

**TRUSTEE'S FINAL DETERMINATION
of the existence or non-existence
of Valid, Perfected, Enforceable Ownership or Security Interest in Assets**

**Matters / Questions
Intended to be Addressed**

1. The Claim (**Debt**)

- (a) the amount owed at March 13, 2002 (total)
- (b) the amount owed for what (individual loans)

NOTE: All creditors are required to file Proofs of Claim in Form 31 of the BIA.

2. **The Security Interest** Asserted in Assets as Security for Debt

- (a) the Asset(s) in which a Security Interest is Claimed
- (b) the Nature of the Asset(s)
 - (i) equipment, inventory, other
 - (ii) originally financed goods, or proceeds
- (c) the Debt(s) for which a Security Interest in an Asset is Claimed
- (d) the Documents on which the Security Interest is Based including any loan agreements or other documents evidencing agreed loan and security arrangements
- (e) the Nature of the Security Interest Claimed
 - (i) General Security Interest (GSA)
 - (ii) Purchase Money Security Interest (PMSI)
 - (iii) Other

NOTE: There is a need to define what interest is being asserted in what asset for what debt based on what documentation.

3. **The Application of PPSA** to the Interest Asserted in Asset(s)

NOTE: Some assertions to interests may fall outside PPSA in whole or in part, e.g. certain consignments, leases for less than one year.

4. The **Enforceability** of a Security Agreement

the existence of a Security Agreement containing an adequate description

NOTE: PPSA, s.11, sets out the requirements for a security agreement to be enforceable.

5. The **Effectiveness of the Security Agreement**

do the terms of the Security Agreement provide for the Security Interest Claimed

NOTE: PPSA, s.10, provides that except as otherwise provided in the PPSA or another Act, a security agreement is effective according to its terms.

6. The **Attachment** of a Security Interest contained in a Security Agreement to Asset(s) and, if Attachment has occurred, when has it occurred.

- (a) Has Value been given - what and when
- (b) What were the Debtor's rights in Collateral (Assets)
 - what rights and when

NOTE: PPSA, s.13, contains provisions relating to the Attachment of Security Interests

7. The **Perfection** of a Security Interest in Assets

- (a) has a Security Interest attached, and to what Asset(s) - (para.6)
- (b) have all steps required for Perfection been Completed

NOTE:

- (1) It is believed there is no Security Interest claimed to have been perfected other than by Registration under PPSA, s.26.
- (2) PPSA, s.20, contains provisions relating to Perfection.

8. The **Effective Date of Perfection**

- (a) Existence of appropriate financing statement, registration date and document number.
- (b) Existence of valid, enforceable security interest with an unexpired registration under prior law properly transitioned (if required) under PPSA.

NOTE: Evidence concerning prior security interests and registration under prior law may be required from some creditors if not already provided.

9. **PMSI** (Where a Creditor Asserts the existence of a PMSI)

- (a) Conformity of the interest claimed with the definition of a PMSI.

NOTE: PPSA, s.2(hh), sets out what is required to constitute a security interest as a PMSI.

- (b) Compliance with notice and other requirements of the PPSA to afford a PMSI a priority over other security interest in the same collateral.

NOTE: PPSA, s.35, contains provisions relating to steps to be taken to afford a PMSI the benefit of the PMSI priority provisions of the PPSA.

- (c) The amount secured by the PMSI, relative to the amount realized on disposition of the Asset(s) secured by the PMSI.

Other

- 1. Final Determinations will contain a list of the documents reviewed, the facts (including source of facts) and law relied on in addressing each question.