WHY HAS THE LAW DEVELOPED IN THIS WAY?</td>
<td>4</td>
</tr>
<tr>
<td>IV. DEVELOPMENTS ELSEWHERE IN CANADA AND THE UNITED STATES</td>
<td>5</td>
</tr>
<tr>
<td>V. WHAT DOES THE SASKATCHEWAN LAW REFORM COMMISSION PROPOSE TO DO?</td>
<td>7</td>
</tr>
<tr>
<td>VI. WHAT CHANGES ARE LIKELY TO BE CONTAINED IN A SASKATCHEWAN PERSONAL PROPERTY SECURITY ACT?</td>
<td>7</td>
</tr>
<tr>
<td>(i) One Kind of Security System</td>
<td>8</td>
</tr>
<tr>
<td>(ii) Greatly Increased Flexibility</td>
<td>8</td>
</tr>
<tr>
<td>(iii) Protection of Defaulting Debtors</td>
<td>9</td>
</tr>
<tr>
<td>(iv) A Single Registry System</td>
<td>9</td>
</tr>
<tr>
<td>VII. WHAT CHANGES IN CONSUMER CREDIT LAW ARE REQUIRED?</td>
<td>10</td>
</tr>
<tr>
<td>(i) Lack of Resale Value of Used Consumer Goods</td>
<td>10</td>
</tr>
<tr>
<td>(ii) Protection of Debtors' Interests in Goods Taken as Security</td>
<td>12</td>
</tr>
<tr>
<td>(iii) The Problem of Deficiency Claims</td>
<td>13</td>
</tr>
<tr>
<td>(iv) Other Areas of Concern</td>
<td>14</td>
</tr>
<tr>
<td>VIII. PUBLIC INVOLVEMENT IN THE REFORM PROCESS</td>
<td>15</td>
</tr>
</tbody>
</table>
I. WHAT IS A PERSONAL PROPERTY SECURITY TRANSACTION?

Most adult residents of Saskatchewan have been involved in or affected by a personal property security transaction. A personal property security transaction is basically an arrangement under which a person who is borrowing money or who is buying something on credit gives to the lender or seller some security (collateral) for the debt. If the borrower or buyer fails to keep his promise to repay the money borrowed or to pay the price of the items purchased, the creditor then can look to this security. This means that the lender or seller is entitled to seize and sell the property of the debtor which was given as collateral. The money recovered from the sale is used to pay the balance of the money owing to the lender or seller.

The most common types of personal property security transactions involving consumers are chattel mortgages and conditional sales contracts. Chattel mortgages are frequently used by banks, credit unions and small loan companies to provide security for loans. These mortgages are usually taken on goods such as automobiles or household furnishings, and give the lender a right to seize and sell the items covered by the agreement (mortgage) if the borrower does not repay the money borrowed. Conditional sales contracts are frequently used by retail automobile dealers and other types of retail dealers who sell high cost goods. The dealer then usually transfers the contracts by assignment to finance companies so that the buyer of the goods ends up having to make his payments to a finance company and not to the dealer. Under these conditional sales
contracts, the seller or finance company is entitled to seize and sell the item purchased if the buyer does not make his payments as set out in the contract.

The most common types of personal property security transactions involving businesses are wholesale chattel mortgages and conditional sales contracts, floating charges, assignments of book debts and security leases.

II. WHAT IS WRONG WITH EXISTING LAW?

One of the most striking features of the development of the laws affecting personal property security transactions in Saskatchewan is the total lack of any attempt on the part of the courts and the legislature to establish uniform principles applicable to all or most types of personal property security transactions. Each type of transaction developed by itself, with little regard for what it had or should have in common with other transactions. For example, the law of mortgages developed along entirely separate lines from the law of conditional sales contracts, even though these two types of transactions can in some cases be used to accomplish the same thing. The point is illustrated in the following example.

Assume that Mr. Jones wishes to purchase a car from City Motor Sales Limited. Mr. Jones does not have sufficient money to pay the total purchase price, but City Motor Sales Limited is willing to permit Mr. Jones to pay the purchase price of the car by installments over a period of time. However, City Motor Sales Limited wants to be sure that if the price is not paid it can seize and sell the car. In order to accomplish this, either a conditional sales contract or a chattel mortgage on the car can be used. The legal rights
which Mr. Jones and City Motor Sales Limited have will be quite different depending on whether they choose to use a conditional sales contract or a chattel mortgage.

