UNIFORM LAW CONFERENCE OF CANADA

THE UNIFORM ASSIGNMENT OF RECEIVABLES IN INTERNATIONAL TRADE ACT (FINAL DRAFT AND COMMENTARIES) AND RELATED RECOMMENDATIONS

CIVIL SECTION

REPORT OF THE WORKING GROUP ON THE ASSIGNMENT OF RECEIVABLES CONVENTION

Edmonton, Alberta
20-24 August 2006

Uniform Law Conference of Canada
Working Group on the Assignment of Receivables

Uniform Assignment of Receivables in International Trade Act
(Final Draft and Commentaries)
and Related Recommendations

Report

August 2006

I. OVERVIEW OF ACTIVITIES

[1] At its August 2005 meeting, the ULCC approved a Pre-Implementation Report prepared by J. Michel Deschamps and Catherine Walsh on *The UN Convention on the Assignment of Receivables in International Trade* ("the Convention"). Acting on the recommendations in that Report, the Conference approved the establishment of a Working Group to prepare a uniform act to implement the *Convention* and to prepare complementary legislation. The Working Group was mandated to conduct its work in collaboration with NCCUSL and the Mexican Uniform Law Centre with a view to coordinating implementation of the Convention in all three NAFTA countries.

[2] Kathryn Sabo (Justice Canada) as chairwoman convened a Working Group composed of the following mix of experts and governmental representatives: John Cameron (Torys LLP, Ontario), Ronald Cuming (College of Law, University of Saskatchewan), J. Michel Deschamps (McCarthy Tétrault LLP, Montreal and Faculty of Law, Université de Montréal), Allen Doppelt (Government of Ontario), Natalie Giassa (Justice Canada), Vincent Pelletier (Justice Quebéc), Catherine Walsh (Law Faculty, McGill University and formerly University of New Brunswick), Roderick Wood (Law Faculty, University of Alberta). Michael Burke (Blake, Cassels & Graydon LLP, Ontario) joined the Working Group in May 2006. In addition, Kate Murray and Luc Labelle ─ the two drafters assigned to the project by Justice Canada ─ provided a very helpful review of the text of the uniform act developed by the Working Group.

[3] The Working Group met regularly by teleconference between January and early August 2006 and held one in-person meeting in Ottawa on May 29. Members of the Group also

attended two meetings with their Mexican and U.S. counterparts, in Detroit from 21-23 April, and in New York City on 17 June. In addition to NCCUSL, the U.S. presence included representatives of the U.S. Department of State and the American Law Institute (ALI - the co-sponsor with NCCUSL of the Uniform Commercial Code). Several observers also attended, including a representative from the U.S. banking sector. The Working Group would like express its appreciation to NCCUSL for organizing and hosting these very productive joint meetings.

[4] In addition to preparing draft legislation and coordinating its efforts with NCCUSL and the Mexican Uniform Law Centre, the Working Group was faced with a significant coordination issue within Canada. Early on in its mandate, its attention was drawn to work on reform of the PPSA conflict of law rules being undertaken at the same time by the Ontario Bar Association Personal Property Security Law Committee. The proposed Ontario reforms potentially conflict with the Convention choice of law rule in situations involving an assignor entity that is organized under U.S. or Canadian law but which has its chief executive office in the other country. As a result of the Ontario initiative, the Working Group devoted considerable time to exploring solutions that would allow the Convention to be implemented while still responding to the Ontario PPSL Committee's reform concerns.

[5] The Ontario PPSL Committee is co-chaired by John Cameron and Michael Burke, and includes Allen Doppelt as an observer. Each of these persons is an invited member of this Working Group. John participated in many of the Working Group's early teleconferences and was a helpful source, along with Allen Doppelt, Ron Cuming and Michael Burke, of the thinking behind the proposed Ontario reforms. However, John, Michael and Allen continue to believe that the proposed Ontario PPSL Committee reforms reflect the best approach for Canadian businesses, at least until such time as the United States and a significant number of other countries have implemented the Convention.

II. RESULTS OF COORDINATION ACTIVITIES WITH THE U.S. AND MEXICO

[6] The joint meetings between representatives of the Working Group and their U.S. and Mexican counterparts produced a consensus that implementation of the Convention in the three countries would produce significant benefits at two levels. First, it would substantially harmonize receivables financing law throughout the NAFTA region. Second, it would encourage other states to adopt the Convention so as to eventually bring about global harmonization.

[7] At the joint meeting in Detroit in April, the U.S. State Department representative expressed some uncertainty as to whether ratification of the Convention by the U.S. was achievable in the immediate term in the prevailing political climate (notwithstanding that the U.S. is a signatory). The participants therefore discussed whether it was possible for the U.S. to achieve de facto implementation of the Convention by enacting conforming amendments to Article 9. It was agreed that while article 9 was compatible with the Convention on most important issues, the choice of law rules applicable to perfection and priority differ where the assignor is an entity organized under U.S. law. Whereas article 9 requires application of the law of the state within the U.S. under whose laws the assignor is organized (or the state where it has its registered office in the case of federally organized entities), the Convention points to the law of the jurisdiction where the assignor has its "centre of administration" ("chief executive office" in Article 9 parlance).

[8] The Convention permits federally organized states to apply different conflicts rules for purely internal conflicts situations. Consequently, the article 9 rule is not incompatible with the Convention in situations where it results in the application of the law of another state within the U.S.: for example, application of the law of Delaware in the case of a Delaware corporation with a chief executive office in New York. The incompatibility arises when the U.S. entity has its chief executive office outside the U.S. altogether, for example, a Delaware corporation with a chief executive office in Mexico City or Toronto. In these examples, the Convention would require the application of Mexican and Ontario law respectively whereas Article 9 refers instead to Delaware law.

[9] To achieve de facto compatibility with the Convention, it was agreed that the U.S. participants would prepare draft amendments to article 9 designed to ensure application of the law of the country where the assignor has its chief executive office in situations where that office is located outside the U.S. It was further agreed that the Canadian participants would also prepare draft legislation designed to ensure that the de facto benefit of the Convention would be given in Canadian proceedings involving an assignor located within the U.S. within the meaning of the Convention.

