

# THREE TALES TO BE TOLD

Pitfalls of Serial Numbered Goods

*Bank Act* Security and Credit Unions

The Power of a General Security Agreement

## CULAM

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## THREE TALES TO BE TOLD

### *Pitfalls of Serial Numbered Goods*

A concept as seemingly straightforward as registering a serial number in the Personal Property Registry should present few problems, one might think. Not so. “Fortunes” can be made or lost, depending on a lender’s knowledge of the idiosyncrasies of serial number registration, especially under Manitoba’s operation of its Personal Property Registry.

#### 1. What is a Serial Numbered Good?

- The Regulations to the PPSA define serial numbered goods as follows:

*“serial numbered goods” means*

- (a) *except where clause (b) applies, motor vehicles, trailer, mobile homes, aircraft, boats or outboard motors for boats, and*
- (b) *in relation to a registration that was made before the Act came into force, collateral referred to in clause (a) that, under the law in force immediately before the Act came into force, was, or was required to be, described in the area of the financing statement designated for motor vehicle description*

- In turn, “motor vehicle” is defined as follows:

*motor vehicle” means a mobile device that is propelled primarily by any power other than muscle power:*

*(i) in, on or which a person or thing may be transported or drawn, and that is designed for use on a road or natural terrain; or*

*(ii) that is used in the construction or maintenance of roads;*

*and includes a pedal bicycle with a motor attached, a combine and a tractor, but does not include a device that runs on rails or machinery designed only for use in farming other than a combine or tractor;*

- A tractor is defined as “a self-propelled vehicle designed for drawing other vehicles or machines.”

- Caution must be used in choosing the serial number for combines and tractors. They often have more than one serial number. The serial number for trailers, mobile homes, tractors and combines is the serial number *located on the chassis*.
- Aircrafts registered pursuant to the *Aeronautics Act* (Canada) are registered by the registration marks assigned to the airframe by the Department of Transport. Other domestic aircraft are registered by the serial number of the airframe.

**CASE STUDY:** In *Houle v. Meyers, Norris, Penny Ltd.*, (2004) (Manitoba Queen's Bench) the issue arose whether a 1999 Yamaha Quad was a serial number good as defined by the PPSA Regulations. Amaranth Credit Union perfected a security interest in all present and after-acquired personal property of Ms. Houle, but without any reference to serial number. She later became bankrupt. The trustee disallowed the Credit Union's claim, stating the Quad was a "motor vehicle" and required serial number registration. The court looked to the definition of "motor vehicle" – "a mobile device that is propelled primarily by any power other than muscle power in, on or by which a person or thing may be transported or drawn...and includes a combine or a tractor, *but does not include...machinery, other than a combine or a tractor, designed for use in farming.*" The court accepted that the Quad was capable of transporting a person or thing and was designed for use on natural terrain and would, therefore, ordinarily be a motor vehicle. However, the court focused on the emphasized portion of the definition and held that a Quad was "used extensively in farming and in particular by those farmers earning a livelihood with cattle and other livestock." He went on:

*Most importantly however the subject machine appears to have been "designed for use in farming" as well as many other commercial ventures. If the machine had not been designed for agricultural purposes, it would not function or be so widespread in that industry.*

The court held that since a Quad was "designed for use in farming" it was not a motor vehicle and, therefore, the Credit Union did not have to register its security interest by serial number.

Question whether this decision is sound. Are Quads *really* designed primarily for agricultural purposes? Ironically, prior to the introduction of tractors and combines as serial number goods, all terrain vehicles almost certainly fit the description of "motor vehicle" under the regulations. Tractors and combines were introduced as serial number goods in 2000 to expand the definition of "motor vehicle" but not so broadly as to include most farm machinery – thence the exemption of any other farm machinery designed for use in farming. The court then made a definition of "motor vehicle" more restrictive by excluding the Quad when the intention was to expand the definition of "motor vehicle." As a consequence of this decision a Credit Union apparently does not have to register

Quads by serial number. However, when the Credit Union finances the purchase of a second hand Quad, it must ensure that the dealer has correctly searched the name of the person who traded in the Quad to determine if any registrations existed against the Quad in a general collateral description.

**CASE STUDY:** The court in *Royal Bank of Canada v. Steinhubl's Masonry Ltd.* (2003) (Sask. Q.B.), held that a Sellick Boom Forklift was a "motor vehicle" and therefore required registration by serial number. Klebuc J. described the forklift's mobility and ability to pick up, transport and lift heavy objects to heights in excess of three metres. He remarked that it had an engine, a four-speed transmission, a steering and braking system, an enclosed operator's cab complete with operating controls, and four large rubber tires suitable for traversing rough terrain and could travel at speeds of 27 kph.

