

# Introduction



<b>The Nature of a Debt Collection Practice . . .</b>	<b>4</b>
<b>Legal Representatives and the Debt Collection Process . . . . .</b>	<b>5</b>
<b>Unlicensed Persons and the Debt Collection Process . . . . .</b>	<b>6</b>
<b>The Collection and Debt Settlement Services Act . . . . .</b>	<b>6</b>
<b>Law Clerks and the Debt Collection Process . . . . .</b>	<b>9</b>
<b>Enforcement of a Judgment as Part of the Debt Collection Process . . . . .</b>	<b>11</b>
<b>How Creditors Administer Credit Transactions . . . . .</b>	<b>12</b>
<b>Secured Transactions Under the Personal Property Security Act . . . . .</b>	<b>14</b>
<b>The Personal Property Security Registration System . . . . .</b>	<b>14</b>
Registration Under the PPSA. . . . .	15
Priority Under the PPSA. . . . .	16
Enforcement of PPSA Secured Interests. . . . .	17
<b>Creditor Approaches to Extending Retail Credit . . . . .</b>	<b>18</b>
<b>Business Creditor Invoice Factoring . . . . .</b>	<b>19</b>
<b>Chapter Summary . . . . .</b>	<b>20</b>
<b>Key Terms . . . . .</b>	<b>21</b>
<b>Review Questions . . . . .</b>	<b>21</b>

## Learning Outcomes

After reading this chapter, students will:

- Have a general understanding and overview of the law and procedure for collecting unpaid debts, including how a debt collection procedure works, and strategies and techniques used by creditors to obtain payment prior to taking legal action.
- Have a general knowledge of the debt collection process from commencement of proceedings to the enforcement of judgments.
- Understand how a lawyer's practice and a paralegal's practice differ with respect to debt collection.
- Understand the role of collection agents and debt settlement providers and the requirements they must meet under the *Collection and Debt Settlement Services Act*.
- Understand the nature and role of a law clerk in the debt collection process.
- Know the effects of and protections available to creditors by registering notice of secured personal property transactions under the *Personal Property Security Act*.
- Know how a notice of a lien is registered under the *Personal Property Security Act* and how priorities are determined under the Act when several creditors have registered notices of liens against the same property owned by a debtor.
- Know how interests in property secured under the *Personal Property Security Act* are enforced.
- Understand the techniques and practices creditors use in the course of extending credit.

# The Nature of a Debt Collection Practice

Debt collection litigation has some features that allow much of the work to be done by law clerks in law firms or by independent paralegals. This book focuses on doing the work of debt collection.

Most debt collection cases arise from the failure to pay what is owing on a contract for goods or services or for the loan of money, where the debt is based on a promise to pay and is **unsecured**. Cases fall into three categories:

## **unsecured credit**

a loan or extension of credit to a debtor where the creditor has no right to seize the debtor's property to satisfy an unpaid debt

## **assignment in bankruptcy**

when a debtor has insufficient income to pay debts when due, they can retain a trustee in bankruptcy and assign most of their assets to the trustee for distribution to creditors; then they emerge from bankruptcy with most of their debts wiped out; sometimes called voluntary bankruptcy, it is distinguished from a petition in bankruptcy where a creditor forces the debtor into involuntary bankruptcy by filing a petition in bankruptcy

## **consumer proposal**

a debtor's plan submitted to their creditors, through a trustee in bankruptcy, suggesting a reduction of debt, interest, and/or a longer period to pay debt

1. *The debtor cannot pay.* This happens most often in consumer debt situations, where an individual's income is not enough to cover debts as they fall due. Many individuals do not know what to do in this situation. Although they may be entitled to make an **assignment in bankruptcy** or negotiate a **consumer proposal**, often out of ignorance they do nothing when sued. In this case, a creditor obtains a judgment by default and then proceeds to enforce it.

A debtor who receives proper advice might make an assignment in bankruptcy or negotiate a consumer proposal, in which case an ordinary creditor's lawsuit will be stayed, and the debt will usually be wiped out in the bankruptcy process or reduced in the consumer proposal.

2. *The debtor will not pay.* In this instance, the debtor could perhaps pay but chooses not to and resorts to various delaying tactics to make it difficult for the creditor both to obtain a judgment and to enforce that judgment. This requires some skill and knowledge, which clever debtors can use to render themselves "judgment proof" or to make it so difficult for the creditor to collect that the creditor agrees to take less than what is owed. In this situation, a creditor may obtain a judgment and then find that the debtor's financial affairs have been arranged so that there are neither assets in the debtor's name to seize and sell nor income to pay the amount due to the creditor on the judgment.

For example, the car that a debtor drives and the house that a debtor lives in may be in a spouse's name, in an adult child's name, or possibly in the name of a corporation. If so, it is not the debtor's legal property and therefore cannot be seized to pay the debtor's debt. Although some consumer debtors engage in these practices, commercial or business debtors are more likely to do so, particularly those who are in a business where cash flow is uneven. Here, the business may be sound but, because its income fluctuates, it sometimes cannot pay bills when they fall due. The debtor may try to stave off payment until funds become available. A commercial debtor may also delay matters, knowing that the creditor may be prepared to settle for less than the full amount owing rather than spend money on legal fees trying to obtain or enforce a judgment where the expense of doing so may be high when compared with the debt owing. For example, a creditor would probably think twice about paying a lawyer \$5,000 in fees and expenses to collect an \$8,000 debt. It may be more rational to accept payment of the principal amount and forgo the interest the creditor is entitled to than to spend thousands of dollars on a case where the creditor collects little or nothing.

3. *The debtor has a defence for nonpayment.* In this situation, the debtor is a dissatisfied customer for goods or services who has refused to pay because they allege that the creditor has sold them a defective product or that the creditor has been negligent in providing a service. If the debtor is aggressive, they may sue the creditor for breach of contract or for furnishing a defective product or service. In this case, the lawsuit is framed as an action for breach of contract or for negligence and not framed as an action in debt. However, often the debtor will just refuse to pay, and when the creditor sues for payment of the price, the debtor responds with a vigorous defence claiming that the money is not owing because the creditor is in breach of their duty or has breached a contract. In addition, if the creditor commences an action to collect the debt, the debtor may **counterclaim** for damages caused by the defective product or service or other wrong done by the creditor.

Where there is no substantive defence to nonpayment, and the debtor is simply refusing or is unable to pay, cases need not be treated as if they require highly specialized legal services. In some circumstances, these cases can be efficiently processed as routine matters by paralegals.<sup>1</sup> In cases where a defence has not been filed, trained support personnel, such as law clerks, working under the supervision of a lawyer, can process undefended cases.