[10] Draft amendments to this effect were duly prepared for discussion at the second joint meeting in New York City in June 2006. However, participants reiterated their concern at that meeting that the de facto implementation approach was complex and awkward in view of the need to coordinate enactment of the required amendments among all fifty states and the need for both Mexico and the Canadian provinces and territories to enact special U.S.-specific complementary legislation. Direct ratification of the Convention by all three countries clearly offered a quicker, simpler and more efficient

solution. The representative from the U.S. State Department ultimately agreed. Provided that support for implementation is forthcoming from industry, he undertook on behalf of the U.S. State Department to undertake the necessary steps for ratification (an undertaking reiterated at UNCITRAL's annual session in June 2006). The participants therefore agreed to organize an industry consultation conference for 16 October 2006 in New York City and to conduct a follow up joint meeting sometime in November 2006.

[11] With respect to Mexico, the Mexican participants at the April joint meeting noted that the Convention choice of law rule is incompatible with the current Mexican approach which instead applies the law of the State where the account debtor on the assigned receivable is located (or possibly the law governing the contract out of which the assigned receivable arises). However, the Mexican participants expressed general support for the Convention solution as better suited to modern receivables financing practices. They further noted that implementation of the Assignments Convention in Mexico need not await comprehensive reform of secured transactions law since it would be compatible with any future reform and might indeed provide an impetus to take action on more comprehensive reform. At the joint meeting in June, the Mexican representative applauded the decision of the U.S. to pursue direct ratification of the Convention, observing that this would provide a strong incentive for Mexico and other Latin American countries to follow suit.

III. COMPLEMENTARY AMENDMENTS TO THE PPSA AND CIVIL CODE CONFLICTS RULES?

[12] The Pre-Implementation Report recommended that in addition to enacting a uniform implementation statute, the provinces and territories should adapt their existing statutory choice of law rules for intangibles and mobile goods to conform to the Convention approach. That Report further recommended the enactment of a different internal conflicts rule, as permitted by the Convention, in situations where the assignor/debtor is organized under the law of a province or territory, or under federal law. Provided that the assignor's chief executive office is also located within Canada, the special rule would provide for the application of the law of the province or territory under whose laws the entity is organized (or where it has its registered office in the case of a federal entity. This latter recommendation was designed to give substantial effect to the recommendations for reform of secured transactions conflicts rules adopted by the ULCC in 2002.

[13] The above recommendations differ from the implementation strategy being pursued by the U.S. (and Mexico). The U.S. intends to ratify the Convention without

making any adjustments to article 9, including its choice of law rules. The result is that the Convention choice of law rule will apply only to receivables transactions falling within the territorial and subject matter scope of the Convention. For other categories of intangibles, and for mobile goods, the existing Article 9 conflicts rules will continue to apply. As a practical matter, this means that except for receivables transactions within the scope of the Convention, the law of the state within the U.S. under whose laws a U.S. assignor or secured debtor is organized will apply, even where the U.S. entity has a foreign chief executive office.

[14] In contrast to the U.S. strategy, the ULCC Pre-Implementation Report envisaged integrating the Convention choice of law approach with the existing PPSA and Civil Code choice of law rules applicable to intangibles generally and to mobile goods. The Working Group has now come to the conclusion that it would be preferable to adopt the U.S. strategy and restrict the application of the Convention choice of law rule to international assignments of receivables that fall within the territorial and subject-matter scope of the Convention. Under this approach, the choice of law rules for intangibles and mobile goods in the PPSA and the Civil Code, whether in their current form or as amended in the future, would continue to apply generally. The Convention choice of law rule would be triggered only when the Convention as a whole applies

[15] The Working Group favours this change in strategy in light of the work on reform of the Ontario PPSA choice of law rules undertaken over the last year by the Ontario Personal Property Security Law Committee. Under the existing PPSA rule, issues of perfection and priority in the case of intangibles and mobile goods are governed by the law of the jurisdiction where the assignor/secured debtor is located. The location of entities with a multijurisdictional presence is defined for this purpose by reference to their chief executive office, compatibly with the Convention. However, the Ontario reform proposals include a new definition of location that creates the potential for incompatibility with the Convention, particularly where the assignor/secured debtor is organized under the law of Canada or the United States. For entities organized under U.S. law, the proposed redefinition adopts the same location criterion as Article 9. For entities organized under Canadian law, the new definition is quite complex. For present purposes, it is sufficient to note that the proposed redefinition would locate a registered corporation or partnership in the province or territory under whose laws it is organized (or where it has its registered office in the case of federal corporations).

[16] The proposed redefinition is not problematic for purely internal conflicts situations since, as noted in the earlier discussion on Article 9, the Convention permits

federally organized countries to adopt different criteria internally. For example, while the Convention would locate an Alberta corporation with a chief executive office in Toronto in Ontario, and a Delaware corporation with a chief executive office in New York City in New York, the Ontario legislature is free under the Convention to instead require application of the law of the jurisdiction under whose laws the assignor is organized (Alberta and New York respectively). However, the proposed Ontario redefinition *is* incompatible with the Convention once the connecting factors cross the U.S. Canada border, for example, a Delaware corporation with a chief executive office in Toronto or an Alberta corporation with a chief executive office in New York. In these examples, the Convention would require the application of Ontario and New York law respectively whereas the Ontario proposal would point to Delaware and Alberta law.

[17] The Working Group does not take any position on the proposed Ontario reforms. We believe that they should be the subject of further coordinated study, ideally under the auspices of the Conference, to ensure that any changes are acceptable nationally and are implemented uniformly across the country.

[18] What is important about the Ontario proposals for present purposes is that they reveal significant dissatisfaction with the relative factual uncertainty of the current "chief executive office" location test in the U.S./Canada cross-border context compared to the more objective jurisdiction of organization or registration approach that is proposed for registered entities. Restricting the scope of application of the Convention choice of law rule to assignments within its scope would enable Ontario and the other provinces and territories to continue to pursue coordinated reform of the location criteria for intangibles and mobile goods generally. Implementation of the Convention would override any future PPSA reforms that might emerge only for receivables transactions and then primarily only in situations where an entity organized under Canadian or U.S. law has its chief executive office on the opposite side of the U.S./Canada border.