The parties agreed that a forklift could transport persons or things but disagreed whether it was "designed for use on a road or natural terrain". Klebuc J. offered that the policy requiring registration of certain goods as "motor vehicles" was because of "their high degree of mobility." (Question, though, if the inclusion of "motor vehicles" as "serial numbered goods" is occasioned by their "mobility" or their general characteristic to retain high second-hand value, like other serial numbered goods.)

Certain evidence suggested that forklifts were designed primarily for use by the construction industry to lift building products such as roofing materials, bricks, steel, and lumber and plywood, and that road use would prematurely depreciate them. Other evidence, from a person with more than 20 years' experience in the masonry construction business, revealed that his company regularly drove forklifts between jobs sites within the city and he had observed farmers use "this model or type of forklift for lifting large bales and transporting those bales, over ordinary ground, to feed cattle in their corrals or feedlots".

Klebuc J. concluded that forklifts were designed for use on roads or natural terrain and, consequentially, were "motor vehicles" requiring serial number registration

**LESSONS LEARNED:** If in doubt whether a good is a serial numbered good, no harm will arise if the *correct* serial number is offered for a non-serial numbered good. However, as will be discussed later, do not unnecessarily register serial numbers for goods that clearly are not serial number goods.

## 2. Serial Numbered Goods "Grandfathered"

- You might wonder what has become of pre 2000 registrations against combines, tractors, boats and boat motors which did not require serial number description. Section 74(3) of the Act provides a reassurance. Differences between the registration requirements of the old Act and the new Act do not affect the continuation of the old

registration. However, upon the expiry of the old registration, any renewals must comply with the new registration requirements.

**CASE STUDY:** *Sleeping Giant Investments Inc. v. Southey Farm Supply Ltd.*, a 1996 decision of Saskatchewan's Court of Queen's Bench, dealt with tractors becoming serial number goods as a result of the similar introduction of using serial numbers to perfect a security interest in tractors and combines with changes proclaimed April 1, 1995. In 1992, Sleeping Giant registered a security interest in the debtor's all present and after-acquired property, which, at the time, perfected a security interest in all tractors without specific reference to serial numbers. In 1996, the debtor traded the tractor to Southey Farm Supply. It checked the Registry by the tractor's serial number and found nothing, missing the registration against the debtor's name.

The Court held that Sleeping Giant had priority over Southey Farm Supply even though its registration did not include the tractor's serial number as required by the new PPSA. The case established that lenders perfected before April 1, 1995 did not have to register tractors by serial number until the original registration had to be renewed.

**LESSONS LEARNED:** When registering a security interest in a tractor or combine (other than a purchase money security interest) realize that a pre-2000 registration against "all present and after-acquired personal property" will have priority over the tractor. When renewing pre-2000 registrations, you must obtain and disclose the serial numbers for goods that became serial numbered goods in 2000 – tractors, combines, boats and outboard motors for boats.

### 3. Serial Numbers Registered in General Collateral Section

- Describing serial number collateral, like a motor vehicle, under the heading "General Collateral Description" will not allow a searching party to find the serial number, even if the serial number is absolutely correct. Even though a search of the debtor's name would reveal the nature of the collateral and its serial number such a registration will almost assuredly be invalid.

**LESSON LEARNED:** Never register a serial number in a "General Collateral" portion of the financing statement. And, if a competing secured creditor registers the serial number in the incorrect place (and assuming you hold a general security interest in goods) take the incorrectly registered serial number and correctly register it in the serial number portion of the financing statement.

#### 4. Serial Number and Equipment

- Since 2000 you have an option to ignore serial number registration when the good is equipment, for example, tractors and gravel trucks. Subsections 30(6) and 35(4) allow secured parties to describe serial number equipment only by item or kind and still defeat the claim of trustees in bankruptcy and judgment creditors - people who don't rely upon the Registry anyway. But if secured parties choose not to register the serial number of equipment, they will lose their interests to purchasers of the equipment and any other secured creditor who has perfected a security interest by using the serial number.