Let us assume that Mr. Jones defaults in paying the installment payments. The following consequences may result:

If a mortgage was used, City Motor Sales Limited would have to get the Sheriff or his agent to seize the car. If a conditional sales contract was used, the employees of City Motor Sales Limited could seize the car themselves.

If a mortgage was used, City Motor Sales Limited could resell the car immediately at a public or private sale. However, if a conditional sales contract was used, City Motor Sales Limited would be required to hold the car for twenty days before it could be resold.

If a mortgage was used and Mr. Jones wants to get the car back after seizure, he must pay the total balance of the purchase price. This is so, even though he has defaulted on only one installment. However, if a conditional sales contract was used, he can obtain the return of the car by paying only the one installment which is in arrears plus any repossession costs.

When the car is sold, the money recovered from the sale is paid to City Motor Sales Limited. If there still remains an amount owing on the purchase price, Mr. Jones must pay this amount if a mortgage was used, but does not have to pay this amount if a conditional sales contract was used.

The same lack of consistency can be found in the laws regulating personal property security transactions between lenders and business debtors. It is clear that the present law of Saskatchewan as it affects personal property security transactions lacks a coherent structure or policy and is
unnecessarily complex. As a result, it is not surprising that in many situations it produces unjust and unreasonable consequences.

In many respects most existing personal property security law is out of touch with modern social and economic conditions. It does not reflect the drastic changes in credit marketing practices which have occurred in Canada since World War II. For example, existing law affecting conditional sales contracts was drafted at a time when one contract was used for the purchase of one item. However, large department stores now use a single contract to cover many items purchased by a customer over a long period of time. One of the legal effects of such a contract is that the department store can seize and sell all of the items purchased if the customer defaults in making his single monthly payment.

III. WHY HAS THE LAW DEVELOPED IN THIS WAY?

The complexity, confusion and general inadequacy which characterizes personal property security law has resulted from the way in which this area of the law developed. Personal property security law is found in at least ten different statutes enacted by the Saskatchewan Legislature and three different statutes enacted by the Parliament of Canada as well as in the rules established by the courts of England and Canada. Courts and legislatures have developed new laws to deal with immediate problems. However, the new laws are simply added to the list and seldom, if ever, are old laws discarded or revised in order to make them more effective and consistent. For example, much of the law which sets out the rights of consumers who purchase goods on credit was enacted in the 1930's as a temporary measure to deal with depression and drought conditions which
exists in Saskatchewan at that time. Many of these were good laws, but may now be outdated because of changed economic conditions and business practices. No attempt to modernize these laws has ever been made in Saskatchewan. There is, therefore, an urgent need to re-examine this area of the law in order to discard unnecessary legislation and to enact less complex legislation in one or two statutes.

IV. DEVELOPMENTS ELSEWHERE IN CANADA AND THE UNITED STATES

As early as 1940, lawyers, judges and businessmen in the United States realized that fundamental changes in general personal property security law were badly needed. Over the next decade, a great deal of research and study was undertaken by individuals and semi-official organizations with the result that in 1951 a totally new code of personal property security law, called Article 9 of the Uniform Commercial Code, was enacted in the United States. Over the next ten years, Article 9 was refined and redrafted in part. It was never intended to provide protection for consumers who enter into credit transactions. It deals primarily with fundamental rules of personal property security law and with business transactions. At the present time, it is the law of all the states of the United States with the exception of Louisiana.

In 1960, the Ontario Commercial Law Section of the Canadian Bar Association took the initial steps toward reform of personal property security law in Ontario. A special Committee under the leadership of Mr. Fred Catzman, Q.C., was formed to draft the model uniform code of personal property security law. The Catzman Committee ultimately gained the support of the Attorney General for Ontario. Because of the similarities in business practices in Canada and the United States and because of the obvious success of Article 9 of the Uniform
Commercial Code, the Catzman Committee decided to use Article 9 as a basis for its work. In 1967, the Ontario Legislature enacted *The Ontario Personal Property Security Act* which was based almost entirely on the recommendations of the Catzman Committee.