[19] The proposed change in strategy would also leave room for greater harmonization with U.S. conflicts approaches, another important consideration in the Ontario reform process. Since the Convention choice of law rule would apply only to Convention transactions in both countries, the provinces and territories would be free to pursue reforms aimed at achieving greater harmony with U.S. choice of law rules for transactions involving other intangibles and mobile goods.

[20] Finally, the proposed approach relieves the provinces and territories from the burden of having to undertake significant reforms to their secured transactions choice of law rules in order to facilitate implementation of the Convention. Indeed,

implementation would be legally and practically possible without making any changes to existing secured transactions law.

[21] In the case of the PPSAs, however, it is the view of the Working Group that the inclusion of a cross-reference to the special Convention choice of law rule would perform a useful educative function in the event that the existing PPSA rules are reformed in the future along lines similar to the Ontario proposals. For this reason, we have included in Appendix 1 of this Report draft legislation based on the proposed Ontario amendments for consideration by a ULCC secured transactions reform working group should one be constituted by the Conference at this meeting.

[22] In the case of Quebec, the Pre-Implementation Report pointed out that Convention choice of law approach is incompatible to some degree with the *existing* rules in the Civil Code for intangibles and mobile goods. The Working Group drafted changes to the Code rules designed to bring them into line with the Convention. These appear in Appendix 2. However, the Working Group recommends against enacting these changes if our proposal to limit the Convention choice of law rule to Convention transactions is accepted. In that event, implementation of the Convention would mean that the Convention rule would simply override the Civil Code rule to the extent of any difference in result.

IV. OPTING OUT OF CHAPTER V OF THE CONVENTION?

[23] Article 39 of the Convention allows States to opt out of the independent conflict of laws regime in Chapter V of the Convention (the Chapter V regime is 'independent' in the sense that it supplies the general conflicts regime for assignments of receivables, whether or not the transaction falls within the scope of the Convention). The ULCC Pre-implementation Report of August 2005 recommended that Canada not opt out of Chapter V. However, as a result of the conclusion of the Working Group, explained in the preceding section, to limit the choice of law rule for priority in article 22 of the Convention to receivables transactions within the scope of the Convention, it is now felt that an opt out declaration be made. Otherwise, the choice of law rule for priority in Chapter V, by virtue of its 'independent' application, would apply to assignments of receivables outside the scope of the convention.s

V. COMPLEMENTARY AMENDMENTS TO THE PPSA AND CIVIL CODE RULES ON ANTI-ASSIGNMENT CLAUSES?

[24] The Pre-Implementation Report recommended complementary reforms to the PPSA and the Civil Code to incorporate the approach taken by the Convention to anti-assignment clauses into secured transactions law generally. The Working Group has prepared draft legislation designed to do this. It appears in Appendix 3.

[25] In the view of the Working Group, there is no controversy with these amendments at the level of general policy. On the other hand, we do not see implementation of these reforms as a necessary pre-condition to implementation of the Convention. Rather, we would prefer to see our proposed draft reviewed by a ULCC secured transactions Working Group to ensure harmonized national reform and to ensure that the formulation is accurate and acceptable.

VI. THE DRAFT *UNIFORM ASSIGNMENT OF RECEIVABLES IN INTERNATIONAL TRADE ACT*

[26] In accordance with its mandate, the Working Group has prepared a draft Uniform Assignment of Receivables in International Trade Act for potential enactment by the thirteen provinces and territories. It is set out in Appendix 4 with section-by-section commentaries.

[27] The commentaries to the draft Act do not generally address the substance of the Convention, except where a Convention issue has an impact on the implementing legislation, most notably, in the case of optional declarations. For detailed commentary on the provisions of the Convention itself, readers should consult the 2005 Pre-Implementation Report.

[28] Section 7 of the draft Act provides that if a provision of the draft Act or the Convention is inconsistent with any other Act of the implementing jurisdiction, the provision prevails over the other Act to the extent of the inconsistency. As noted in the Comment to that section, this provision is necessary to ensure that Canada is in conformity with its international obligations. To avoid internal conflict, however, enacting jurisdictions should ensure that if an equivalent provision appears in other Acts with which the draft Act or the Convention might potentially be inconsistent, those other Acts should be amended to give precedence to the draft Act and the Convention. Since this is the case with the Personal Property Security Acts, the Working Group has prepared draft amendments to achieve this result. These amendments appear in Appendix 5.

VII. PARTICULAR ISSUES FOR CONSIDERATION BY THE CONFERENCE

[29] The attention of the Conference is drawn to the following departures from the Pre-Implementation Report:

- The Working Group has concluded that the scope of application of the Convention choice of law rule for priority should be limited to receivables transactions within its scope as opposed to being fully integrated into the general PPSA and Civil Code choice of law rules for intangibles and mobile goods: see Part 3 of the Report above.
- As a result of the foregoing conclusion, the Working Group has further concluded that jurisdictions implementing the Convention should opt out of the independent conflicts regime in Part V of the Convention: see Part 4 of the Report above.
- To ensure adequate time for nationally harmonized and comprehensive reform, reform of the PPSAs and the Civil Code on the treatment of anti-assignment clauses should be pursued in its own right and according to its own schedule rather than being tied to, and thereby unnecessarily delaying, implementation of the Convention: see Part 5 of the Report above.

[30] As noted in paragraph 4 of the Report, the Working Group faced considerable difficulties, in the absence of a formal coordinating structure, in attempting to take into consideration the impact on its own work of the significant reforms to the PPSA conflicts provisions under development by the Ontario PPSL Committee during the same time period. These difficulties underscore the need for the Conference to reinvigorate its coordinating and leadership role in harmonizing secured transactions law. In the hope that this can be done at the 2006 meeting, the Working Group in this Report identified choice of law and anti-assignment clauses as discrete issues on which immediate work can commence and for which it has prepared draft legislation which, with respect to the choice of law issue, takes into account the reforms proposed by the Ontario PPSL Committee.