**CASE STUDY:** In *Re Sokoloski*, (2002( Alberta Q.B.), the Royal Bank perfected a serial number in a 1986 Kenworth Truck. The registration expired before the debtor made an assignment in bankruptcy. The Royal Bank continued to exert a claim as a perfected secured party, relying upon an earlier registration against "all present and after-acquired personal property" taken under a General Security Agreement. The Court allowed the Royal Bank to rely upon the general collateral description to defeat the interests of the Trustee in Bankruptcy.

**LESSON LEARNED:** Always register the serial number for equipment, but remember that a trustee in bankruptcy cannot defeat a security interest in equipment if the serial number is absent.

#### 5. Name and Serial Numbers

- Don't assume that if a serial number is correct, the debtor's name is less important. Section 43(8) states:

*43(8) Subject to subsection (11)... where collateral consists of consumer goods prescribed as serial numbered goods, and a seriously misleading defect, irregularity, omission or error appears in*

*(a) the disclosure of the name of any of the debtors, other than a debtor who does to own or have rights in the collateral; or*

*(b) the serial number of the collateral;*

*the registration is invalid.*

**CASE STUDY:** In *Harry Watson Farm Supply Ltd. v. Hi-Way Service Inc.*, (2000) (Alberta Q.B.), the secured party correctly perfected a security interest against the debtor's name but transposed two numbers in the serial number of a Case IH 7120 Magnum Tractor. The debtor traded the tractor one day before the secured party realized its mistake. A search of the Tractor's correct serial number failed to show the registration, either as an exact or similar match. A search of the name would have revealed the registration. The secured party argued that the error was not seriously misleading and that the searching party had a duty to search the debtor's name. The court disagreed, saying, "There is no duty on a person conducting a search to search both the debtor's name and serial number".

**CASE STUDY:** In *Stevenson v. GMAC Leaseco Ltd.* (N.B. Court of Appeal) the secured party described the debtor as "Moncton Motorhome and Trailer Sales Ltd." when the correct name was "Moncton Motor Home & Sales Ltd." A search of the correct name did not reveal the incorrect name as a "similar" match. A search of the serial number would have disclosed the registration.

The court held that it was irrelevant that a "reasonable" user of the Registry would ordinarily search a vehicle's serial number to ensure the broadest base of protection. The court also held that it was irrelevant that a prudent solicitor, asked to complete a search of a vehicle, would search by serial number and not just the name, because to do otherwise might buy a lawsuit. The court said that it was important to correctly describe the debtor's name since potential unsecured creditors, wishing to determine if a particular debtor owning numerous serial number goods had unencumbered assets available for a sheriff's seizure, might only search the debtor's name rather than searching several serial numbers.

**LESSON LEARNED:** When a good requires serial number registration, you must ensure that the debtor's name is offered in a correct manner, as well as the serial number.

## 6. Using Serial Numbers When Unnecessary

- Many mobile or highly valuable goods do not require serial number registration in the Personal Property Registry even though they are motorized and commonly considered "motor vehicles." Think of swathers, bale wagons and high clearance sprayers. If the Credit Union wishes to register its security interest in this type of collateral by offering the serial number, the Credit Union must be certain the serial number is correct. The Credit Union cannot offer an incorrect serial number for a non serial number good without consequence. Information offered in the Registry cannot be "retracted."

**CASE STUDY:** In *Saskatchewan Economic Development Corporation v. Pryor* (1992) (Sask. Q.B.) the registration contained the following description: “Rubber Tire Loader, Serial No. 9668.” The serial number was incorrect and the registration did not specify any make, model number, or year. The loader was not a serial number good (as defined by the Regulations then in effect). Fortunately the secured creditor also had a registration in “all present and after-acquired personal property.” The court held that this latter description was sufficient to give the secured creditor a perfected security interest in the loader.

**LESSON LEARNED:** Do not offer gratuitous serial numbers for non serial number goods unless you are certain they are correct.

## 7. Manitoba Does Not Salvage Misdemeanor Serial Numbers

- The Regulations need not be followed to the “letter of law,” so long as the deviation does not lead to a defect or error that the Act does not “forgive”. Section 43(6) provides the latitude of “forgiveness”:

*43(6) The validity of the registration of a financing statement is not affected by a defect, irregularity, omission or error in the financing statement or in the registration of it unless the defect, irregularity, omission or error is seriously misleading.*

- Whether a registration is “seriously misleading” does not depend on whether the person challenging the registration has actually been misled. The test is an “objective” test, not a “subjective” test. Section 43(9) states:

*43(9) Nothing in subsection (6) or (8) requires as a condition to finding that a defect, irregularity, omission or error is seriously misleading, proof that anyone was misled by it.*