### **counterclaim**

where A sues B and B defends A's claim and makes their own claim against A

## Legal Representatives and the Debt Collection Process

In Ontario, there are two types of licensed legal representatives: lawyers and paralegals.

Lawyers are individuals licensed by the Law Society of Ontario (LSO), who are authorized to practise in all areas of law. To become a lawyer, an individual must obtain a law degree, complete an articling period as a student at law or complete the Law Practice Program, pass barrister and solicitor examinations, and demonstrate that they are of good character.<sup>2</sup>

Paralegals are individuals, licensed by the LSO, who are authorized to provide some legal services directly to the public.<sup>3</sup> To qualify as a paralegal, an individual must complete an accredited paralegal education program and pass a licensing examination.<sup>4</sup> They must also demonstrate that they are of good character.

In order to provide legal services to the public, both lawyers and paralegals must carry errors and omissions insurance. Paralegals are restricted in their practice to those areas authorized by the LSO. Included in these services is representation in courts and

1 A paralegal on their own can handle cases where the debt is \$35,000 or less. For cases above this amount, paralegals must be supervised by a lawyer.

2 See "How Do I Become a Lawyer in Ontario?" on the website of the Law Society of Ontario at <<https://lso.ca/becoming-licensed/lawyer-licensing-process/how-do-i-become-a-lawyer-in-ontario#gain-experience-working-in-a-legal-environment-5>>.

3 The jurisdiction of paralegals to appear in court is governed by the *Law Society Act*, RSO 1990, c L.8, and the scope of their activities is governed by By-Law 4 of the LSO, made under the authority of the *Law Society Act*.

4 A list of accredited paralegal education programs can be found at <<https://lso.ca/becoming-licensed/paralegal-licensing-process/paralegal-education-program-accreditation/accredited-programs>>.

before tribunals where a statute permits agents or non-lawyers to appear. These courts and tribunals are as follows:

- the Ontario Court of Justice, Provincial Offences Court;
- the Ontario Court of Justice, Criminal Court on summary conviction offences where the maximum sentence does not exceed six months;
- the Small Claims Court, where actions for damages or the return of property valued at \$35,000 or less can be heard;<sup>5</sup> and
- tribunals where representation by an agent or non-lawyer is permitted.

Lawyers and paralegals who, in the ordinary course of their professional business, assist clients in pursuing collection of a debt, are exempt from the registration requirements of Ontario's *Collection and Debt Settlement Services Act*<sup>6</sup> and its regulations.<sup>7</sup>

## Unlicensed Persons and the Debt Collection Process

In addition to lawyers and paralegals, the LSO, under By-Law 4,<sup>8</sup> sets out a number of categories of non-licensed persons who, based on their occupation or relationship to their employer or a family member, may appear before some courts and tribunals, such as the Small Claims Court, without a licence. By-Law 4 exempts certain representatives from requiring a licence by deeming their work to not constitute practising law or providing legal services. Such workers include Aboriginal court workers. The second category of persons not requiring a licence to provide certain legal services includes legal aid clinic workers, parliamentary constituency assistants, in-house legal representatives, and those who occasionally represent friends or family. Also included are persons who provide legal services occasionally as an ancillary part of their job. These persons include some human resources professionals, appraisers, and those working for trade unions. Unlicensed persons who fall into one of the above-noted categories are able to act in debt collection litigation matters.

### collection agent

a person or a corporation licensed and governed by the Ontario government to act on behalf of creditors to collect debts

### debt settlement service provider

a person or a corporation authorized by the Ontario government to act on behalf of debtors to negotiate debt settlements with creditors

## The Collection and Debt Settlement Services Act

Collection agents and debt settlement service providers are regulated under the CDSSA and Ontario Regulation 74, which was made under the CDSSA. **Collection agents** act on behalf of creditors to collect debts. **Debt settlement service providers** act on behalf of debtors to negotiate debt settlements with creditors.

The statute and its regulation set out disclosure requirements, establish advertising restrictions, and impose a fee cap for debt settlement services. A unique aspect of the

5 *Courts of Justice Act*, RSO 1990, c C.43, s 23(1) and O Reg 626/00, s 1(1).

6 RSO 1990, c C.14 [CDSSA].

7 RRO 1990, Reg 74: General; see ss 18.1 and 18.2.

8 By-Law 4 is made under the authority of the *Law Society Act*. The by-law can be found in its entirety at Law Society of Ontario, By-Law 4 (amendments current to 27 February 2020), online: <<https://lso.ca/about-lso/legislation-rules/by-laws>>.

legislation is that it permits the licensing of agents to act on behalf of creditors, in collecting on a debt, while at the same time, governing debt settlement service providers who work with debtors in negotiating with creditors to settle a debt. In other words, an agent may be actively pursuing a particular debtor to make payment to a creditor while at the same time attempting to broker a settlement with the creditor on behalf of that debtor. Conversely, in some provinces, such as Alberta, a choice must be made between acting as a collection agent or a debt settlement service agent; one is not permitted to do both.

Lawyers and paralegals who act in their ordinary professional capacity in representing creditors or debtors in collection matters are exempt from the provisions of the CDSSA and its regulations.<sup>9</sup> A lawyer or paralegal who, in addition to their professional legal work, holds themselves out as someone who obtains or arranges for the payment of money owed to another person will be required to adhere to the provisions of the CDSSA.<sup>10</sup>

In either case, legal professionals need to be aware of the provisions of the CDSSA and its regulations as some of their clients may be dealing with collection agents whose collection techniques may not adhere to these provisions. Included below is a list of some of the CDSSA provisions that such agents must follow.

Additionally, lawyers and paralegals who have been retained by a debtor are able to send a written notice to a collection agency to stop the debt collector from dealing directly with the debtor and requiring them to direct future communications on the matter to the lawyer or paralegal.<sup>11</sup>

The CDSSA prevents abuse of debtors by those who engage in collection work and ensures that creditors who use a collection agency are paid what they are entitled to out of the collection proceeds. The CDSSA offers some protection to debtors using debt settlement services by requiring disclosure of the conditions of debt settlement offers, allowing debtors to compare differing proposals. The Act also mandates a ten-day “cooling-off period,” during which time a debtor may cancel a services agreement.<sup>12</sup> Additionally, there are restrictions on how debt settlement services can be advertised. A collection agency is prohibited from doing the following:<sup>13</sup>

- attempting to collect payment without having sent a notice to the debtor that sets out the name of the creditor to whom the debt is owed and the balance owing on the debt, and advising the debtor that the agency is acting on behalf of the creditor to collect the debt (although this notice may be included in a demand for payment sent to the debtor);
- phoning the debtor before the sixth day after mailing the above-mentioned notice;
- commencing proceedings without first giving notice to the debtor of its intention to sue on behalf of the creditor;

9 RRO 1990, Reg 74, ss 18.1 and 18.2.

10 *Ibid*, ss 18.1(4) and 18.2(4).