VIII. RECOMMENDATIONS

[31] The Working Group recommends that the Conference provisionally approve and adopt the draft Uniform Assignment of Receivables in International Trade Act and commentaries, with final approval being postponed until later in the fall. Postponement is needed to enable NCCUSL, with the active participation of the Working Group, to conduct its industry consultation conference in October and to enable the Working Group to participate in a follow-up joint meeting with NCCUSL and the Mexican Law Centre in

November. The Working Group will of course prepare a supplementary report summarizing the results of these meetings for presentation at the 2007 Annual Meeting.

[32] The Working Group also recommends that the Conference actively pursue and promote coordinated jurisdictional reform in the area of secured transactions legislative reform, including the reforms contemplated by the draft amendments to secured transactions legislation referred to in paragraphs 21 and 24-25 of this Report.

APPENDIX 1

Complementary Amendments to Recognize the Special Convention Choice of Law Rule

(Recommended in the event of future reform of the existing PPSA rules along the lines proposed by the Ontario PPSL Committee)

Conflict of laws - law of debtor's jurisdiction

Note: The complementary amendments to section 7 of the Ontario PPSA that appear in bold italic type below are based on the reformed version of s. 7 of the Ontario PPSA proposed by the Ontario PPSL Committee. The Working Group does not take a position on the substance of the Ontario reform pending its review by a ULCC Working Group to ensure national acceptability and uniform national implementation. However, the Ontario draft provides a convenient basis to illustrate the approach to accommodating the Convention recommended by the Working Group if and when section 7 is reformed.

7(1) The validity,

(a) of a security interest in,

(i) an intangible, or

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

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

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

7(2) Perfection, effect of perfection or non-perfection and the priority of a security interest described in subsection (1) are governed by the law of the jurisdiction where the debtor is located.

7(3) If a debtor relocates to another jurisdiction, a security interest perfected in accordance with the applicable law as provided in subsection (2) continues perfected until the earliest of,

(a) 60 days after the day the debtor relocates to another jurisdiction;
(b) 15 days after the day the secured party receives notice that the debtor has relocated to another jurisdiction; and
(c) the day that perfection ceases under the previously applicable law.

7(4) Where subsection (3) applies and the security interest is perfected in the jurisdiction to which the debtor relocates on or before the earliest of the days described in subsection (3),

that security interest is deemed to be continuously perfected from the day of its perfection under the previously applicable law.

Location of debtor

7(5) Except as otherwise provided in this section, for the purposes of subsections (1) and (2) a debtor is located:

(a) if the debtor is an individual, in the jurisdiction where the debtor's principal residence is located;

(b) if the debtor (including without limitation a limited partnership) is incorporated, continued, amalgamated or otherwise organized under a law of a province or territory of Canada that has established a public record necessary for its incorporation, continuance, amalgamation or organization, in that province or territory;

(c) if the debtor is incorporated, continued, amalgamated or otherwise organized under a law of Canada that has established a public record necessary for its incorporation, continuance, amalgamation or organization, in the jurisdiction where its registered office or head office is located, as specified in (i) the special Act, letters patent, articles or other constating instrument by which the debtor was incorporated, continued, amalgamated or otherwise organized, or (ii) its by-laws if subparagraph (i) does not apply;

(d) if the debtor is a registered organization that is organized under the law of a U.S. State, in that U.S. State;

(e) if the debtor is a registered organization that is organized under the law of the United States of America,

(i) in the U.S. State that the law of the United States of America designates, if the law designates a U.S. State of location;

(ii) in the U.S. State that the registered organization designates, if the law of the United States of America authorizes the registered organization to designate its U.S. State of location; or

(iii) in the District of Columbia in the United States of America, if neither subparagraph (i) nor subparagraph (ii) applies;

(f) if the debtor is a trustee or trustees acting for a trust,

(i) and the trust instrument governing that trust states that it is governed by the laws of a province or territory of Canada, in that province or territory; or

(ii) in the jurisdiction in which the administration of the trust by the trustees is principally carried out, if subparagraph (i) does not apply;

(g) except as otherwise provided in paragraph (b), if the debtor is a partnership and the partnership agreement governing that partnership states that is governed by the laws of a province or territory in Canada, in that province or territory; and

(h) except as otherwise provided in this subsection (5), in the jurisdiction where the chief executive office of the debtor is located.

7(6) For the purposes of this section, "U.S. State" means a State of the United States of America, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States of America, and "registered organization" means an organization organized solely under the law of a single State or the United States of America and as to which the State or the United States of America must maintain a public record showing the organization to have been organized.

7(7) Except as otherwise provided in subsections (8) and (9), where a security agreement provides for a security interest to which the United Nations Convention on the Assignment of Receivables in International Trade applies, for the purposes of subsections (1) and (2), the debtor is located:

(a) in the jurisdiction where the debtor's place of business is located;
(b) in the jurisdiction where the central administration of the debtor is located if the debtor has a place of business in more than one jurisdiction; and
(c) otherwise where the debtor's habitual residence is located.

7(8) If pursuant to subsection (7) the debtor is located within Canada, the location of the debtor is determined as provided in clauses (a), (b), (c) and (f)(i)) and (g) of subsection (5).

Note: There is no need to include an equivalent to ss. 7(8) for U.S. debtors. In ratifying the Convention, it is anticipated that the U.S. will deposit a declaration specifying the Article 9 location rules for debtors organized under U.S. law that are otherwise considered located in the U.S. under the Convention location criterion. Canadian jurisdictions implementing the Convention can – indeed are obligated – to apply the rules set out in the U.S. declaration.

7(9) A debtor continues to be located in the jurisdiction specified in this section despite:

(a) in the case of individual debtors, the death or incapacity of the individual, and

(b) in the case of other debtors, the suspension, revocation, forfeiture or lapse of the debtor's status in its jurisdiction of organization, or the dissolution, winding-up or cancellation of the existence of a debtor.

Transition

Note:

The Ontario proposal includes detailed rules to accommodate the transitional perfection and priority issues that will arise as a result of the proposed changes in the location criteria for determining the applicable law. Since the Convention applies only to assignments arising after the Convention comes into force, (see article 45(3), there is no need (nor would it be appropriate) to provide for transitional perfection and priority rules where a pre-Convention assignment that would be a Convention assignment had it occurred after the Convention came into effect is involved. See section 7.2(1) below.