- The Manitoba Registry does not generate any similar matches for serial numbers. Unlike many other provinces, in Manitoba secured creditors must register the serial number without any errors. In Ontario *any* error or omission in the debtor’s name invalidates the registration since a specific name search discloses only those names that precisely match the information entered by the searcher.
- Compounding the Registry’s inability to provide similar matches for serial numbers is the need to use *exactly* the serial number shown on the chassis of the good. For

example all 2400 series John Deere tractors will begin with a serial number “2400JD” and then continue with seven very accurate digits, say “9786562” for a total serial number, shown on the chassis as “2400JD9786562.” In Saskatchewan a search of “2400JD9786562” will reveal “9786562.” Similarly, a search of “9786562” will reveal “2400JD9786562.” In Manitoba such similarities are not disclosed.

**LESSON LEARNED:** Ensure that you register the serial numbers exactly as shown on the chassis of the good. If other secured creditors have used an “abbreviated” serial number you should have priority if you use the serial number shown on the chassis to defeat their interests. Similarly do not search an abbreviated number – you will not find the correct registration of the serial number taken from the chassis.

## 8. How to Use Serial Numbers to Your Advantage

- You can take the serial number offered by a prior registrant in the Personal Property Registry and add the serial number to your registration as a second interest – if the member has signed a security agreement providing a security interest in that type of good.
- If you can obtain a vehicle search from MPIC, you can add the serial numbers from any vehicle registered in the debtor’s name.
- If your debtor has sold or traded a serial number good without the Credit Union’s consent, a search of the serial number in the Personal Property Registry might disclose the current owner if the current owner has offered the good as collateral to secure a loan or has allowed a garagekeeper’s lien to be registered against the good.

### ***Bank Act Security and Credit Unions***

#### **1. Two Regimes**

- Credit Unions in Manitoba reserve and perfect security interests in collateral under *The Personal Property Security Act*. Chartered banks, on the other hand, have two options. They can use the PPSA, just like Credit Unions, or they can use a federally created regime under the *Bank Act*. Chartered banks must use the PPSA and the Personal Property Registry if they wish to reserve a security interest in consumer goods or in accounts receivable.
- Unfortunately, both the PPSA and the *Bank Act* have created separate registries to determine priority to collateral. Within each regime, priority is easily determined. But when a chartered bank reserves a security interest under the *Bank Act* and a Credit Union reserves a security interest under the PPSA in the same collateral, neither Act addresses priority.

**LESSON LEARNED:** Credit Unions must be aware that their lending neighbours, chartered banks, might use a completely different registry. To search for Bank Act interests you must arrange to have an account at the Bank of Canada. Then search inquiries can be directed to Canadian Securities Registration Systems, Suite 180, 13571 Commerce Parkway, Richmond, British Columbia, V6V 2L1, Phone: 1-888-278-2116. Facsimile: 1-604-207-4066 or online at [www.crss.ca](http://www.crss.ca).

#### **2. A Hard Lesson: *Moosomin Credit Union v. Royal Bank of Canada***

- In Saskatchewan Moosomin Credit Union learned a hard lesson respecting priority between an earlier taken *Bank Act* security interest in all present and after-acquired farm machinery (registered under the *Bank Act*) and a later taken purchase money security interest in which the Credit Union reserved a security interest in a truck. The Saskatchewan Court of Appeal awarded priority to the Royal Bank of Canada. Since no statutory rule provided priority, the court referred to a long standing common law rule that the first secured creditor party to reserve (not register) its security interest enjoyed priority.

- If the later taken purchase money security interest was reserved by a vendor who retained title to the sold goods the bank would forfeit priority. *Bank Act* security requires the debtor to hold title to collateral. A vendor under a conditional sales agreement retains the title so that the *Bank Act* security interest cannot attach. Credit Unions, though, seldom are the assignees of conditional sales agreements.

**LESSON LEARNED:** Credit Unions might think that a purchase money security interest is infallible. Not so if a chartered bank has properly taken an earlier interest in the same type of collateral under the *Bank Act*.

