

Note – This form of opinion letter should not be used in transactions in which the subject security documents are standard form security instruments. If the opinion is in respect of standard form security instruments, the recommended form of opinion can be found under. 2. Model Form of Opinion for Standard Form Security Documents (Search the Web. “Legal Opinions British Columbia”)

Solicitors using this opinion should refer to the comments under “Notes Re: Sample Opinions for guidance on the use of this opinion and summary explanations of some of the terms used

SAMPLE PPSA OPINION

To be given by counsel for the Debtor (as defined below)

[For use where Debtor is a corporation and Collateral does not include Consumer Goods]

[DATE]

[ADDRESSEE]

Dear ●:

Re: ● (the "Debtor")

We have acted as counsel to ● in connection with a general security agreement (the “**Security Agreement**”)¹ dated as of the date hereof made by the Debtor in favour of ● (the “**Secured Party**”).

Capitalized terms used but not expressly defined in the body of this opinion letter have the meanings given such terms in **Schedule A** hereto.

1. DOCUMENTS, SCOPE OF REVIEW AND RELIANCES

¹ This opinion letter and the opinions, assumptions and qualifications included in it have been prepared in respect of a general security agreement which does not contain a floating charge on land. Other types of security agreements, (a pledge of shares, for example) may warrant different and/or additional opinions, assumptions and qualifications.

In our capacity as counsel for the Debtor, we have reviewed an original or a signed copy of the Security Agreement and have also made such investigations and searches, examined such other documents and certificates of public officials and have considered such questions of law as we have considered necessary to provide the opinions set out below.

In particular, we have, without independent investigation or verification, reviewed and relied upon the following, copies of which are enclosed or have been previously provided to you:

- 1.1 as to certain matters of fact, a certificate of ●, as ●, of the Debtor (the "**Certificate of Officer**"), dated as of the date of this opinion letter, to which are attached, among other things:
 - 1.1.1 copies of the notice of articles and articles of the Debtor (the "**Constituting Documents**");²
 - 1.1.2 [if applicable, a copy of the shareholders' agreement made among the Debtor and its shareholder, ●, ● and ● dated as of ●;]
 - 1.1.3 a copy of a resolution of the directors of the Debtor with respect to, among other things, the execution, delivery and performance by the Debtor of its obligations under the Security Agreement (the "**Directors' Resolution**"); and
 - 1.1.4 an incumbency schedule identifying [certain of] the directors and officers of the Debtor and providing specimen signatures for [certain of] them and (the "**Incumbency Schedule**");
- 1.2 a certificate of good standing issued by the Office of the Registrar of Companies for British Columbia (the "**Companies Office**") with respect to the Debtor on ● (the "**Certificate of Good Standing**" and together with the Certificate of Officer, the "**Certificates**" and either one, a "**Certificate**"). [alternatively, if Debtor is a CBCA corporation... a certificate of status issued by the Director, *Canada Business Corporations Act* with respect to the Debtor on ●]

We have not reviewed the minute books or any of the other corporate records of the Debtor, except for the extracts therefrom attached to the Certificate of Officer.

2. PPR REGISTRATIONS

We have [prepared and attended to the registration in/reviewed a BC Online search of or a BC Online document print issued by] the Personal Property Registry

² Use equivalent terms from the CBCA where Debtor is a federal corporation.

for the Province of British Columbia (the “**PPR**”) [of/evidencing] a financing statement in respect of the Security Agreement registered on ● under base registration number ● (the “**Financing Statement**”). Further particulars of the Financing Statement are set out in **Schedule B** hereto.

The Financing Statement has been registered for a period of ● years and, accordingly, has an expiry date of ● (the “**Expiry Date**”). The registrations in respect of the Financing Statement will expire and any Security Interest perfected solely by virtue of the registration thereof will cease to be perfected unless a financing change statement renewing the Financing Statement is filed before the Expiry Date. **Please note that renewal is the Secured Party's responsibility.** Neither the PPR nor our firm reminds secured parties of the pending expiry of PPR registrations. Renewal is required notwithstanding seizure or repossession of the Collateral or enforcement or the commencement of insolvency proceedings against the Debtor.

Please also note that the filing of financing change statements in respect of the Financing Statement is necessary or advisable in the circumstances outlined in **Schedule C** to this opinion.