However, there is need for a priority rule that deals with a priority competition between a pre-Convention assignment and an assignment to which the Convention applies. Section 7.3 below accommodates this need. . This section has two functions. The first is to set a priority rule where there is a conflict between a prior non-Convention (including a pre-Convention international assignment) and a Convention assignment. Subsection (1) makes it clear that perfection under the applicable law gives to the non-Convention secured creditor priority over the Convention secured creditor. The subsection is consistent with the policy embodied in Article 44(4) of the Convention. Subsection (1) does not address what happens if the non-Convention security interest becomes unperfected under the applicable law. Any attempt to address this matter would introduce complications with little gain. The second function of the section (i.e. subsection (2)) is to provide information. The subsection has been designed to replicate Articles 22 and 30 of the Convention. As such it might be viewed as redundant. However, it is important to include it in the PPSA for educational purposes.

7.2 (1) This section does not apply to an assignment of an intangible in the form of a receivable to which the Convention on the Assignments of Receivables in International Trade applies.

7.2(2) In this section:

(a) "prior law" means the law in force immediately before section 7 comes into force, including the applicable law as provided by that law;

(b) "prior security agreement" means a security agreement entered into before section 7 comes into force; and

(c) "prior security interest" means a security interest arising under a prior security agreement.

7.2(3) Except as provided in subsection (3), where a prior security agreement is amended, renewed or extended by agreement entered into after section 7 comes into force, the security agreement as amended, renewed or extended is a prior security agreement.

7.2(4) Where a prior security agreement is amended, renewed or extended by agreement entered into after section 7 comes into force to include kinds or items of collateral not referred to in the prior security agreement, the security agreement as amended, renewed or extended is not a prior security agreement with respect to the additional collateral.

7.2(5) Collateral that falls within a general collateral description in a prior security agreement is not additional collateral for the purposes of subsection (3).

7.2(6) Section 7 does not affect the law governing the validity of a prior security interest.

7.2(7) Except as provided in subsections (7) and (8), section 7 applies to determine the law governing perfection of a security interest described in subsection 7(1), whether attaching before or after section 7 comes into force.

7.2(8) Unless otherwise perfected in accordance with applicable law determined under section 7, a prior security interest described in subsection 7(1) perfected under prior law immediately before section 7 comes into force, continues perfected until the earlier of:

(a) the day that perfection ceases under prior law, and

(b) the fifth anniversary of section 7 coming into force.

7.2(9) If a prior security interest described in subsection (7) is perfected in accordance with applicable law determined under section 7 before the earlier of the days specified in subsection (7), that security interest is deemed to be continuously perfected from the day of its perfection under prior law.

7.2(10) Except as provided in subsections (11), (12) and (13), section 7 applies to determine the law governing the effect of perfection or of non-perfection and the priority of a security interest described in subsection 7(1), whether attaching before or after section 7 comes into force.

7.2(11) The effect of perfection or of non-perfection and the priority of a prior security interest described in subsection 7(1) in relation to an interest, other than a security interest, in the same collateral arising before section 7 comes into force, is determined under prior law, regardless of whether the prior security interest is perfected in accordance with applicable law determined under section 7.

7.2(12) Except as provided in subsection (13), the law governing the priority of a prior security interest described in subsection 7(1) in relation to any other prior security interest in the same collateral is determined under prior law.

7.2(13) If a prior security interest was not perfected under prior law immediately before section 7 comes into force, and is perfected by registration made or another step taken after section 7 comes into force in accordance with applicable law determined under section 7, the law governing the priority of that prior security interest in relation to any other security interest (including any other prior security interest) in the same collateral is determined under section 7.

7.2(14) Section 7.1 does not affect the validity of a prior security interest.

7.2(15) Except as provided in subsections (14), (16) and (17) and section 84, section 7.1 applies to determine the law governing the validity, perfection, effect of perfection or of non-perfection and priority of all security interests in investment property, whether attaching before or after section 7.1 comes into force.

7.2(16) Unless otherwise perfected in accordance with applicable law determined under section 7.1, a prior security interest in a security perfected by registration immediately before subsections 7(2) and (5) come into force, continues perfected until the earlier of:

(a) the day that perfection ceases under prior law, and

(b) the fifth anniversary of subsections 7(2) and (5) coming into force.

7.2(17) If a prior security interest described in subsection (16) is perfected in accordance with applicable law determined under section 7.1 before the earlier of the days specified in subsection (16), that security interest is deemed to be continuously perfected from the day of its perfection under prior law.

7.3(1) An assignment of an intangible in the form of a receivable that is perfected at the date when the Convention on the Assignments of Receivables in International Trade comes into force pursuant to the law applicable as provided in section 7 or law in force immediately before section 7 comes into force has priority over an international assignment of the receivable to which the Convention on the Assignments of Receivables in International Trade applies, whether or not the security interest is perfected under the law applicable to competing interests in receivables as provide by that Convention.

7.3(2) The law applicable as provided in subsections (7)-(9) of section 7 governs priority between an assignment of a receivable to which the Convention on the Assignments of Receivables in International Trade applies and another security interest in the receivable whether or not that security interest was created under a security agreement that was an international assignment.

APPENDIX 2

MODIFICATIONS TO THE CCQ ON CONFLICT OF LAWS

Not recommended for adoption: see paragraph 22 of the Report

Article 3105

La validité d'une sûreté grevant un meuble corporel ordinairement utilisé dans plus d'un État ou celle grevant un meuble incorporel est régie par la loi de l'État *où le constituant avait son établissement principal ou, si le cédant n'avait pas d'établissement, sa principale résidence* au moment de sa constitution.

La publicité et ses effets sont régis par la loi de l'État *du principal établissement actuel du constituant, ou si le constituant n'a pas d'établissement, de l'État de sa principale résidence actuelle.*

Si toutefois le domicile et l'établissement principal ou, le cas échéant la principale résidence du constituant sont au moment pertinent soit situés les deux au Canada soit situés les deux aux Etats-Unis d'Amérique, la loi alors applicable est celle du lieu du comicile du constituant.

La présente disposition ne s'applique ni à la sûreté grevant un meuble incorporel constaté par un titre au porteur ni à celle publiée par la détention du titre qu'exerce le créance.