### 3. **Prairie Fire: *Innovation Credit Union v. Buist & Bank of Montreal***

- In December 2007, Innovation Credit Union found facts to take advantage of the Saskatchewan Court of Appeal's earlier decision. In this case, though, the Credit Union had reserved its security interest *before* the Bank of Montreal reserved its *Bank Act* security interest. Even though the Credit Union's registration in the Personal Property Registry had lapsed, the Credit Union argued that the failure of any statutory priority determination necessitated the application of the "first to sign the security agreement rule."
- The Court of Queen's Bench provided an awkward determination of priority in favour of the Bank of Montreal, a determination that the learned Professor R. C. C. Cuming has called a "tortured analysis." The case was argued before the Saskatchewan Court of Appeal in May 2008. No decision has yet been rendered.
- If the Credit Union is successful in its argument, chartered banks will be virtually forced to abandon *Bank Act* security because they will stand to lose their security interests to earlier taken (and even unregistered) security interests reserved by provincial lenders, like Credit Unions.

**THE POWERS OF A GENERAL SECURITY AGREEMENT**

- **1. Three Options to Describe Collateral**

- Section 10(1)(b) of the PPSA gives three options to secured creditors to describe collateral in a security agreement:
  - A description of collateral by item or kind.
  - A statement that the security interest is taken in all of the debtor's all present and after-acquired personal property
  - A statement that a security interest is taken all of the debtor's present and after-acquired personal property except specified items or kinds of collateral.
- When a debtor grants a security interest in all present and after-acquired personal property, the security agreement is generally called a "General Security Agreement". General Security Agreements take advantage of three provisions of the Act:
  - s. 10(1)(b)(ii) which allows a security interest to be reserved in all present and after-acquired personal property;
  - s. 14 which allows a security interest to secure future advances; and
  - s. 1 which allows a security interest to secure past debt.
- The combination of these three sections allows the Credit Union to take a security interest in all present and after-acquired personal property to secure performance of all obligations, past and future. This is a powerful security interest.

**CASE STUDY:** In *Bank of Montreal v. King* (2003) (Alberta Q.B.) Mr. & Mrs. King signed an agreement entitled "Security Agreement." The agreement contained a broad and inclusive term in which the Kings charged all "property and assets, real and personal, moveable or immovable, of whatsoever nature and kind, both present and future..." The Kings stated that when they signed the security agreement they did not intend to grant a general security, but only a specific security interest in a truck and trailer shown in an attached schedule. The judge found that the Kings had the opportunity to read the agreement, they did not read it (or did so cursorily), the bank officer told them nothing

untrue and they were quite prepared to give whatever security the bank wanted. Master Funduk found that the schedule had a particular purpose – to record the serial numbers for registration. Funduk found not only that the security interest applied to all personal property, but also the phrase “real and personal, moveable and immoveable” allowed the bank to complete a foreclosure action respecting certain land not specifically described in the security agreement (and even though *The Personal Property Security Act* does not govern an interest in land). Since the terms of the contract between the parties were clear, the subjective intentions of the parties or the naming of the agreement as a “security agreement” were irrelevant. He cited with approval a decision of the Alberta Court of Appeal which stated:

*The intent of the parties is to be determined from the words which they put in their written contract; their subjective intent is irrelevant. ... Subjective intent cannot even be used to interpret the written, if they are clear.*

## 2. Advantages of a General Security Agreement

- Often General Security Agreements are not fully utilized by Credit Unions. Consider the following advantages a Credit Union will enjoy if it holds a General Security Agreement:
  - A debtor has defaulted on an “unsecured” loan. Five years previously the member signed a General Security Agreement to secure repayment of a term loan, since paid in full. Can the Credit Union now rely on this General Security Agreement? Yes it probably can. The General Security Agreement secures repayment of all obligations.
  - A debtor has provided a General Security agreement to secure repayment on a term loan. The member is also a guarantor of another member's loan. Upon demand under the Guarantee, can the Credit Union look to the General Security Agreement to seize collateral to satisfy the Guarantee? Again, the answer is probably yes.
  - The Credit Union holds a General Security Agreement respecting a certain member. Unfortunately the Credit Union's registration is subsequent to the registration in the Personal Property Registry by Farm Credit Corporation. The Credit Union knows that the member has just acquired a new automobile. Can the Credit Union obtain the automobile's serial number and register a security interest by serial number and claim priority to the automobile? Yes it can. A General Security Agreement gives the Credit Union a security interest in the after-acquired automobile. Registration by serial number perfects its security interest.
  - A Credit Union member has gone into serious default. The Credit Union learns that the member has sold certain types of goods out of the ordinary course of

business. For example, a farmer has traded a high clearance sprayer to a farm machinery dealer without the Credit Union's release of its security interest. Because the Credit Union perfected a security interest in all present and after-acquired personal property, it can seek recovery from the dealership. Without a General Security Agreement, the Credit Union would be denied this option for recovery.