Since the Catzman Committee was concerned solely with developments in Ontario, the Commercial Law Section of the Canadian Bar Association established a special committee to prepare a Model Act for possible adoption in other Canadian provinces. This committee worked very closely with the Catzman Committee and in 1969 it published the draft *Model Uniform Personal Property Security Act*. A second draft of the Act was published in 1970 and endorsed by the Canadian Bar Association. In 1971, the Conference of Commissioners on Uniform Legislation in Canada recommended for enactment a *Uniform Personal Property Security Act* which is largely a copy of the Ontario Act with a few changes taken from the *Model Uniform Personal Property Security Act*. In 1973, the Manitoba Legislature enacted *The Manitoba Personal Property Security Act*. This Act is closely patterned after the *Model Uniform Personal Property Security Act*. At present, the Law Reform Commissions of British Columbia and Nova Scotia are preparing similar legislation for enactment in their respective provinces.

Until recently, there has been very little interest in Canadian jurisdictions in fundamental reform of the laws affecting consumer credit transactions. As a result of the fact that all of the existing and proposed Canadian personal property security acts were patterned after Article 9 of the Uniform Commercial Code, they do not provide consumer protection legislation. Only one Canadian province, Manitoba, has enacted comprehensive consumer protection legislation dealing with secured consumer credit transactions. Much of *The Manitoba Consumer Protection Act* will be rendered obsolete by *The Manitoba Personal Property Security Act*, which makes major changes in fundamental personal property security law in Manitoba.
V. WHAT DOES THE SASKATCHEWAN LAW REFORM COMMISSION PROPOSE TO DO?

The Saskatchewan Law Reform Commission has decided to undertake a major study of all personal property security law in Saskatchewan. This study will ultimately lead to recommendations for reform of this area of the law. A Final Report setting out these recommendations will be made to the Attorney General for Saskatchewan.

After studying Article 9 of the Uniform Commercial Code, the Ontario Personal Property Security Act and the Model Uniform Personal Property Security Act, the Commission decided that the Model Act should be used as a basis for the development of a Saskatchewan Personal Property Security Act. The Model Act will be updated and modified to reflect conditions found in Saskatchewan.

But the Commission plans to go further. The Model Act was designed to deal only with general rules of personal property security law, and with business level security transactions. It was not designed to deal specifically with the problems of private consumers who enter into security transactions. Once general rules are established, the Commission will prepare recommendations which will deal specifically with private consumer transactions. These recommendations will be embodied either in a special part of a proposed Saskatchewan 'Personal Property Security Act' or possibly a separate 'Consumer Credit Act'.

VI. WHAT CHANGES ARE LIKELY TO BE CONTAINED IN A SASKATCHEWAN PERSONAL PROPERTY SECURITY ACT?

The new Act will produce major changes in the laws affecting personal property security transactions in Saskatchewan. Many of these changes will
be very technical. Nonetheless, the general public will benefit from them. The new Act will streamline the law and procedures under it so that a much more efficient and, therefore, less expensive system will result.

The following are some of the major changes which may occur if the Commission recommends a Personal Property Security Act for Saskatchewan.

(i) One Kind of Security System

Under present law there are many different kinds of security devices each with its own history and peculiarities (conditional sales contracts, chattel mortgages, assignment of book debts, floating charges, etc.). A Personal Property Security Act would recognize one type of security device: a security agreement. Old categories and labels would no longer be significant. This does not mean that all types of agreements creating security interests will be treated in the same way. Differences in treatment will directly reflect differences in use. For example, a security agreement which gives a security interest in goods to secure the purchase price of those goods will have a different status from a security agreement which gives an interest in goods to secure a loan which is used for purposes unrelated to the purchase price of the goods.

(ii) Greatly Increased Flexibility

A Personal Property Security Act will give parties entering into a secured transaction much more flexibility in drawing exactly the kind of contract they need or desire. For example, the Act will permit parties to make one agreement which will provide for a security interest in goods to be acquired at some time in the future and to secure a series of loans to be made over a period of time. It will allow businesspersons
to give security on goods they plan to purchase for resale, on the accounts resulting from the resale of those goods, and on any goods traded in, all in one agreement.