The validity of a security on a corporeal movable ordinarily used in more than one country or an incorporeal movable is governed by the law of the country where the grantor *had his principal establishment or, if he had no establishment, his principal residence* at the time of creation of the security.

Publication and its effects are governed by the law of the country in which the grantor currently *has his principal establishment or, if the grantor has no establishment, his principal residence*.

If, however, the domicile and principal establishment or, as the case may be, the principal residence of the grantor are either both situated in Canada or both situated in the United States of America, then the applicable law is that of the place where the domicile of the grantor is situated.

However, the provisions of this article do not apply to a security encumbering an incorporeal movable established by a title in bearer from or to a security published by the holding of the title exercised by the creditor.

Article 3120

Le caractère cessible de la créance, ainsi que les rapports entre le cessionnaire et le débiteur cédé, sont soumis à la loi qui régie les rapports entre le cédé et le cédant.

La validité et l'opposabilité aux tiers de la cession sont régies par la loi qui est applicable à la validité et la publicité d'une sûreté sur la créance.

The assignability of a claim and relations between the assignee and the assigned debtor are governed by the law governing relations between the assigned debtor and the assignor.

The validity and effectiveness against third persons of the assignment of a claim are governed by the law that is applicable to the validity and publication of a security on the claim.

APPENDIX 3

EFFECTS OF ANTI-ASSIGNMENT CLAUSES

DRAFT AMENDMENTS TO THE CIVIL CODE

Article 1646.1

La cession conclue en violation d'une stipulation d'inaliénabilité de la créance produit ses effets si la créance est pour le paiement d'une somme d'argent, sans préjudice, toutefois, des recours en dommages-intérêts du débiteur contre le cédant [et, s'il est de mauvaise foi, le cessionnaire].

An assignment made in violation of a stipulation of inalienability of the claim produces its effects if the claim is for payment of a sum of money, without prejudice to the recourse of the debtor for damages against the assignor [and, if he is in bad faith, the assignee].

Note: Comparer avec l'article 1397. Il faudra aussi avoir un article semblable en matière d'hypothèque.

DRAFT AMENDMENTS TO THE PPSA

Note: The current provisions of the Ontario PPSA on the effects of assignments against the account debtor differ from the relevant provisions in the other PPSAs. Therefore two drafts are given below: one for the Ontario Act, and one using the Alberta Act as the model for all the non-Ontario PPSAs.

Ontario Personal Property Security Act

Person obligated on an account or on chattel paper

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

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

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

Idem

(1.1) Notwithstanding subsection (1), a person obligated on an account or on chattel paper may not assert against an assignee a defence or claim based on breach of an agreement limiting in any way the assignor's right to assign the account or chattel paper or to transfer a right securing its payment.

Transfer of security rights

(1.2) An assignment of an account or chattel paper transfers to the assignee any personal or property right that secures payment of the account or chattel paper.

Effect of prohibition or restriction on assignment

(1.3) An assignment of a right to payment or part payment under an account or chattel paper and a transfer of a security right under subsection (1.2) are effective notwithstanding any agreement limiting in any way the assignor's right to assign the account or chattel paper or to transfer the security right.

Idem

(1.4) Nothing in subsection (1.3) affects any obligation or liability of an assignor for breach of an agreement that limits the assignor's right to assign the account or chattel paper or to transfer a security right, but the other party to the agreement may not avoid the assignment on the sole ground of that breach.

Payment of assignor

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

Modification, etc., effective against assignee

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

Alberta Personal Property Security Act

Note: The Alberta Act is used here as the proxy for all the non-Ontario PPSAs. APPSA s.41 below applies to intangibles generally, and is not restricted to accounts. The ULCC Working Group concluded that the anti-assignment provisions should be restricted to accounts and the draft changes below reflect that conclusion.

Rights of assignee

41(1) In this section, "account debtor" means a person who is obligated under an intangible or chattel paper.

(2) *Subject to subsection (2.1), t*he rights of an assignee of collateral that is either an intangible or chattel paper are subject to

(a) the terms of the contract between the account debtor and the assignor and any defence or claim arising out of the contract or a closely connected contract, and

(b) any other defence or claim of the account debtor against the assignor that accrues before the account debtor has knowledge of the assignment,

unless the account debtor has made an enforceable agreement not to assert defences or claims arising out of the contract.

(2.1) An account debtor may not assert against an assignee of an account or chattel paper a defence or claim based on breach of an agreement limiting in any way the assignor's right to assign the account or chattel paper or to transfer a right securing its payment.

(2.2) An assignment of an account or chattel paper transfers to the assignee any personal or property right that secures payment of the account or chattel paper.

(2.3) An assignment of a right to payment or part payment under an account or chattel paper and a transfer of a security right under subsection (2.2) are effective notwithstanding any agreement limiting in any way the assignor's right to assign the account or chattel paper or to transfer the security right.

(2.4) Nothing in subsection (2.3) affects any obligation or liability of an assignor for breach of an agreement that limits the assignor's right to assign the account or chattel paper or to transfer a security right, but the other party to the agreement may not avoid the assignment on the sole ground of that breach.

(2.5) Subsection 2.3 does not affect the enforceability of an agreement between an account debtor that is a deposit-taking organization and a depositor that limits the depositor's right to assign less than the entire amount of a deposit account.

(2.6) For the purposes of subsection (2.5):

(a) a deposit-taking organization is a bank, credit union or any similar financial institution that is licenced or otherwise authorized to maintain deposit accounts as part of its ordinary course of its business.

(b) "deposit account" means a separately identified obligation of a deposit-taking organization, whether or not represented by a receipt, certificate or instrument, due to a person as a result of having received value:

(i) for which the organization has given or is obligated to give credit to the account of that person; and

(ii) which the organization is required to discharge on a fixed day, on demand by that person or within a specified period following the demand.

Note on draft subsections 2(5) and 2(6): The ULCC Assignment Convention Working Group concluded that the complete deletion of the protection currently given to account debtors by the non-Ontario PPSAs against the risk of an anti-assignment clause being made ineffective even where there are multiple partial assignments (see subsection 41(7) and new subsection (2.3)) was unacceptable in the context of deposit accounts held by financial institutions. The Convention does not apply to assignments of "bank deposits". Consequently the retention of the power to contract against multiple part-assignments in the context of deposit accounts does not result in a conflict with the Convention. The intended result of draft subsections (2.5) and (2.6) is to allow banks, credit unions (*caisses populare*) and other similar deposit-taking institutions to enter into contracts with their customers under which multiple partial assignments of the same account or guaranteed investment certificate are prohibited and, consequently, enforceable.

