

# **Bangsund on the Commercial Liens Act of Saskatchewan**

Clayton Bangsund



[JuliusErwin.com](http://JuliusErwin.com)

*Bangsund on the Commercial Liens Act of Saskatchewan*  
by Clayton Bangsund

JuliusErwin logo designed by Joseph Bangsund.

2023 © Clayton Bangsund

ISBN: 978-1-7381536-0-2

Notice & Disclaimer

All rights reserved, including copyright. Without the prior written consent of Clayton Bangsund, no part of this publication may be reproduced, stored, or transmitted in any form or by any means.

The information in this publication does not constitute legal or other professional advice. The services of a competent professional should be sought if such advice is required. The analysis contained herein should in no way be construed as being the policy of any governmental body including the Government of Saskatchewan.

Publisher Information

Office of the King's Printer, Ministry of Justice and Attorney General

B19-3085 Albert Street  
Regina SK S4S 0B1  
Phone: 306-787-6894 or  
Toll Free in SK: 1-800-226-7302  
Fax: 306-798-0835  
<http://publications.saskatchewan.ca>

## Dedication

This book is dedicated to the memory of my late grandparents,  
Joseph and Bessie (nee Doud) Bangsund, and  
Erwin and Ruth (nee Schoepp) Bessel.



# Overview

*Dedication*

*Overview*

*Table of Contents*

*Table of Statutes*

*Table of Regulations*

*Table of Cases*

*Glossary*

*Preface*

*Prologue*

Chapter 1. Introduction

Chapter 2. History & Modernization

Chapter 3. Terminology, Integration & Interpretation

Chapter 4. Scope

Chapter 5. Concept, Creation & Termination

Chapter 6. Perfection

Chapter 7. Priority

Chapter 8. Enforcement

Chapter 9. Conflict of Laws

Chapter 10. Conclusion

Appendices

Appendix A. Governance Overview

Appendix B. Table of Statutory Concordance

Appendix C. List of Tables

Appendix D. Statutes & Regulations

I. Commercial Liens Statutes & Regulations

D.1. *The Commercial Liens Act*

D.2. *The Commercial Liens Regulations*

Appendix Form A – Warrant to Sheriff

Form B – Bailee’s Undertaking

D.3. *The Personal Property Security Act, 1993*

Range: ss. 2(2), 5-8, 17-18, 42-54 (Part IV), 55-64  
(Part V), 65, 67-68

D.4. *The Personal Property Security Regulations*

II. Other Commercial Statutes That Create Liens on Goods (list only)

D.5. *The Animal Products Act*, s. 15.1

D.6. *The Factors Act*, s. 8

D.7. *The Sale of Goods Act*, ss. 25, 39-47

D.8. *The Threshers' Lien Act*

D.9. *The Woodmen's Lien Act*

Appendix E. Sample Documents from the Personal Property Registry

E.1. Verification Statement

E.2. Search Results Under Individual Debtor Name

E.3. Search Results Under Serial Number

## Table of Contents

<i>Dedication</i> .....	iii
<i>Overview</i> .....	v
<i>Table of Contents</i> .....	vii
<i>Table of Statutes</i> .....	xvii
<i>Table of Regulations</i> .....	xx
<i>Table of Cases</i> .....	xxi
<i>Glossary</i> .....	xxvii
<i>Preface</i> .....	xxxvi
<i>Prologue</i> .....	xxxvii

### Chapter 1. Introduction

I. Subject .....	1
II. Integration .....	1
A. Incorporation & Differentiation .....	1
B. Contextual Usage: Shortform & Longform Statutory References.....	2
III. Object, Method, Strategy & Style.....	3
IV. Outline.....	4