3. **APPLICABLE LAW**

Our opinions given below are limited to the laws of the Province of British Columbia and the federal laws of Canada applicable therein (collectively, “**Applicable Law**”). We express no opinion herein as to the laws of any other jurisdiction including to the extent that those laws may govern the validity, perfection, effect of perfection or non-perfection or enforcement of the Security Interest.³ In addition, we express no opinion as to whether, pursuant to conflict of laws rules, Applicable Law would govern the validity, perfection, effect of perfection or non-perfection or enforcement of the Security Interest.

4. **ASSUMPTIONS**

For the purposes of the opinions expressed below, we have, without independent investigation or verification and with your concurrence, assumed:

- 4.1 the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified, conformed, photostatic, facsimile, scanned or other copies;

³ See sections 5 through 8.1 of the PPSA, which set out the applicable rules to determine whether, based on the nature of the collateral in question, Applicable Law or the law of another jurisdiction will govern the matters of validity, perfection, the effect of perfection or non-perfection and the enforcement of a security interest.

- 4.2 the identity and capacity of all individuals acting or purporting to act as public officials and of all individuals executing the Security Agreement or any Certificate, whether in an individual capacity or on behalf of any party thereto;
- 4.3 all facts set forth in the official public records, indices, filing and registration systems and all certificates, documents and printed results supplied or otherwise conveyed to us by public officials on which we have relied for the purposes of this opinion are true, accurate and current at the time this opinion is delivered;
- 4.4 the accuracy and completeness of all statements of fact made in the Certificates and that all such statements remain true, accurate and current at the time this opinion is delivered;
- 4.5 to the extent such matters are governed by laws other than Applicable Law, that the Security Agreement has been duly executed and delivered by the Debtor under and in accordance with such laws;
- 4.6 that the Collateral does not include “consumer goods” (as described in the PPSA);⁴
- 4.7 that the Debtor and the Secured Party have not agreed, either orally or in writing, to postpone the time for attachment of the Security Interest;
- 4.8 that the Debtor has rights in the Collateral; and
- 4.9 that value has been given by the Secured Party for the granting of the Security Interest.

5. **OPINIONS**

Based and relying upon the foregoing and subject to the limitations and qualifications set out below, we are of the opinion that:

- 5.1 The Debtor was incorporated as a company under the laws of the Province of British Columbia, is a valid and existing company and is, with respect to the filing of annual reports with the Companies Office, in good standing.

[or, if Debtor is a CBCA corporation... the Debtor exists as a corporation under the Canada Business Corporations Act, has sent to the Director under that Act all required annual returns, is registered as an extra-provincial company under the Business Corporations Act (British

⁴ See PPSA 55, 55(4) and 55(5).

Columbia), and is, with respect to the filing of annual reports, in good standing with the Companies Office]

- 5.2 The Debtor has the corporate power and capacity to enter into and perform its obligations under the Security Agreement.
- 5.3 The Debtor has taken all necessary corporate action to authorize the execution, delivery and performance by it of the Security Agreement.
- 5.4 The Debtor has duly executed and delivered the Security Agreement.
- 5.5 The Security Agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms.
- 5.6 The execution and delivery by the Debtor of the Security Agreement and the performance by the Debtor of its obligations thereunder, do not:
 - 5.6.1 conflict with or result in a breach of any of the provisions of the Constituting Documents of the Debtor [*and, if appropriate...or the unanimous shareholders agreement in respect of the Debtor*]; or
 - 5.6.2 violate, conflict with, or result in a breach of Applicable Law.
- 5.7 No consent, approval, authorization, exemption, filing, order or qualification of or with any governmental authority is required under Applicable Law for the execution and delivery by the Debtor of the Security Agreement or the performance by the Debtor of its obligations thereunder.
- 5.8 The Security Agreement creates in favour of the Secured Party a valid security interest in the Collateral in which the Debtor now has rights and is sufficient to create in favour of the Secured Party a valid security interest in any Collateral in which the Debtor hereafter acquires rights when those rights are acquired, in each case to secure payment and performance of the obligations described therein as being secured thereby.
- 5.9 By virtue of the registration of the Financing Statement, registration has been made in all public offices where such registration is necessary under Applicable Law to perfect the Security Interest in the Collateral.