(3) To the extent that an assigned right to payment arising out of the contract has not been earned by performance, and notwithstanding notice of the assignment to the account debtor, any modification of or substitution for the contract, made in good faith and in accordance with reasonable commercial standards and without material adverse effect on the assignee's rights under the contract or the assignor's ability to perform the contract, is effective against the assignee unless the account debtor has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract.

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

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

(a) before the account debtor receives a notice that

(i) states that the amount payable or to become payable under the contract has been assigned and payment is to be made to the assignee, and

(ii) identifies the contract under which the amount payable is to become payable,

or

(b) after

(i) the account debtor requests the assignee to furnish proof of the assignment, and

(ii) the assignee fails to furnish the proof within 15 days from the date of the request.

(6) Payment by an account debtor to an assignee pursuant to a notice referred to in subsection (5)(a) discharges the obligation of the account debtor to the extent of the payment.

~~(7) A term in a contract between an account debtor and an assignor that prohibits or restricts assignment of the whole of the account or chattel paper for money due or to become due is binding on the assignor, but only to the extent of making the assignor liable in damages for breach of contract, and is unenforceable against third parties.~~

APPENDIX 4

Draft Uniform Assignment of Receivables in International Trade Act

Interpretation

1. (1) The following definitions apply in this Act.

"Convention" means the United Nations Convention on the Assignment of Receivables in International Trade set out in the schedule. (*Convention*)

Comment: *This is a standard provision in uniform acts implementing international conventions. For previous examples, reference may be made to subsection 1(2) of the Uniform International Commercial Arbitration Act and subsection 1(2) of the Settlement of International Investments Disputes Act.*

"declaration" means a declaration made by Canada under the Convention with respect to (*name of province or territory*). (*déclaration*)

Comment: *Articles 35, 36, 37, 39, 40, 41 and 42 of the Convention provide for the deposit of declarations by contracting States:*

Article 35 is a standard provision in private law conventions. It allows federal States to identify by declaration the territorial units to which the convention is to extend. Canada will make declarations pursuant to Article 35 upon the request of provinces and territories that adopt implementing legislation.

Article 36 supplies rules for identifying the particular territorial unit in which a person is located within a federal State where, under the rules of the Convention, that person is located in that State. However, States are allowed to specify by declaration other rules for determining the location of a person within that State. For such a declaration, the appropriate reference to the specific legislation of the enacting jurisdiction should be communicated to the federal Minister of Justice. The Working Group has recommended that the question of the appropriateness of declarations under this Article be considered by a ULCC Secured Transactions Working Group as part of the larger question of reforming and harmonizing PPSA and Civil Code choice of law rules governing the perfection or publication and priority of security rights in intangibles and mobile goods. An adapted version of any reforms to the existing domestic location rules that emerge from that process could be extended to transactions within the scope of the Convention through the vehicle of a declaration.

Article 37 provides that a reference in the Convention to the law of a State means, in the case of a federal State, the law in force in the relevant territorial unit. For example, Article 22 of the Convention provides that the law of the State where the assignor is located governs issues relating to the priority of the assignee's rights. Applied to a Canadian context, the effect of Article 37 is to clarify that the governing law is the law of the province or territory within Canada in which the assignor is located. However, Article 37 allows a State to specify by declaration at any time other rules for determining the applicable law, including rules that render applicable the law of another territorial unit of that State. As to the appropriateness or desirability of such a declaration, the comments made on the equivalent point in the context of declarations under Article 36 above also apply here.

Article 39 allows States to opt out of the independent conflict of laws regime in Chapter V of the Convention (the Chapter V regime is 'independent' in the sense that it supplies the general conflicts regime for assignments of receivables, whether or not the transaction falls within the scope of the Convention.) The ULCC Pre-implementation Report of August 2005 recommended that Canada not opt out of Chapter V. However, as a result of the recommendation of the Working Group to limit the choice of law rule for priority in Article 22 of the Convention to receivables transactions within the scope of the Convention, it is now recommended that an opt out declaration be made. Otherwise, the choice of law rule for priority in

Chapter V, by virtue of its 'independent' application, would apply to assignments of receivables outside the scope of the convention, contrary to the recommendation of the Working Group to minimize the impact of the Convention choice of law rule on the general PPSA and Civil Code conflicts rules.

Article 40 authorizes a State to declare at any time that it will not be bound by Articles 9 and 10 of the Convention where the debtor on an assigned receivable is a governmental entity or other entity constituted for a public purpose. Articles 9 and 10 render ineffective an anti-assignment clause contained in contracts generating ordinary trade-type receivables. Article 40 was introduced in response to the practice of some States of restricting the assignability of debts owing by the government through the device of a contractual anti-assignment clause, particularly in the procurement context. It is the understanding of the Working Group that in Canada, as in most States, restrictions on the assignability of government and other public debts are effected through statutory rather than contractual prohibitions or restrictions. Since Article 8(3) of the Convention preserves the operation of statutory restrictions on assignments, the Working Group does not foresee a need for a declaration under Article 40. Of course it may be that governmental practices in particular jurisdictions warrant a different conclusion.

Article 41 allows a State at any time to declare that the Convention does not apply to the specific types of assignment or to the assignment of specific categories of receivables described in the declaration. The Working Group was not able to conceive of any examples that warranted such an exclusion.

Article 42 of the Convention allows a State to declare that it will be bound by one of the three sets of substantive priority rules set out in the Annex to the Convention. For the reasons set out in the ULCC Pre-implementation Report of August 2005, no declaration is recommended.

(2) Unless a contrary intention appears, words and expressions used in this Act have the same meaning as in the Convention.