11 *Ibid*, s 22(2).

12 CDSSA, RSO 1990, c C.14, s 16.7.

13 RRO 1990, Reg 74, ss 21-24.

- threatening or commencing proceedings or other collection activity without authorization in writing by the creditor;
- continuing to contact a debtor when the debtor or the debtor's lawyer or paralegal has sent a notice requesting that the collection agency communicate only with the debtor's lawyer or paralegal, and setting out the lawyer or paralegal's address and telephone number;
- communicating in such a manner or with such frequency as to constitute harassment;
- phoning the debtor on Sunday before 1 p.m. or after 5 p.m. (local time), on a statutory holiday, or on any other day other than between the hours of 7 a.m. and 9 p.m. local time in the place being called unless the debtor has consented to or requested contact during those times;<sup>14</sup>
- giving false information about a debtor to anyone;
- failing to give full particulars of the debt when contacting a debtor;
- contacting the debtor more than three times in a seven-day period except by ordinary mail;<sup>15</sup>
- contacting the debtor's spouse, family, relatives, friends, or acquaintances, unless that person is a guarantor or the debtor has granted consent to speak to them, or if the sole purpose of the contact is to find out the debtor's home address or home telephone number;
- contacting the debtor's employer, unless they are a guarantor or consent has been granted to speak to them by the debtor or if the sole purpose of the contact is to find out the debtor's employment, business title, and/or business address;
- publishing or threatening to publish the debtor's failure to pay;
- using threatening, profane, intimidating, or coercive language;
- using undue, excessive, or unreasonable pressure or otherwise communicating in such a manner or with such frequency as to constitute harassment;
- collecting or attempting to collect a debt from a person whom the collection agency or collector knows or reasonably ought to know is not liable for the debt;
- continuing to contact a person who has stated that they are not the same person as the debtor the agency is seeking, unless the agency takes all reasonable precautions to ensure that the person is, in fact, who the collection agency intends to contact;
- giving any person any false or misleading information;
- misrepresenting to any person contacted in respect of the debt the purpose of the contact or the identity of the creditor, collection agency, or collector;
- using, without lawful authority, any summons, notice, demand, or other document that states, suggests, or implies that the collection agency or collector is authorized or approved by a court in Canada or another jurisdiction;

---

<sup>14</sup> *Ibid*, s 22(8)2.

<sup>15</sup> *Ibid*, s 22(8)1.

- commencing proceedings in the collection agency or collector’s own name, unless it has paid the creditor for the right to collect and keep the amount owing to the creditor; and
- failing to record all phone calls where the debt collection agency employs ten or more collectors.

In order to register as a collection agency, applicants must be 18 years of age or older (in the case of non-corporate applications)<sup>16</sup> and must do the following:

- pay the required fees;
- state in the application an address for service in Ontario;
- operate out of a place of business in Ontario that is open to the public and is not in a private residence;
- file, for review by the registrar, copies of all forms and form letters sent to debtors and all contracts used with creditor-clients;<sup>17</sup>
- achieve at least 75 percent on a written examination based on the Act and such further subject matters as the registrar prescribes (and, if the agency is a corporation, the active officers and directors must also meet this examination requirement);<sup>18</sup> and
- have at least two years’ experience in the collections business or, in the opinion of the registrar, equivalent related experience.

All monies collected by the agency are deemed to be held in trust for the creditor in accordance with the collection contract.<sup>19</sup> The agency must maintain a separate bank account for such trust funds.

## Law Clerks and the Debt Collection Process

If the debt is for more than \$35,000, then the matter must be heard in the Ontario Superior Court of Justice. If the debtor contests payment and wishes to have representation in court, a lawyer will be required to appear in court to handle the case because, although a debtor who is not incorporated may appear on their own behalf in any court—including the Supreme Court of Canada—non-lawyers may not appear in the Superior Court on behalf of paying clients. However, if the debtor has no defence and the plaintiff can obtain a **default judgment**, the matter does not require a court appearance, and it may be handled by a non-lawyer who can complete the procedures to obtain a default judgment. In this case, a lawyer should be supervising the work because non-lawyers have no independent standing in the Superior Court. For this reason, while debt collection for amounts of \$35,000 and under can be an important part of a paralegal’s practice, a claim in excess of \$35,000 should be handled by a lawyer or by a law clerk or paralegal working under a lawyer’s supervision.

### default judgment

a plaintiff obtains a default judgment when the defendant takes no action and files no defence when they are sued, meaning the defendant is deemed to have admitted the debt and the plaintiff may apply to the court clerk, who, on behalf of the court, will sign a judgment for the amount claimed

<sup>16</sup> *Ibid*, s 12(1).

<sup>17</sup> *Ibid*, s 13(4).

<sup>18</sup> *Ibid*, s 15(6).

<sup>19</sup> *Ibid*, s 17(1).

Debt collection work is or can be a large part of a legal practice. It includes the collection of consumer debt, credit card debt, defaults on personal loans, and retail and wholesale customer accounts involving commercial debtors. Often this work can be done economically on a high-volume basis because the routine nature of most collection cases lends itself to standardized processing. Many law firms, however, still treat debt collection matters in the same way as more complex matters, which results in higher costs to the client and greater inefficiencies. This unnecessarily complicated approach creates opportunities for collection agencies, paralegal firms, and law firms that are organized efficiently and effectively to do debt collection work.

Such law firms may improve efficiency through the use of law clerks who have some legal training and can participate in the kinds of work done by lawyers, provided that they are supervised by lawyers and that they do not undertake work that only lawyers are allowed to do. An example of prohibited work is giving a legal opinion or legal advice to a client. This cannot be done by a law clerk. The prohibitions on legal work by a non-licensure are set out in the LSO's By-Law 7.1 (see the box below).

### SUMMARY OF BY-LAW 7.1 OF THE LSO

In general, By-Law 7.1 requires that lawyers closely supervise the work of their non-lawyer staff.<sup>20</sup> Specifically, law clerks and other unlicensed persons are prohibited from doing the following:

- taking instructions from clients or giving undertakings on behalf of a lawyer, unless the lawyer provides express instructions and authorization to do so and closely supervises the work;
- giving legal advice to clients;
- negotiating with third parties without the client's specific approval and without the lawyer supervising the process;
- signing or sending correspondence, other than on routine or administrative matters, unless it is reviewed by a lawyer;
- using the lawyer's personalized key to access the electronic registration of title documents system;
- appearing as advocates, unless the appearance is limited to routine or administrative matters, such as setting dates for trial in criminal courts (the LSO requires non-lawyers employed by lawyers who appear before tribunals and lower courts to be licensed paralegals); and
- sending collection letters on behalf of a client, unless the letter is prepared under the direct supervision of the lawyer and reviewed, approved, and signed by the lawyer prior to being sent out.