### Chapter 2. History & Modernization

I. History .....	5
A. Common Law Liens .....	5
1. Definition & Classification.....	5
2. Creation.....	6
a. Operational Lien.....	6
b. Contractual Lien.....	6
i. Express Terms .....	6
ii. Trade Usage .....	7
3. Attributes .....	7
a. Operational Lien: Possessory & Particular.....	7
b. Contractual Lien.....	8
4. Enforcement .....	8
a. Operational Lien: Passive Enforcement .....	8
b. Contractual Lien: Customized Enforcement .....	9
5. Termination.....	9
B. Equitable Liens .....	9
C. Maritime Liens.....	10

D. Statutory Liens .....	10
1. Crown Liens .....	11
2. Specialized Liens .....	11
a. Traditional Specialized Liens .....	11
b. Analogous Specialized Interests .....	14
i. Production-Money Security Interests.....	14
ii. Pre-Paying Buyer’s Equitable Interest.....	14
II. Modernization .....	15
A. Philosophy .....	15
1. Object & Inspiration .....	15
2. Values.....	16
B. Foundations & Reform .....	19
1. Ontario Discussion Paper .....	19
a. Background & Recommendations.....	19
b. Reform in Ontario: RSLA .....	20
2. ALRI Liens Report .....	20
a. Survey & Recommendations.....	20
b. ALRI Model CLA.....	23
c. No Reform in Alberta .....	23
3. ULCC Report.....	23
a. Review of the ALRI Liens Report & Recommendations ...	23
b. ULA.....	25
c. Reform .....	26
i. Saskatchewan .....	26
ii. Nova Scotia .....	26
iii. British Columbia.....	26
iv. Other Canadian Provinces & Territories .....	27

### **Chapter 3. Terminology, Integration & Interpretation**

I. Terminology.....	29
A. CLA Definitions.....	29
1. Court.....	29
2. Financing Statement .....	30
3. Lien.....	30
4. Lien Claimant .....	30
5. Security Interest.....	31
a. PPSA Definition.....	31
b. CLA Definition .....	32
6. Secured Party.....	33
7. Services.....	33



B. Other Key Terms .....	35
1. Service Provider .....	35
2. Signed Acknowledgment.....	35
3. Services Agreement.....	35
4. Debtor .....	36
a. Generic Reference .....	36
b. Subclassification.....	36
i. Owner.....	36
ii. Requester.....	36
5. Goods.....	37
a. Meaning.....	37
i. Common Law.....	37
ii. Statutory Definitions .....	38
iii. Narrow Meaning.....	39
b. Subclassification.....	39
i. System 1 for Registration Requirements:	
Intrinsic Nature.....	39
ii. System 2 for Conflict of Laws:	
Normal Purpose of Use .....	41
iii. System 3 for Priority Rules:	
Actual Purpose of Use.....	41
iv. Discrete Subclassification Systems .....	42
II. Integration .....	42
A. Incorporation by Reference .....	43
1. Direct Incorporation .....	43
2. Indirect Incorporation.....	44
3. Interpretive Approach.....	44
a. Substitution.....	44
b. Residual Ambiguity.....	44
B. Incorporated Provisions .....	45
1. Knowledge.....	45
2. Giving of Notice.....	46
3. Custodial & Disclosure Obligations.....	46
4. Registration.....	46
5. Enforcement .....	47
6. Statutory Liability.....	47
7. Conflict of Laws .....	47
8. Common Law, Equity & the Law Merchant .....	47
9. Good Faith & Commercial Reasonableness.....	48
10. Court Authority.....	48

III. Interpretation.....	48
A. Favoured Interpretation & Plausible Alternate Interpretation .....	48
B. Points of Uncertainty .....	49
1. Meaning of Security Interest .....	49
a. Focal & Oppositional References.....	49
b. Unexercised Regulatory Authority.....	50
2. Voluntary Subordination.....	51
3. Affixed Goods.....	52
a. Indirect Incorporation by Reference.....	52
b. Affixed Goods at Common Law & Under the PPSA.....	52
i. Fixtures.....	53
ii. Crops .....	54
iii. Accessions.....	55
c. Possible Interpretations.....	56
i. Favoured Interpretation: No Application .....	56
ii. Plausible Alternate Interpretation: Partial Application.....	57
4. Receivership .....	58