Such an Act would provide all of the advantages, but none of the disadvantages of an equitable floating charge (a special type of mortgage presently used in business financing).

(iii) Protection of Defaulting Debtors

The Personnal Property Security Act will establish a commercially reasonable, but fair system for the protection of rights of borrowers or buyers who default in payment of loans or credit purchases. For example, a lender will be required to give the defaulting borrower sufficient time and every reasonable opportunity to avoid having the borrower's property seized and sold. Under existing mortgage law, the creditor can seize and immediately sell any goods covered by a mortgage. In addition, if a borrower defaults, the lender will be allowed to demand only those payments which are actually in arrears. Under present mortgage law, he can demand the entire balance owing under the mortgage.

(iv) A Single Registry System

Under existing law, most security agreements must be registered at the central registry office to protect third persons who might otherwise deal with the borrower without knowing that someone else had a claim against the borrower's property. However, there is a separate registry system for each type of agreement. For example, there is a separate registry for conditional sales contracts, one for chattel mortgages, one for assignments of book debts, and one for floating charges. Each registry system has its own rules which
often differ substantially from those of other registries. Consequently, registration is a complicated procedure.

A Personal Property Security Act would employ one registry system for all security agreements. Registration would be free from unnecessary formalities. Under a proposed notice filing system, the filing of one single document would be sufficient, even though the underlying security transaction is extremely involved and broad enough to apply to several different kinds of property.

VII. WHAT CHANGES IN CONSUMER CREDIT LAW ARE REQUIRED?

There is little doubt that existing Saskatchewan laws which regulate the rights of parties to secured consumer transactions are totally inadequate. Most of these laws were developed at a time when economic conditions, business practices and social attitudes were quite different from what they are today. In addition, these laws are extremely complex and inconsistent. As a result, reputable credit grantors must comply with a mass of unrelated, overlapping, and sometimes arbitrary laws, frequently at considerable expense. Consumers often do not get adequate protection either because the laws represent only half-measures or are so complex that people do not understand what their rights are.

It is much too early to predict what specific corrective measures will be recommended by the Commission. However, it is clear that the following problems will be examined.

(i) Lack of Resale Value of Used Consumer Goods

It is very common for a credit grantor to take as security for a loan or for the unpaid purchase price of goods a right to seize and sell the
borrower's or buyer's property (consumer goods, i.e. cars, appliances, furniture) in the event that there is a default in repayment by the borrower or buyer. The money obtained from the sale of these goods is used to repay the money owing.

Most used consumer goods have very little resale value due to the fact that new consumer goods are so readily available to the public on credit. Consequently, when defaulting borrowers' or purchasers' goods are seized and sold, the amount realized from the sale is often little more than enough to pay the costs of seizure and sale. Under existing Saskatchewan law, the balance owing by a purchaser under a credit sale cannot be collected by a seller; but the balance owing by a borrower or buyer who has given a chattel mortgage can be collected by the seller or lender. In any case, the defaulting debtor may suffer hardship if the goods are sold at a fraction of their replacement value. In the case of a mortgage, not only are the goods lost to the defaulting debtor, but in addition, the major portion of the debt remains. Although credit grantors realize that little can be recovered in this way, they know that the threat of seizure and sale can be a powerful incentive to pay the debt. Frequently, defaulting debtors will borrow from other sources, often on more difficult terms, in order to pay a debt and thus prevent the seizure of their property.

In dealing with this problem, the Commission will attempt to provide answers to the following questions:

- Is it socially desirable and commercially reasonable to permit the continued use of consumer goods as security for consumer credit?
- What effect would limitation on the use of consumer goods as security have on the availability of consumer credit?
- In setting restrictions, should distinctions be drawn between goods such as automobiles and boats which have a relatively low depreciation rate and goods such as furniture which have a high depreciation rate?
- Should there be a difference between credit contracts which provide for seizure only of items purchased with the proceeds of the loan and those which provide for seizure of other property of the debtor?