<sup>20</sup> For paralegals, the requirement to supervise non-licensed staff is found in Rules 8.01(3), (4), and (5) of the *Paralegal Rules of Conduct*. See the Law Society of Ontario website at <<https://lso.ca/about-lso/legislation-rules/paralegal-rules-of-conduct>>.



# Enforcement of a Judgment as Part of the Debt Collection Process

There are other features of collection work that are of interest here. Obtaining a judgment against a debtor is often easy, since many debtors cannot pay what they owe. Because that is not a defence in an action for debt, debtors often do not bother to put forward a defence, and the creditor is able, with relative ease, to obtain a default judgment as an administrative act. The more difficult job is to enforce the judgment. A judgment is no more than a piece of paper containing an order to pay. It is not self-enforcing; if the debtor pays voluntarily when the order is made, that is the end of the matter. However, if the debtor does not pay, then the creditor must take steps to enforce the judgment, using a variety of legal procedures. Enforcement is covered in detail in later chapters; however, by way of introduction, some of the more common procedures are as follows:

- *A writ of seizure and sale* (also called a writ of execution) allows the sheriff (in the case of land) or court enforcement officers (in the case of personal property) to manage the seizure and sale of land or goods belonging to the **judgment debtor** and apply the proceeds to the **judgment creditor's** claim.<sup>21</sup>
- *Garnishment* allows the judgment creditor to have someone who owes money to the debtor pay some or all of that money to the creditor to satisfy the creditor's claim against the debtor.
- *Examination in aid of execution* allows the judgment creditor to demand that the debtor appear for questioning before the creditor's legal representative and requires them to answer questions about what income or assets they have that can be used to satisfy the debt.

The most difficult part of collection work is enforcement. The tools available are cumbersome, expensive to use, and slow. A skilful **execution debtor** can delay matters, drive up costs, and generally make it difficult to seize assets to satisfy the debt. In many cases, the **execution creditor** will decide that the cost of collection exceeds the benefit to be obtained. At that point, the creditor may decide to "write off" the debt. This is not a dead loss for the creditor because they may deduct the loss from other income for tax purposes, thereby reducing the taxable income and the amount of overall income tax otherwise paid. Institutional lenders or creditors with large numbers of customer accounts usually track collection costs and, using formulas, determine in a rational and dispassionate way when to cease unsuccessful enforcement proceedings or when a compromise should be made with the debtor. Where a creditor is deciding to cut their losses, they will often accept some of what is owing, rather than the total amount, on the assumption that getting partial payment now is better than the risk of recovering less later.

## **judgment debtor**

a debtor against whom a judgment has been obtained

## **judgment creditor**

a creditor who has obtained a judgment for debt against a debtor

## **execution debtor**

a debtor who is the subject of enforcement proceedings by an execution creditor

## **execution creditor**

a creditor who has obtained a judgment and is in the process of executing or enforcing a judgment for debt

<sup>21</sup> A few years ago, the provincial government considered privatizing the enforcement of court judgments and is expected to revisit this issue in the future. For an interesting article on this topic, see <<http://www.blaney.com/articles/ontario-paves-road-to-improved-judgment-creditor-recovery-new-developments-could-expedite-enforcement>>.

## How Creditors Administer Credit Transactions

When a person provides goods or services on contract where some or all of the payment is due in the future, there has been an extension of credit. While the parties may arrange special terms for payment, the customary business arrangement on the sale of goods and services is to offer payment terms of “net 30 days.” This means that the debtor has 30 days, including the date of the invoice, to pay the invoiced amount without having to pay interest, and often with a discount of 5 to 10 percent on the invoiced amount to encourage prompt payment.<sup>22</sup> The invoice will usually provide that, starting on the 31st day, interest accrues at some percentage per month, usually in the range of 1 to 2 percent. Although that may not sound like much, it works out to between 12 and 24 percent per year, which adds substantially to the debt and makes it more difficult to pay off. As a matter of practice, a knowledgeable debtor may negotiate a late payment by trying to reduce or eliminate the interest component. A creditor may well accept this, knowing that the older a debt is, the harder it is to collect, and take what is offered rather than run the risk of collecting nothing.

Many creditors and some lawyers assume that if there is a provision for interest in the invoice, the creditor is legally entitled to payment. This is usually not the case. Unless the debtor specifically agreed to the interest provision at the time of sale or extension of credit, simply including it on an invoice does not make interest an enforceable part of the contract. Contractual terms, such as the imposition of interest, cannot be unilaterally added to an invoice *after* the contract has been formed. Note that if interest is payable on terms of less than a year (for example, if daily, weekly, bi-weekly, or monthly interest is payable), the contract must set out the yearly rate of interest. If the equivalent annual interest rate is not set out, section 4 of the *Interest Act*<sup>23</sup> sets out that interest is limited to 5 percent or less per year.

### AN OVERVIEW OF THE DEBT COLLECTION PROCESS

1. The creditor is unable to collect the money owing and refers the matter to a lawyer or a paralegal.
2. A demand letter giving the debtor ten days to pay should be sent by a collection agent, lawyer, or a paralegal. The letter should also set out how payment is to be made and indicate that if payment is not made by the deadline, then civil court proceedings may be commenced against the debtor.
3. Asset and identification searches of the debtor are carried out.
4. The amount owing is calculated prior to commencing action.
5. At the expiry of the ten-day period, the pleadings are prepared, issued in the appropriate court, and served.

22 Some business owners start the net 30-day period on the day after the purchase has been invoiced; however, this text follows the more common business practice of using the date of purchase (invoice date) as day 1 of the net 30-day period as the vendor creditor generally wants the net 30-day period to end as soon as possible to ensure a regular cash flow and timely payment of invoices.

23 RSC 1985, c I-15.

6. If the debtor does not defend within the time provided for filing a defence, default judgment is signed against the debtor.
7. When a judgment has been obtained, proceedings to enforce the judgment are commenced.
8. The lawyer or paralegal will file a writ of execution, issue a garnishment notice, and/or conduct an examination of the judgment debtor to enforce the judgment and to determine the debtor's ability to pay.