- A General Security Agreement allows the Credit Union a quick and effective remedy upon default. Since the Credit Union holds a security interest in all accounts due to the debtor, the Credit Union can serve a notice on all account debtors – financial institutions, trade creditors, grain buyers, livestock auctions, etc. These notices effectively prevent the debtor from conducting business.

### 3. Preferred Practice

- As a general practice Credit Unions should ensure that every commercial and farm member has signed a General Security Agreement. Form CRI – CCSM 72.61 Rev. 08/00, attached as Appendix 15, purports to be a “General Security Agreement”. Clause (3) is the granting clause, the clause in which the member grants a security interest in certain collateral. It states:

#### 3. Collateral

*The collateral subject to the security interest created herein is, in the event any sub-clause of this clause 3 is deleted, that personal property of the Debtor, both present and future, not deleted from the sub-clauses of this clause 3. In the event there is no deletion of any sub-clause of this clause 3, the collateral subject to the security interest created herein is the Debtor's undertaking and all its business, property and assets of whatever nature and kind, both present and future, and without restricting the generality of the foregoing, includes:*

*(a) Inventory: All inventory of whatever kind and wherever situated now owned or hereafter acquired or re-acquired by the Debtor including, without limiting the generality of the foregoing, all goods, merchandise, raw materials, goods in process, finished goods and other tangible personal property held for sale, lease or resale or furnished or to be furnished under contracts for service or used or consumed in the business of the Debtor, all livestock and the young hereof after conception and all crops and timber, together with the products and cash and non-cash proceeds thereof (all of which is hereinafter called the “inventory”); and*

*(b) Equipment: All machinery, equipment and other tangible personal property now owned or hereafter acquired or re-acquired by the Debtor and not included in subparagraph (a) above and all accessories installed in or affixed or attached or appertaining to any of the foregoing (all of which is hereinafter called the “equipment”); and*

(c) *Receivables*: All debts, accounts, claims, money and choses in action now or hereafter due or owing to or owned by the Debtor (all of which is hereinafter called the “receivables”); and

(d) *Intangibles* All intangible property not included in sub-paragraphs (a) and (c) above including, without restricting the generality of the foregoing, all chattel paper, goodwill, patent, trademarks, copyrights, quotas, warehouse receipts, bills of lading, shares, warrants, bonds, debentures, debenture stock, bills, notes, instruments, writings and other documents or industrial property now owned or hereafter acquired or re-acquired by the Debtor (all of which is hereinafter called the “intangibles”); and

(e) *Scheduled Property*: All property specifically described in Schedule A hereto and all accessories installed in or affixed or attached or appertaining to any of the foregoing or any property added to Schedule A as agreed between the parties hereto (all of which is hereinafter called the “scheduled property”); and

(f) *Proceeds*: All personal property in any form or fixtures derived directly or indirectly from any dealing with the collateral and the proceed therefrom, and includes payment representing indemnity or compensation for loss of or damage to the collateral or proceeds therefrom (all of which is hereinafter called the “proceeds”);

**NOTE:** The terms of the Manitoba General Security Agreement show considerable deviation from the language and flexibility of the Act. Note the following:

1. Section 10 of the Act gives a clear licence to describe the collateral in a General Security Agreement using the precise language of the Act – as “all present and after-acquired personal property”. To ignore this statutory invitation might suggest that the secured party chose to take a security interest in less than all of the debtor’s present and after-acquired personal property.
2. The language used to describe collateral in the General Security Agreement does not accord with the definitions of property set out in the Act. Recall that the Act describes seven mutually exclusive types of property: goods, intangibles, securities, documents of title, chattel paper, instruments and money. These terms are ignored in Clause 3. The collateral is inaccurately categorized. For example, under the heading “Intangibles” several types of personal property – chattel paper, warehouse receipts, bills of lading, shares, warrants, bonds, debentures, bills, notes and instruments – are included, but are not intangibles, even under a common law definition of “intangibles”.

**CASE STUDY:** In *Houle v. Meyers, Norris, Penny Ltd.*, (2004) (Manitoba Court of Queen’s Bench) the trustee disallowed the Credit Union’s claim as a perfected secured creditor respecting the Quad because the Credit Union was unaware of the Quad and the General Security Agreement did not specifically mention the Quad.

The court looked to section 10 of the Act and held that a security interest can be taken in “all of the debtor’s present and after-acquired personal property,” without specific reference to a good.