(3) In interpreting this Act and the Convention, recourse may be had to

> **(*a*) the commentary prepared by the United Nations Commission on International Trade Law with respect to the Convention; and**
>
> **(*b*) the Report of the United Nations Commission on International Trade Law on its thirty-fourth session, 25 June-13 July 2001, General Assembly Official Records, Fifty-sixth session, Supplement No. 17 (A/56/17).**

Comment: *The supplementary interpretive sources listed in paragraph (3) conform to the interpretive sources sanctioned by Article 32 of the Vienna Convention on the Law of Treaties, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to these sources is reflected in the observation of Justice La Forest in Thomson v. Thomson, [1994] 3 S.C.R. 551, at pp. 577-578, that "It would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689."*

For an example of a similar provision, reference may be made to subsections 14(1) and (2) of the Uniform International Commercial Arbitration Act.

To facilitate ease of access to the sources referred to in paragraph (3), enacting jurisdictions may wish to include reference to the UNCITRAL web address from which they may be downloaded in their Gazettes or other appropriate governmental organ.

The list in paragraph (3) is not intended to be exhaustive. It merely indicates the principal sources to be used in interpreting the Convention. It is expected that over time other helpful resources will emerge. In particular, over time UNCITRAL's Case Law on UNCITRAL Texts (CLOUT) will provide a useful source of the evolving jurisprudence on the Convention from the courts in all Contracting States

Purpose

2. The purpose of this Act is to implement the Convention.

Comment: *The authors of the ULCC Pre-implementation Report of August 2005 recommended that implementation of the Convention be accompanied by complementary conforming amendments to the existing provisions of the PPSAs and the Civil Code governing choice of law rule for priority in intangibles and mobile goods. This is no longer necessary in view of the Working Group's recommendation, based on intervening developments, to limit the application of the Convention choice of law rule to receivables transactions within its territorial and subject matter scope. The 2005 Pre-Implementation Report also recommended conforming amendments to the PPSAs and Civil Code to bring them into line with the Convention rules on the effects of contractual anti-assignment clauses. While the Working Group supports this recommendation as a desirable general reform, it does not think it is necessary to tie their timing to implementation of the Convention. For a more detailed explanation of both these points, see the Report of the Working Group.*

Publication

3. A notice shall be published in *(name of publication*) of the day on which the Convention comes into force, or a declaration or withdrawal of a declaration takes effect, in (*name of province or territory*).

Force of law

4. Subject to any declaration that is in force, the Convention has the force of law during the period that it is, by its terms, in force in (*name of province or territory*).

Comment: *Under the Act the Convention is given the force of law domestically only from the date the Convention comes into force at the international level for Canada in the jurisdictions declared pursuant to Article 35. That date is the first day of the month following the expiration of six months (i) after the date of deposit of Canada's instrument of accession, pursuant to Article 43(3); or (ii) in the case of a jurisdiction adopting implementing legislation after accession by Canada, after the date the declaration extending the application of the Convention to that jurisdiction is received by the depositary, also in accordance with Article 43(3).*

The ULCC Uniform International Interests in Mobile Equipment Act (Aircraft Equipment) excluded specific (final) provisions from having the force of law. However, the preferred approach has been to give the force of law to all the provisions of a Convention. This approach eliminates the risk of inadvertently overlooking provisions or omitting substantive provisions. To the extent that the final provisions of the Convention are not substantive but are binding as to States on an international level, they would produce no legal effect in provinces or territories in any event.

Inconsistent laws

5. If a provision of this Act, or a provision of the Convention that is given the force of law by section 6, is inconsistent with any other Act, the provision prevails over the other Act to the extent of the inconsistency.

Comment: *The Act and Convention need to prevail over inconsistent provisions in other Acts to ensure that Canada is in conformity with its international obligations. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other Acts with which this Act or the Convention might potentially be inconsistent, those other Acts should be amended to give precedence to this Act and the Convention. Since this is the case with the Personal Property Security Acts, the Report of the Working Group has recommended draft amendments to achieve this result.*

Binding on Crown

6. This Act is binding on the Crown in right of (*name of province or territory*).

Comment: *The Convention is drafted on the assumption that it applies to all receivables transactions otherwise within its scope whether or not they involve governmental entities. This is subject to the preservation of statutory limitations on assignability and the special declaratory power with respect to anti-assignment clauses mentioned in the comment on the definition of declaration above. Section 6 merely confirms this. Of course, if a jurisdiction's interpretation legislation already provides that the Crown is bound unless otherwise stated in the particular act, there is no need to include it.*

Coming into force

7. This Act comes into force on (_____).

OR

7. The provisions of this Act come into force on a day or days to be fixed by (_____).

Comment: *There is a need to co-ordinate the entry into force of the Convention at the international level, the coming into force of domestic implementing legislation, and giving the Convention force of law. A provision in the implementing legislation stating that the Act comes into force when the Convention enters into force for enacting jurisdictions is not recommended since the actual date is not transparent on the face of the legislation. Accordingly, it is recommended that the legislation implementing the Convention state that it comes into force on Royal Assent or similar means. Enacting jurisdictions will need to communicate with Justice Canada officials to coordinate dates.*

SCHEDULE

United Nations Convention on the Assignment of Receivables in International Trade

APPENDIX 5

Recommended PPSA Amendment Complementary to Enactment of the Uniform Implementing Legislation

Note: The amendments shown in bold italic text below are supplementary to section 7 of the draft Uniform Act and are intended to confirm that the Convention prevails in the event of any conflict between the provisions of the PPSA and the provisions of the Convention.

OPPSA

Conflict with other acts

73. Where there is conflict between a provision of this Act and

(a) a provision of the Consumer Protection Act, 2002, the provision of the Consumer Protection Act, 2002 prevails

(b) a provision of the Assignment of Receivables in International Trade Act, the provision of the Assignments of Receivables in International Trade Act prevails,

(c) a provision of any general or special Act, other than the Consumer Protection Act, 2002, or Assignments in International Trade Act, the provision of this Act prevails.

APPSA s. 74 (as representative of the non-Ontario PPSAs)

74(1) If there is a conflict between this Act and:

(a) a provision for the protection of consumers in any Act, the provision of that Act prevails;

(b) a provision of the Assignment of Receivables in International Trade Act, the provision of that act prevails.

72(2) Except as otherwise provided in this or any other Act, if there is a conflict between this Act and any Act other than those referred to in subsection (1), this Act prevails.