Ideally, creditors should have debtors sign a contract setting out terms of repayment, including interest. Such a contract should also include consent from the debtor permitting the creditor to conduct a credit bureau search on the debtor. Except among sophisticated institutional lenders, however, this practice is rare. The lawyer or paralegal should consider recommending to clients who have collection issues that they obtain this consent when a debtor–creditor relationship is established. Privacy legislation requires that consent be obtained before conducting a credit bureau search, and it is easier to get such consent up front rather than when an account later goes into default. In general, a creditor should obtain as much information as possible about the debtor at the outset, when the parties are on good terms. The use of a customer information form should be considered to collect data that includes the debtor's full legal name and driver's licence number, as well as asset, debt, and banking information. The form should also secure the debtor's consent to a credit bureau search and release of information in accordance with the *Personal Information Protection and Electronic Documents Act*.<sup>24</sup> In the event of nonpayment, a driver's licence search may confirm the debtor's whereabouts. A credit bureau report on the debtor can provide information concerning the debtor's employment, other debts, and repayment history. Driver's licence and credit bureau searches are discussed in more detail in Chapter 3.

Most commercial extenders of credit will not immediately demand payment on the 31st day after the debt was incurred. Often there is a business relationship that has gone on for some time and is expected to go on in the future. In the interest of continuing the relationship, most creditors will allow the 31st day to pass without taking action. Instead, the overdue debt, called a **receivable**, begins to earn interest. Most businesses will review the receivable at the end of 60 days, and again at 90 days. Depending on the nature of the relationship, the extender of credit may automatically send a letter in the form of a gentle reminder that payment is due when 60 days have elapsed. When 90 days have elapsed, most legal representatives and most businesses consider that there is a problem with the account and that there may be difficulties with collecting. Now is the time for the creditor to make personal contact with the debtor and find out why payment has not been made. Sometimes the reason is quite innocent—for example, the person responsible for payment has been ill or is on vacation, or the matter has simply been overlooked. At other times, the creditor may learn that the debtor has a cash flow problem—perhaps business has fallen off, other creditors are demanding payment, or the debtor's own customers have been slow to pay. In times of recession, this can have a ripple effect as one debtor fails to pay their

### receivable

money owing to a creditor (also called an account receivable); because it constitutes a right to future payment or income, a creditor can sell or assign its receivables to others, thereby giving the purchaser or assignee the right to be paid the amount of the receivable by the debtor

<sup>24</sup> SC 2000, c 5.

creditor who, in turn, does not have the cash to pay their creditor, and so on. Whatever the reason, the creditor needs to make a decision to alter the terms of payment, extend further time to pay, or turn the matter over to a lawyer, paralegal, or collection agency. This decision requires a balancing of the desire to continue a commercial relationship with the desire to be paid. In the interests of preserving the relationship and profits from it over time, a creditor may choose to forgo all of the entitled interest and relax the payment terms.

To avoid debts that are difficult to collect, a creditor will, at the commencement of a commercial relationship, usually require cash on delivery (COD). Once the relationship is ongoing, credit may be extended by allowing payment on terms of net 30 days, as described earlier, or as the parties otherwise decide.

Another common way to advance credit, particularly in consumer transactions of “big ticket” items such as vehicles, is for the creditor (the seller) to lend the money to the purchaser to buy the seller’s product. This is done with a **conditional sales contract** (also called an executory contract or an installment contract). For example, if a consumer buys a car and does not have all the cash to pay the purchase price, the seller may give the buyer credit, allowing the buyer to put a down payment on the purchase price and pay the balance of the purchase price plus interest in monthly installments over a period of time. Because this loan may be quite large, the seller may require the purchaser to pledge the car as security for repayment of the loan. This means that, if the purchaser misses an installment payment on the debt, the lender has the right to seize and sell the car and apply the sale proceeds to pay down the loan.<sup>25</sup> Usually, if the debtor still owes money after that happens, the seller has the right to then sue the debtor to collect any outstanding balance. A transaction where the debtor gives the creditor an interest in property of the debtor, as a guarantee of payment to the creditor, is referred to as a **secured credit transaction** or a secured debt.

### **conditional sales contract**

also called an executory contract or an installment contract; the vendor finances the debtor’s purchase, taking security in the item sold

### **secured credit transaction**

a transaction where the debtor has put up some asset of value as collateral that the creditor may use as security for the unpaid debt; if the debtor defaults, the creditor can recover what is owing by seizing the collateral; the debt is secured by the creditor’s rights in the collateral

### **personal property**

consists of tangibles, such as consumer goods, other goods, inventory and equipment, and intangibles, including investments and securities

## Secured Transactions Under the Personal Property Security Act

The Ontario *Personal Property Security Act*<sup>26</sup> applies whenever a debtor grants a creditor a secured interest, using some or all of their **personal property** as collateral, and registers notice of their interest under the Act.<sup>27</sup> The PPSA contains rules to determine and govern the priorities and rights of secured creditors and debtors.

## The Personal Property Security Registration System

The Personal Property Security Registration (PPSR) system handles registrations and searches executed under the provisions of the PPSA. The PPSR also accepts registration

<sup>25</sup> Section 25 of the *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A provides that where a consumer under a conditional sales contract has paid two-thirds or more of their payment obligation, the repossession/ resale provisions of the Act are unenforceable except with leave of the Superior Court of Justice.

<sup>26</sup> RSO 1990, c P.10 [PPSA].

<sup>27</sup> All common law provinces and territories have their own personal property security acts.

of liens under the *Repair and Storage Liens Act*.<sup>28</sup> The RSLA is most commonly used by motor vehicle repair shops to register a non-possessory lien against a motor vehicle to secure unpaid repair work. When a motor vehicle is repaired and a customer does not make full payment for properly authorized repairs, the repairer can either keep the vehicle until payment is made or release the vehicle to the customer upon receipt of an acknowledgment signed by the customer stating that the bill has not been paid in full. The repairer can then use the acknowledgment to register a non-possessory lien against the vehicle. The owner cannot legally sell the vehicle with the lien in place. Liens under the RSLA are effective for up to three years. A properly registered RSLA lien may have priority over other secured interests, such as the PPSA registration by a financing company that loaned the owner the funds to purchase the vehicle.<sup>29</sup>

## Registration Under the PPSA

In order to obtain priority under the PPSA, a creditor must achieve attachment of the collateral and perfect their secured interest.

### Attachment of the Secured Collateral

For a secured interest to be enforceable under the PPSA against a third party, the interest must attach to the collateral. The most basic form of attachment is for the creditor to keep possession of the property. However, in most cases, a debtor requires possession of the property. When the secured property is to stay in the debtor's possession, the parties will need to execute a security agreement to set out the terms of their agreement. In this case, attachment occurs when the agreement is signed.

### Security Agreements

The parties may enter into either a specific security agreement or a general security agreement. The specific security agreement covers only a single asset. A general security agreement usually covers all present and future assets with the exception of real property, for which a mortgage is required.