(ii) Protection of Debtors' Interests in Goods Taken as Security

If the Commission concludes that the laws should continue to allow credit grantors to take at least some kinds of goods as security for repayment of debts, it must deal with the problem of ensuring that the debtor is given every reasonable opportunity to avoid the seizure and sale of those goods. Even though the goods have resale value, a defaulting debtor will suffer loss if the goods are seized and sold. The costs of seizure, storage and sale are often quite high. In the end, these costs must be born by the defaulting debtor. Further, when a sale is carried out by a creditor, the debtor has little guarantee that the sale has been handled in an honest and efficient manner.

In dealing with these problems, the Commission will be considering the following questions:

- What additional provisions, if any, should be included in the law to give defaulting debtors every reasonable opportunity to avoid having their goods seized and sold?
- Should courts be given wider powers to allow defaulting debtors more time to pay than the credit contract permits?
- Should all seizures and sales be carried out by a public official
to avoid dishonesty and abuse by some credit
grantors?

- Should resale of consumer goods be abolished and replaced by some
other method of determining the fair market value of goods seized?

(iii) The Problem of Deficiency Claims

Under existing law, a credit grantor who uses a chattel mortgage can,
in the event of default by a borrower, or buyer, seize the goods taken as
security and sell those goods. If the amount recovered from the sale is
not enough to pay the debt owing, the credit grantor can obtain the balance
(the deficiency) from the debtor by attaching his wages or having other
property owned by the debtor seized and sold by a sheriff under a writ of
execution. By contrast, a seller who sells goods on credit under a
conditional sales contract cannot make any further claim against the
defaulting buyer if after the seizure and sale of goods purchased some
of the purchase price of the goods is still owing.

The present law is clearly unsatisfactory. Many people feel that the
law is unfair to credit sellers who use conditional sales contracts but much
too lenient toward lenders or sellers who use chattel mortgages. In theory,
if the defaulting debtor is given any reasonable opportunity to avoid
repossession and resale, if goods which are seized have realistic resale
value, and if the sale is carried out in an honest and efficient manner, or
a reasonable substitute for a sale is employed, it may be reasonable to
require the debtor to pay the deficiency. However, legislators in other
jurisdictions have concluded that it is impossible to ensure that this ideal
state of affairs will prevail. Accordingly, they have enacted limitations on
the rights of certain credit grantors to make deficiency claims.
In formulating recommendations to deal with this problem, the Commission will attempt to answer the following questions, among others:

- Should those who sell on credit be treated differently from lenders of money (finance companies) when the right to claim a deficiency is being considered?

- Can new laws regulating the kinds of goods taken as security, rights of redemption and the seizure and sale of goods, guarantee that the defaulting debtors would not be required to pay large or unjustifiable deficiency claims?

- If not, is the present Saskatchewan law which prohibits all claims after repossession of goods sold under conditional sales contracts fair to both sellers and buyers? Are there better ways to deal with this problem?

(iv) Other Areas of Concern

The Commission will also direct its attention to the following issues:

- The need to deal with unfair, irresponsible or deceptive advertising by credit grantors.

- The need to restrict the activities of certain credit grantors who employ unfair or unconscionable practices to induce people to deal with them or to overextend themselves financially.

- The need to control abuses in credit insurance arrangements.

- The need to protect friends, relatives or members of the debtor's family who have guaranteed the debts.

- The need for full and complete disclosure of debtors' rights and the corresponding need to prohibit the use of certain types of
deceptive contracts by credit grantors.

- The need for new ways of enforcing consumer credit laws such as a
  public administrator, class actions and injunctions.

VIII. PUBLIC INVOLVEMENT IN THE REFORM PROCESS

The Saskatchewan Law Reform Commission has published this background
paper to inform the public of the development of recommendations for change
in personal property security law in Saskatchewan. The Commission feels that
any changes must reflect the needs and desires of all segments of the
Saskatchewan public affected by these laws. We are, therefore, asking for
comments from interested individuals and groups.

We would appreciate receiving written memoranda, briefs or comments
at the Commission office at Suite 403, 402 - 21st Street East, Saskatoon,
Saskatchewan, S7K 0C3. Further copies of this background paper may be
obtained by telephoning the Commission offices in Saskatoon at 653-1891.