#### **Chapter 4. Scope**

I. Displacement .....	59
II. Abolition of Common Law Liens .....	59
III. Other Statutes That Create Liens on Goods.....	60
A. Repeal .....	60
B. Survival .....	60
C. Continued Application .....	61
IV. Exceptions .....	61

#### **Chapter 5. Concept, Creation & Termination**

I. Concept.....	63
A. Non-Consensual Interest in Goods to Secure Payment for Requested Services .....	63
B. Unitary Lien .....	63
C. Eligibility & Lienability.....	64
1. Request for Services from an Empowered Requester.....	64
2. Separate Identity.....	65
3. Gasoline & Oil .....	65
4. Deemed Lien on Goods.....	66

II. Creation .....	67
A. Attachment .....	67
1. Concept.....	67
2. Commencement & Fair Value .....	67
B. Enforceability.....	68
1. Concept.....	68
2. Methods .....	68
a. Possession.....	68
b. Signed Acknowledgment.....	69
3. No Retroactive Effect .....	70
C. Obligations.....	71
1. Amount Secured .....	71
a. Agreed Value.....	71
b. Fair Value .....	72
2. Verification Statement.....	72
3. Custodial Obligations .....	73
4. Disclosure .....	74
5. Discharge.....	75
D. Options.....	76
1. Credit .....	76
a. Common Law Approach.....	76
b. CLA Approach.....	77
2. Assignment .....	78
3. Security Interest.....	78
III. Termination .....	79
A. Retirement of the Obligation Secured .....	79
B. Repudiation of the Services Agreement.....	79
C. Release of Goods Seized by the Sheriff.....	80
D. Creation of Replacement Charge in Lieu of a Discharged Lien.....	80
E. Effectuation of a Cut-Off Transaction .....	80

## **Chapter 6. Perfection**

I. Meaning .....	81
II. Methods.....	81
A. Possession .....	81
B. Registration .....	82
1. Perfection by Registration .....	82
a. Basic Requirements .....	82
b. Signed Acknowledgment Prerequisite.....	83

c. Lack of Continuity.....	84
d. Deemed Lien .....	85
e. Returned Goods .....	85
f. Temporary Deemed Perfection .....	86
2. Part IV of the PPSA .....	87
a. Modern Practice & Phraseology.....	87
b. Personal Property Registry: Notice Registration System .....	87
c. Financing Statement .....	87
i. Registration as Prescribed.....	87
ii. Time of Effectiveness.....	88
iii. Omni-Registration .....	88
3. Regulatory Requirements .....	89
a. Integrated CLA Terminology.....	89
b. Basic Requirements.....	90
c. Description Requirements .....	91
i. Non-Serial Numbered Goods.....	91
ii. Serial Numbered Goods .....	91
d. Registrar Discretion.....	92
e. Invalidity & Forgiveness .....	92
i. Presumption of Validity.....	92
ii. Statutory Guidance.....	93
iii. Seriously Misleading .....	95
4. Verification Statement.....	95
5. Transfer.....	96
6. Voluntary Subordination.....	97
7. Renewal .....	97
8. Amendment.....	98
9. Not Constructive Knowledge .....	98
10. Searches of the Personal Property Registry.....	99
11. Evidence .....	99
12. Discharge & Lapse .....	100