Security agreements generally cover matters such as a description of the parties and the collateral, restrictions on the use of the collateral, the obligations of the debtor to maintain and insure the collateral, and remedies for breach of the agreement. An example of a general security agreement is appended to this chapter as Figure 1.1.

### Perfection of the Security Interest Under the PPSA

Following attachment, the creditor must perfect their interest to obtain priority under the PPSA. Perfection usually occurs upon registration of a financing statement.

<sup>28</sup> RSO 1990, c R.25 [RSLA].

<sup>29</sup> For an interesting article that sets out the possible competing priorities of a PPSA, RSLA, and a purchase money security interest (PMSI) on a vehicle, see <<https://www.airdberlis.com/insights/publications/publication/the-powerful-protections-of-the-ontario-repair-and-storage-liens-act>>.

## ADVANTAGES OF REGISTERING UNDER THE PPSA

- Registration provides notice of the creditor's secured interest to the public, allowing potential creditors to conduct searches against the debtor to determine whether the debtor has already granted security to another creditor.
- Registration, in most cases, provides the creditor with priority over unregistered interests and over interests registered subsequent to their interest.
- Future advances to a debtor can be secured under the initial registration; however, in the case of consumer goods, a financing statement must be registered after the execution of every security agreement.
- The Act sets out rules for realization of the security that may result in a faster and less expensive seizure of property.

### Registering a Financing Statement Under the PPSR

The PPSR is a notice-based system. Security agreements themselves are not registered. Notice of the agreement, in the form of an electronically filed financing statement, is registered in the PPSR system. A financing statement for an individual contains the borrower's name, address, and date of birth. It also contains the lender's name and address, along with the registration period, the initial amount of the loan, its maturity date, and a description of the collateral.

A financing statement should be filled out very carefully and proofread thoroughly before registration. Neglecting to include the debtor's middle initial (if they have one), spelling their name incorrectly, or marking off the wrong box on the form may result in a loss of priority under the PPSA. Information on PPSA registrations is available online at <https://www.ontario.ca/page/register-security-interest-or-search-lien-access-now>. There is a PPSA Assurance Fund to provide compensation for errors made by PPSR staff.

A financing statement must be registered online. Registration can be done online through the Access Now portal noted in the preceding paragraph or through a third party for hire. A creditor can register a financing statement for between one and 25 years, or for a perpetual period. The registration fee is \$8 per year for one to 25 years or \$500 for a registration in perpetuity.<sup>30</sup>

Within 30 days of registration, the creditor must deliver a copy of the registered financing statement to the debtor.<sup>31</sup>

### Priority Under the PPSA

If there is only one registered secured creditor against a particular piece of property or inventory, then they have priority over unregistered creditors and trustees in bankruptcy. If, however, there is more than one registered security interest against the property, the PPSA sets out who has priority. A perfected security interest takes priority over an unperfected one. If, for example, the debtor has signed two security agreements and only one of the creditors has registered a financing statement under

<sup>30</sup> PPSA, RSO 1990, c P.10, s 51(1) and O Reg 345/97, s 1.

<sup>31</sup> PPSA, RSO 1990, c P.10, s 46(6).

the PPSA, the registered security interest is the only perfected one and has priority over the unregistered, unperfected interest. If both creditors registered under the Act, the rule of “first in time, first in right” applies, so that the party who first registered a financing statement has priority. However, there is one category of registration, called the purchase money security interest (PMSI), that takes priority over other perfected interests, even those registered prior to the PMSI. A PMSI occurs, in some cases, when a creditor lends the debtor funds to purchase a specific item. The creditor then takes a secured interest, in the form of a PMSI, in that item. Under the PPSA, PMSIs are perfected by registration within 15 days after the debtor obtains possession of the purchased item.<sup>32</sup> PMSIs permit multiple secured creditors to register their interests against a debtor’s property. For example, the debtor may have executed a general security agreement over their entire inventory with a creditor, and then contracted with another creditor to borrow money to buy a new item to add to inventory covered by the general security agreement. The new creditor will want to register a PMSI in order to take priority on that item against the other creditor, who has security under the general security agreement.

In some cases, with multiple registrations under the PPSA, priorities may be difficult to determine. The PPSA provides that the Superior Court of Justice can be called upon to establish priorities and make orders to protect the collateral in the interim. In some cases, a court-ordered injunction to refrain from selling or damaging the property may be of assistance to the creditor.

## Enforcement of PPSA Secured Interests

Part V of the PPSA sets out the rights and responsibilities of the parties when realizing upon security under the PPSA. The overriding general rule is that the parties must act in a commercially reasonable manner. Therefore, the creditor must give the debtor time to remedy the default. The Act permits the creditor to seize the secured item and even to render it unusable if it cannot be easily seized. If the collateral consists of consumer goods and the debtor has paid at least 60 percent of the indebtedness secured, then, under section 65(1) of the PPSA, the secured party must dispose of or contract to dispose of the collateral within 90 days of taking possession. Once 66.66 percent or more of the amount outstanding on consumer goods has been paid, in accordance with Schedule A of the *Consumer Protection Act, 2002*, the goods cannot be seized. The PPSA also provides for the granting of injunctions by the court and for the appointment of a receiver, where appropriate. In all cases, a creditor should avoid using violence when realizing upon the security because charges of assault and trespass against the creditor could result. Once the creditor gains possession of the collateral, they must use reasonable care to preserve it. The creditor can charge the debtor reasonable repair, storage, and insurance costs. The creditor must notify the debtor and other creditors, with an interest in the collateral, of the seizure, and must provide 15 days’ notice of any sale of the property. All sales must be at fair market value as determined by two appraisers. The creditor must account to the debtor and the other creditors and must pay any surplus after the sale to the debtor. If there is a shortfall, the creditor may sue for recovery against the debtor.

---

<sup>32</sup> *Ibid*, s 20(3)(a).

## EXAMPLE OF PRIORITY RANKING AMONG SECURED AND UNSECURED CREDITORS OF A DEBTOR

A debtor owes \$4,000 to Sedate Motors Ltd on a conditional sales contract. The debtor's car is collateral for payment to Sedate. The contract was made in 2017 and registered under the PPSA. In 2016, the debtor bought an exercise machine for \$1,000 from Bulko Wholesale Ltd (Bulko). The debtor didn't pay for it and was sued in 2018; Bulko obtained judgment and filed a writ of execution against the debtor in 2019. In 2020, the debtor pledged his car to Fly By Night Enterprises for a \$2,000 loan. Fly By Night registered its interest in the car under the PPSA in 2020.

