

UNIFORM TRADE SECRETS ACT

47.1-1

1(1) In this Act,

Interpretation

"Court" means [insert name of appropriate court];

"improper means" includes commercial espionage by electronic or other means;

"trade secret" means any information that

- (a) is, or may be, used in a trade or business,
- (b) is not generally known in that trade or business,
- (c) has economic value because it is not generally known, and
- (d) is the subject of efforts that are reasonable under the circumstances to prevent it from becoming generally known.

(2) For the purposes of the definition trade secret "information" includes information set out, contained or embodied in, but not limited to, a formula, pattern, plan, compilation, computer program, method, technique, process, product, device or mechanism.

2 This Act binds the Crown.

Crown is bound

3 This Act does not affect any rule of equity or of the common law by virtue of which obligations of confidence arise with respect to the acquisition, disclosure or use of confidential information.

Equity and common law preserved

4 The *Uniform Contributory Fault Act* does not apply to proceedings under this Act.

Non-application of Uniform Contributory Fault Act

5 Nothing in this Act is intended to impose on anyone any liability for the acquisition, disclosure or use of information acquired in the course of a person's work if the information is of such a nature that its acquisition amounts to no more than an enhancement of that person's personal knowledge, skill or expertise.

Knowledge acquired in course of work

6(1) A person entitled to the benefit of a trade secret has a right of action against any person who acquires the trade secret by improper means.

Improper acquisition

- (2) A trade secret is not acquired by improper means if it is developed independently or arrived at by reverse engineering.

*Unlawful
disclosure or use*

- 7 A person entitled to the benefit of a trade secret has a right of action against any person who discloses or uses the trade secret if the discloser or user knew or ought to have known that there was no lawful authority to disclose or use the trade secret in the manner that it was disclosed or used.

Court orders

- 8(1) Where the Court in an action under section 6 or 7 determines that a person acquired a trade secret by improper means or has disclosed or used a trade secret without lawful authority, the Court may do any one or more of the following:

- (a) grant an interlocutory or permanent injunction;
- (b) award compensatory damages;
- (c) order the defendant to account to the plaintiff for any profits that have accrued, or that subsequently may accrue, to the defendant by reason or in consequence of the improper acquisition or unlawful disclosure or use of the trade secret;
- (d) award exemplary damages;
- (e) subject to subsection (3), make an adjustment order regulating the future use of the trade secret by the defendant or by both the plaintiff and the defendant;
- (f) make any other order the Court considers appropriate.

- (2) The Court shall not exercise its discretion to award both compensatory damages and an account of profits in a manner that allows a plaintiff to recover twice for the same loss.

- (3) An order referred to in subsection (1)(e) may include any one or more of the following:

- (a) payment in a lump sum or periodic payments, to the plaintiff with respect to the future use by the defendant of the trade secret in an amount and on terms that the Court considers appropriate;

- (b) contribution by the defendant to the plaintiff for expenses incurred by the plaintiff in connection with the acquisition or development of the trade secret;
 - (c) a determination of any incidental question relating to the extent to which both the plaintiff and the defendant may use the trade secret in the future, and the rights and liabilities of each with respect to that use.
- (4) On application, the Court shall terminate an injunction if the trade secret ceases to be a trade secret but the injunction may be continued for any additional period of time and on terms that the Court considers reasonable in order to eliminate any commercial advantage that would otherwise accrue to the defendant from the improper acquisition or unlawful disclosure or use.
- 9(1) A person who in good faith acquires, discloses or uses a trade secret and subsequently learns that a person entitled to the benefit of the trade secret has been unlawfully deprived of the benefit, or the person entitled to that benefit, may apply to the Court for a declaration of the rights of the parties. Good faith acquisition, use or disclosure
- (2) In a proceeding under subsection (1), the Court may do either or both of the following:
 - (a) make an interim order to protect the interests and preserve the rights of the parties as it considers appropriate;
 - (b) make an order under section 8 as if the proceeding were an action referred to in section 6 or 7.
- (3) In a proceeding under subsection (1), the Court shall, in determining the rights of the parties, have regard to
 - (a) the value of the consideration given by the person for the trade secret,
 - (b) any change in the position of the person in reliance on or in order to use the trade secret made before discovering that the person entitled to the benefit of the trade secret had been unlawfully deprived of the benefit,

- (c) the protection granted by this Act to the person entitled to the benefit of a trade secret, and
- (d) any other matter the Court considers relevant.

Defences

10(1) In any proceedings under this Act for the unlawful disclosure or use of a trade secret, the defendant is not liable to the plaintiff if the defendant satisfies the Court

- (a) that the disclosure was required to be made to a court or tribunal pursuant to any power in that court or tribunal to order the disclosure of information, or
 - (b) that, in view of the nature of the trade secret, there was, or will be, at the time of the disclosure or use a public interest involved in the disclosure or use that outweighs the upholding of the trade secret.
- (2) For the purposes of subsection (1)(b), a public interest in the disclosure or use of a trade secret means the interest of the public at large in being made aware of the existence of
- (a) an offence committed under a law in force in [enacting jurisdiction] or other unlawful conduct, or
 - (b) a matter affecting the public health or safety, in relation to the development, composition or use of the trade secret.
- (3) For the purposes of subsection (1)(b), the Court shall have regard to all the circumstances of the case, including
- (a) the nature of the trade secret,
 - (b) the circumstances under which the trade secret was or will be disclosed or used by the defendant, and
 - (c) whether the extent and nature of the disclosure or use was or will be justified.

11(1) In any proceedings under this Act, the Court may, at any time, on application, make an order directing by what means the trade secret at issue in the proceedings is to be preserved during the course of the proceedings. *Preservation of trade secret*

(2) Without limiting the generality of subsection (1), the Court may

- (a) hold hearings in private,
- (b) order that all or any of the records of the proceedings be sealed, or
- (c) order any person involved in the proceedings not to disclose an alleged trade secret without prior approval of the Court.

12 A person entitled to the benefit of a trade secret may assign a right to the trade secret, either in whole or in part, and either generally or subject to territorial limitations, and may grant an interest in the right to the trade secret by licence or otherwise. *Assignment of trade secrets*

13(1) Proceedings for the improper acquisition or unlawful disclosure or use of a trade secret must be commenced within 2 years after the acquisition, disclosure or use, as the case may be, is discovered or, by the exercise of reasonable diligence, ought to have been discovered. *Limitation period*

(2) For the purposes of this section, a continuing disclosure or use constitutes a single claim.

[If a discovery rule is not desired in the particular jurisdiction, add the usual tort period for that jurisdiction, calculated from the point at which the cause of action arose.]

[Jurisdictions may wish to place section 13 in their legislation that deals with limitation of actions.]