## Chapter 7. Priority

I. Concept.....	101
A. Technical Meaning.....	101
B. Colloquial Meaning .....	101
II. Priority Rules .....	101
A. Competing Liens.....	101
B. Competing Interests that Arise Before Attachment of the Lien .....	103
1. Security Interests .....	103
a. Presumptive PPSA Rule .....	103
b. CLA Rule.....	103
2. Enforcement Charges .....	104
C. Competing Interests that Arise After Attachment of the Lien.....	105
1. Residual Rule .....	105
2. Security Interests .....	105
3. Sales & Leases.....	106
a. Unperfected Lien .....	106
b. Temporarily Perfected Lien .....	107
i. Lien Claimant With Possession.....	107
ii. Lien Claimant Without Possession .....	107
c. Transactions in the Ordinary Course of Business.....	108
d. Low-Value Consumer Goods .....	108
4. Enforcement Charges .....	110
5. Bankruptcy & Liquidation.....	110
6. Continuing Lien v. Post-Transfer Interest .....	111
a. Registration Against Transferee or Possession .....	111
b. Transfer With Lien Claimant's Prior Consent .....	111
c. Transfer Without Lien Claimant's Prior Consent .....	113
7. Debtor Name Change .....	116

## Chapter 8. Enforcement

I. Remedies .....	117
A. Personal Remedies.....	117
1. Personal Remedies at Common Law .....	117
2. Personal Remedies Governed by Part VI of the PPSA.....	117
a. Damages for Failure to Discharge Obligations .....	117
b. Deemed Damages for Certain Non-Compliance.....	118
c. Evidential Burden.....	118
d. Exclusion & Limitation Clauses.....	119
B. Real Remedies.....	119
1. Part V of the PPSA.....	119
a. General.....	119
i. Balancing of Interests.....	120
ii. Comprehensive & Unitary Framework.....	120
iii. Cumulative Rights & Remedies.....	120
iv. Non-Merger .....	120
v. Enforcement Provision in Part II of the PPSA .....	121
b. Modification by the CLA.....	121
2. Enforcement Sequence .....	121
a. Default .....	121
i. Rights & Remedies on Default.....	121
ii. Waiver & Variation.....	122
b. Seizure or Surrender .....	122
i. Voluntary Surrender .....	122
ii. Sheriff's Seizure Obligations & Powers.....	123
iii. Lien Claimant's Custodial Obligations .....	126
iv. Exemption Protection .....	126
v. Court-Supervised Settlement Mechanism .....	127
vi. Seizure Not Required .....	128
c. Redemption & Reinstatement.....	128
i. Redemption .....	129
ii. Reinstatement.....	129
iii. Limits on Reinstatement .....	129
d. Disposition or Retention.....	130
i. Disposition .....	130
ii. Retention .....	135

e. Distribution .....	138
i. Order of Allocation.....	138
ii. Surplus.....	139
iii. Deficiency .....	140
iv. Accounting .....	140
3. Goods of an Indigenous Debtor Situated on a Reserve.....	141
C. Remedies Against the Crown.....	142
1. Immunity for Crown Agents.....	142
2. Crown Subrogation.....	143
3. Limitation on Recovery .....	143
4. Payment of Claim .....	143
II. Judicial Supervision .....	144
A. Court of King’s Bench for Saskatchewan.....	144
1. Application for Enforcement Order.....	144
2. Court Proceedings .....	146
3. Settlement Mechanism .....	147
B. Court of Appeal for Saskatchewan .....	149
C. Supreme Court of Canada .....	149

## **Chapter 9. Conflict of Laws**

I. Location of Person.....	151
A. Concept & Significance .....	151
B. Person Location Rules .....	151
II. Choice of Law .....	153
A. Concept.....	153
B. Aspects of Governance .....	153
1. Validity.....	153
2. Perfection.....	153
a. Concept.....	153
b. Perfection in a Foreign Jurisdiction.....	154
3. Priority.....	154
4. Effect of Perfection or Non-Perfection.....	154
5. Enforcement .....	155
a. Procedural Issues .....	155
b. Substantive Issues.....	155