### Priority Ranking

1. Sedate, having registered its interest in the collateral in 2017 under the PPSA, has first priority with respect to a claim by the other creditors against this asset.
2. Fly By Night, having registered its interest in the same collateral as Sedate, but after Sedate, is in the second priority position with respect to the car. This means that Sedate is entitled to seize and sell the car and take \$4,000 from the proceeds to satisfy the debt. If there are any proceeds of sale left over, Fly By Night is entitled to take its share from those proceeds.
3. Bulko, as an unsecured creditor, can levy execution on any sale proceeds left over from the sale of the car and against any other assets that are not held as collateral for a secured debt. Although Fly By Night's interest arose after Bulko's, Bulko has a lower priority because a registered interest in specific collateral takes priority over any unsecured interest.

## Creditor Approaches to Extending Retail Credit

Consumer credit is remarkably easy to obtain. Many retail sellers offer credit to finance purchases or allow payments on easy terms. Although many of these credit transactions may go into default and require collection, retail sellers rely on the high volume of such sales to generate profits. In the absence of a downturn in the economy with rapidly rising unemployment, this approach has usually worked. However, even in the best of times, many consumers take on a debt load that they cannot discharge and find themselves being sued or having their secured property seized. A retail seller who does not want to be in the debt collection business will often sell their right to be repaid, at a discount, to a finance company or other financial institution. This means that the seller will sell the right to collect the debt at a price that is less than the full amount owing to them. Although the seller has not gotten the full purchase price, they have gotten rid of the cost of collecting the debt, as well as the risk that the debtor will default. And, of course, the cost of discounting a receivable will often have been factored into the price charged to the retail consumer to begin with. Someone purchasing overdue credit is subject to the provisions of the CDSSA. Such a person falls under the definition of a collection agency.<sup>33</sup>

<sup>33</sup> CDSSA, RSO 1990, c C.14, s 1(1)(d).



# Business Creditor Invoice Factoring

A business that supplies goods and/or services to clients on credit arrangements of net 30 to 90 days may, from time to time, experience a cash flow problem. On occasion, or in some cases on an ongoing basis, a business will enter into an **invoice factoring** agreement with a factoring business, also known as a **factor**. The factor provides the business with a cash advance against the invoices in exchange for a fee, which is usually collected when the business's clients pay the monies due, on the invoices, to the factor. The factor then remits such funds, less the cash already advanced and minus the fee payable, to the business.

Cash advances are typically 70 to 85 percent of the total invoiced amount, with fees usually being approximately 5 percent of the amount of the invoice.<sup>34</sup> The fee charged is often lower than the cost of taking out a loan from a traditional lender.

A factor must, in accordance with the PPSA, register a financing statement against the business, claiming a security interest in the business's accounts receivable. The business and/or the factor are required to send a notice to the invoiced customers directing them to pay the factor and not the business.<sup>35</sup>

Prior to entering into an agreement with a factor, a business should ensure that they understand the terms of the arrangement, particularly with respect to fees payable. The business should also review the terms of the arrangement to determine what happens with invoices that become overdue. In some cases, the business must buy back the invoice or provide invoices from one or more other customers to replace the bad debt. The invoice factoring agreement may provide that the factor will enforce the overdue invoices.

The business should also consider how using a factor may affect their business. While it is helpful to receive cash up front against future invoice payments, the business must pay a fee for this. If they collected payment on their own, they would receive the full invoiced amount. As well, some customers may prefer to deal with the business directly, rather than with a factor, on matters concerning their account. A business, however, may be more productive when it no longer has to worry about dealing with its accounts receivable.

## invoice factoring

an arrangement whereby, for a fee, the invoices of an ongoing business will be administered by a third-party factor in exchange for a cash advance paid to the business

## factor

a financial entity that, for a fee, provides a business with a cash advance in exchange for the right to collect the upcoming, or, in some cases, overdue, funds owing on some or all of the invoices of the business

<sup>34</sup> For further information on factoring, see <<https://loanscanada.ca/business/how-to-use-invoice-factoring-to-finance-your-business>>.

<sup>35</sup> PPSA, RSO 1990, c P.10, s 40(2). For a useful article on Notices of Assignment, see <<https://www.torkinmanes.com/our-resources/publications-presentations/publication/notice-of-assignment-of-accounts-receivable-under-the-ppsa-what-every-factor-should-know>>.

## PLAINTIFF FAILS TO PROVE THAT CUSTOMER RECEIVED NOTICE OF ASSIGNMENT OF INVOICES TO FACTOR

*Factbanc Corporation v Buttcon Limited*, 2017 CanLII 77429 (Ont Sup Ct J (Sm Cl Ct))

### Facts

Factbanc Corporation (Factbanc) entered into a factoring agreement with Jacon Fire Protection Inc (Jacon). Buttcon Limited (Buttcon) is a construction company that hired Jacon to provide fire equipment services at a Toronto Transit Commission site that Buttcon was working on. Jacon sent Buttcon two invoices totalling \$26,276.11 for services rendered. These invoices had allegedly been turned over to Factbanc under a factoring agreement with Jacon. Factbanc sued Buttcon for payment of the invoices. Buttcon defended on the basis that they were not provided with proper notice of the assignment of the invoices.

### Relevant Issue

Was notice of the invoice factoring given?

### Decision

The Court found that the factor (Factbanc) could not prove that it had given the invoiced customer, Buttcon, notice of the assignment of the invoices and as such could not enforce payment of the invoices. The onus is on the plaintiff to prove that notice was given. The plaintiff's witness, the CFO of the factoring company, could not prove that Buttcon had received notice of the assignment of their invoices to Factbanc. The Court cited *Fairbanx Corp v On the Bench Resources Inc*, 2010 ONSC 203 as authority that notice of the assignment of a debt must be given and that such notice must be "unequivocal and express." The defendant did not call any evidence. The Court offered suggestions on possible ways in which notice could effectively be given going forward.

## CHAPTER SUMMARY

This chapter introduced the nature of a debt collection practice, beginning with the reasons debtors do not pay debts when they are due. The reason for nonpayment often drives the strategies and approaches to collection taken by both parties to the debt. The roles of lawyers, paralegals, and law clerks in a debt collection practice were then discussed. It was noted that both lawyers and paralegals are exempt from registration under the CDSSA when they are doing debt collection work in the course of their ordinary business. It was noted that lawyers may work on cases involving any monetary sum; however, paralegals are limited to matters that fall within the limit of the Small Claims Court's monetary jurisdiction. Law clerks may work on files involving any monetary amount, provided that

they are working under a lawyer's supervision, but may not operate independently. The chapter continued with a discussion of how creditors administer credit transactions, including how interest is determined and charged; how creditors decide when they need to take action to collect a debt; and how creditors decide when a debt is not worth pursuing. Secured transactions under the PPSA and PPSR were then discussed, followed by a brief discussion of consumer credit and in what situations retail sellers will sell their right to collect on a debt to a finance company or other financial institution. The chapter concluded with information about invoice factoring and the example of a real-world case concerning the giving of notice of invoice factoring to customers.