C. Choice of Law Rules.....	156
1. Location of Goods.....	156
a. General Rules.....	156
b. Relocation of Goods to Saskatchewan.....	157
c. Goods Understood to be for Export.....	158
2. Location of Debtor.....	159
a. Mobile Goods.....	159
b. Continuous Perfection: Relocation of Debtor to Saskatchewan.....	161
<b>Chapter 10. Conclusion</b>	
I. Reflection.....	163
II. Reform.....	163
III. Epilogue.....	164
<b>Appendices</b>	
Appendix A. Governance Overview.....	165
Appendix B. Table of Statutory Concordance.....	166
Appendix C. List of Tables.....	168
Appendix D. Statutes & Regulations.....	169
I. Commercial Liens Statutes & Regulations	
D.1. <i>The Commercial Liens Act</i> .....	170
D.2. <i>The Commercial Liens Regulations</i> .....	185
Appendix        Form A – Warrant to Sheriff	
Form B – Bailee’s Undertaking	
D.3. <i>The Personal Property Security Act, 1993</i> Range: ss. 2(2), 5-8, 17-18, 42-54 (Part IV), 55-64 (Part V), 65, 67-68.....	189
D.4. <i>The Personal Property Security Regulations</i> .....	233
II. Other Commercial Statutes That Create Liens on Goods (list only)	
D.5. <i>The Animal Products Act</i> , s. 15.1	
D.6. <i>The Factors Act</i> , s. 8	
D.7. <i>The Sale of Goods Act</i> , ss. 25, 39-47	
D.8. <i>The Threshers’ Lien Act</i>	
D.9. <i>The Woodmen’s Lien Act</i>	
Appendix E. Sample Documents from the Personal Property Registry	
E.1. Verification Statement.....	263
E.2. Search Results Under Individual Debtor Name.....	264
E.3. Search Results Under Serial Number.....	271



## Preface

In late 2021, while finishing my book on the *Personal Property Security Act* [“PPSA”], I decided to write a companion book on *The Commercial Liens Act* [“CLA”] of Saskatchewan. The CLA is a revolutionary statute, yet it has received little attention since coming into force over two decades ago. An exposition is long overdue. The CLA is adapted from the *Uniform Liens Act, 2000* [“ULA”], a model statute promulgated by the Uniform Law Conference of Canada [“ULCC”]. It enables service providers to protect their trade credit with proprietary interests – liens – in the goods they enhance and preserve. The CLA modernizes and rationalizes the law of commercial liens by standardizing rules for attachment, perfection, priority and enforcement.

I encountered many thorny interpretive issues while writing this book, and benefited from the insights and experiences of several key individuals including (formal titles omitted) Tamara Buckwold, Cynthia Callahan-Maureen, Ronald Cuming and Roderick Wood. I am immensely grateful to each of you for sharpening my understanding of the CLA. I also wish to thank my editor, Carla Windl, for your careful attention to detail during the closing stages of this project. Finally, I owe a special heartfelt thanks to all my family and friends for your support and ongoing patience throughout the gruelling book-writing process.

Clayton Bangsund, BEd, JD, LL.M, PhD  
Associate Professor, University of Saskatchewan, College of Law  
Langenburg, Saskatchewan  
July 2023

## Prologue

Professor Roderick J. Wood – of the University of Alberta, Faculty of Law – came of age as a lawyer and scholar during an era of sweeping personal property security legislative reform in his home Province of Saskatchewan. Drawing on his extensive experience with personal property security legislative reform, Professor Wood developed another innovative idea while preparing a report on the law of liens for the Alberta Law Reform Institute [“ALRI”]. In conducting this study, he observed many of the same defects that plagued the law of secured transactions prior to adoption of the *Personal Property Security Act* [“PPSA”]. Commercial liens in Alberta were governed by an uncoordinated series of *ad hoc* statutes, some obsolescent due to decades of neglect. Professor Wood applied a familiar set of PPSA principles to a distinct, yet analogous, body of commercial law. His recommendations for reform were not followed by Alberta lawmakers, but they did instigate a national uniformity effort that ultimately paved the way to legislative reform in Saskatchewan.