## KEY TERMS

- assignment in bankruptcy, 4  
collection agent, 6  
conditional sales contract, 14  
consumer proposal, 4  
counterclaim, 5  
debt settlement service provider, 6  
default judgment, 9  
execution creditor, 11  
execution debtor, 11  
factor, 19  
invoice factoring, 19  
judgment creditor, 11  
judgment debtor, 11  
personal property, 14  
receivable, 13  
secured credit transaction, 14  
unsecured credit, 4

## REVIEW QUESTIONS

1. Bulko Wholesale Ltd (Bulko) sells exercise machines to fitness clubs and to individual consumers. The machines range in price from \$600 to \$10,000.
  - a. What kind of sale arrangement might Bulko make with a first-time wholesale (commercial) customer?
  - b. What kind of sale arrangement might Bulko make with an established wholesale customer?
  - c. Suppose that an individual consumer wishes to buy a \$6,000 machine but cannot pay the sale price immediately. What kind of arrangement might Bulko make to sell the machine to the consumer?
  - d. If Bulko isn't paid after 30 days, should it sue immediately? After 60 days? After 90 days? Explain your answer.
2. Identify the usual reasons for which a debt remains unpaid.
3. Describe limitations on the right of paralegals to conduct a debt collection practice.
4. What are the limitations on a law clerk's involvement in the debt collection process?
5. Name two persons, other than a lawyer or a paralegal, who can represent someone in Small Claims Court on a debt collection matter.
6. Define:
  - a. secured and unsecured transactions
  - b. judgment creditor
  - c. execution creditor
  - d. judgment debtor
  - e. execution debtor
  - f. conditional sales contract
  - g. assignment in bankruptcy
7. Give two reasons why a creditor would register a financing statement under the PPSA.
8. Explain two ways in which attachment under the PPSA can take place.
9. How is a security interest perfected under the PPSA?
10. Explain which secured creditor has priority in each of these circumstances:
  - a. one creditor who has perfected their interest and one who has not perfected their interest
  - b. two perfected interests
  - c. a creditor with a perfected interest and one with a PMSI
11. Describe three ways in which the PPSA can be used to assist a secured creditor with repossession of the secured property.
12. Explain what a factoring agreement is and provide one advantage and one disadvantage for a business when that business agrees to have another company factor its invoices.

**FIGURE 1.1 Example of a General Security Agreement**

## SECURITY AGREEMENT

Crazy Car Parts Manufacturing (the “Company”), the secured party, and Auto Parts Dealer (the “Dealer”), as debtor, agree to the following terms:

### 1. INDEBTEDNESS SECURED

The Dealer contracts to pay the Company, when due, all debt now owed to the Company and all additional debt later incurred by the Dealer to the Company.

### 2. COLLATERAL

The collateral that is to be subject to the security interests created under this agreement consists of the Dealer’s entire stock of goods, including, but not limited to, all cars, parts, and accessories supplied to the Dealer by the Company and that form part of the Dealer’s inventory.

### 3. GRANTING OF SECURITY INTEREST

As security for payment of the indebtedness and in consideration of this agreement, the Dealer grants to the Company a security interest in all paid and unpaid for items of collateral, both of which are referred to in this agreement as the “security interest.” Such collateral shall remain as security for the Dealer’s entire indebtedness until payment in full is made. The security interest extends to collateral presently in the Dealer’s possession and collateral subsequently acquired along with proceeds from the sale or lease of such collateral and any returned or repossessed collateral.

### 4. ATTACHMENT

The security interest attaches upon execution of this agreement in regard to all collateral that the Dealer has at that time and shall attach to future collateral upon acquisition of same.

### 5. PROTECTION OF COLLATERAL

The Dealer shall properly store collateral and protect it from injury or damage. The Dealer shall not release, surrender, or abandon possession of the collateral. The Dealer shall keep the collateral insured with all risk coverage satisfactory to the Company. The Dealer shall provide details of such coverage to the Company. If coverage is not in place, the Company may purchase its own and charge it to the Dealer.

The Dealer shall pay all taxes associated with the collateral.

The Dealer shall keep the collateral free from liens and encumbrances unless it has the prior written authorization of the Company to lien the property.

The dealer shall not sell, lease, or assign, or otherwise dispose of or deal with, the collateral outside of the ordinary course of business.

### 6. DEFAULT

The following shall be considered defaults by the Dealer:

- a) the Dealer’s authority to sell the Company’s goods is cancelled,
- b) the Dealer defaults in the payment or performance of any obligation owed to the Company,
- c) the Dealer fails, upon request, to hand over proceeds or provide further information,
- d) the Dealer disposes of the collateral without first obtaining the written consent of the Company,
- e) the Dealer enters into bankruptcy or a bankruptcy order is made against the Dealer,
- f) a receiver is appointed on behalf of a secured creditor of the Dealer,
- g) an application is made under the *Companies’ Creditors Arrangement Act* or a proposal or notice to make a proposal is filed under the *Bankruptcy and Insolvency Act*.

**FIGURE 1.1 Example of a General Security Agreement (continued)**

**7. RIGHTS ON DEFAULT**

If default occurs, the Company may:

- a) accelerate all debt owed by the Dealer to the Company along with reasonable legal expenses,
- b) take possession of any or all collateral,
- c) stop delivery of any collateral,
- d) commence legal action to enforce payment and/or performance of the Dealer's obligations,
- e) appoint a receiver of the collateral to carry on the Dealer's business,
- f) exercise all rights and remedies of a secured party under the *Personal Property Security Act*,
- g) sell, consign, or lease, or otherwise dispose of, the collateral in a commercially reasonable manner.

**8. REPOSSESSION**

For repossession purposes, the Company, to the extent permitted by law, may enter the Dealer's premises to repossess the collateral.

**9. SALE OF THE COLLATERAL**

The Company may sell the repossessed collateral privately or by public auction. The proceeds of any sale are to be applied to the Company's expenses, then to the Dealer's indebtedness, and, third, to any subordinate security interest where notice has been received by the Company. Any surplus shall be paid to the Dealer, and if there is a shortfall, the Dealer is liable to pay it forthwith.

**10. SUCCESSORS AND ASSIGNS**

This agreement enures to the benefit of the heirs, executors, successors, and assigns of the Company.

**11. AGREEMENT**

This agreement becomes effective immediately upon execution by the parties and will continue in effect until replaced by a new agreement.

DATED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dealer \_\_\_\_\_ Witness \_\_\_\_\_

Company \_\_\_\_\_ Witness \_\_\_\_\_