6. **LIMITATIONS AND QUALIFICATIONS**

The foregoing opinions are subject to the limitations and qualifications set out below:

Scope of Opinions

6.1 **No Title Opinion.** No opinion is given as to the legal or beneficial title of the Debtor to, or any other interest or rights of the Debtor in, any property (whether real or personal), assets or undertaking.

6.2 **No Priority Opinion.** No opinion is given as to the rank or priority of the Security Interest.

General Enforceability

6.3 **Bankruptcy/Insolvency.** The enforceability of the Security Agreement is subject to bankruptcy, insolvency, winding-up, reorganization, moratorium, arrangement, fraudulent preference and conveyance and other similar laws of general application affecting the enforcement of a creditors' rights and remedies.

6.4 **Remedies Limitation.** No opinion is given as to the availability of any specific remedy and, in particular, no opinion is expressed as to the availability of any equitable remedy, including that of specific performance or injunctive relief, for the enforcement of any provision of the Security Agreement. In particular, a court has equitable and statutory powers to stay proceedings and the execution of judgments and nothing in this opinion is to be taken as indicating that the remedy of, or any order for, specific performance or the issuance of any injunction will be available other than through the exercise of the discretion of a court.

6.5 **General Principles of Law and Equity.** The enforceability of the Security Agreement, any rights or remedies of the Secured Party thereunder or in connection therewith and any judgment arising out of or in connection therewith is subject to and may be limited by general principles of law and equity, including, without limitation:

6.5.1 the obligation to give reasonable notice prior to enforcement of any security; and

6.5.2 fraud, mistake, undue influence, unconscionability, duress, misrepresentation and deceit;

6.5.3 estoppel, waiver and laches;

6.5.4 the requirement that a party act honestly in the performance of its obligations and reasonably and in good faith in the exercise of discretionary rights or powers;

6.5.5 consideration of the impracticability or impossibility of performance at the time of attempted enforcement;

6.5.6 rules of court procedure which affect rights, powers, privileges and remedies of creditors generally; and

6.5.7 the powers of a court to grant relief from forfeiture, to stay proceedings before it and to stay executions on judgment and, under the PPSA, to grant relief from the consequences of default.

6.6 **Effectiveness of Non-Waiver Provisions.** British Columbia courts may apply such doctrines as waiver, election, acquiescence or estoppel to deny the enforceability of any provision of the Security Agreement that attempts to limit or prohibit the rights of the Debtor. In particular, but without limiting the foregoing, we express no opinion as to the enforceability of any provision contained in the Security Agreement which:

- 6.6.1 states that consents, amendments or waivers that are not in writing will not be effective;
- 6.6.2 purports to waive, or have the effect of waiving, any statutory rights or defences;
- 6.6.3 purports to restrict access to a court, or waive the benefit of, equitable remedies or defences;
- 6.6.4 constitute a general waiver of legal or equitable defences or which constitute a general agreement not to challenge the validity or enforceability any right or remedy; or
- 6.6.5 absolve or exculpate the Secured Party, any agent of the Secured Party, any receiver, manager or receiver-manager appointed by the Secured Party or any other person from any liability or duty otherwise owed by it.

6.7 **Exculpatory Provisions - General.** We express no opinion as to the validity or enforceability of any provision in the Security Agreement which purports to:

- 6.7.1 indemnify any party in respect of any breach of law by such party; or
- 6.7.2 establish evidentiary standards; or
- 6.7.3 state that matters or determinations of fact are conclusive.

6.8 **Exculpatory Provisions - PPSA.** We express no opinion as to the validity or enforceability of any provision in the Security Agreement which:

- 6.8.1 provides that any receiver, receiver-manager or receiver and manager appointed by the Secured Party is the agent of the Debtor;

6.8.2 provides that the taking of or the failure to take one or more specified actions by the Secured Party, any agent of the Secured Party or any receiver, manager or receiver-manager appointed by the Secured Party is commercially reasonable or otherwise consistent with obligations imposed upon a secured party under the PPSA;

6.8.3 permit any receiver, manager or receiver-manager to deal with any Collateral in such order or manner as the Secured Party may direct, notwithstanding any rule of law or equity to the contrary; or

6.8.4 limit the liability of the Secured Party for failure to discharge duties imposed by the PPSA.

6.9 **Severability.** No opinion is given as to the effectiveness or enforceability of any provision inserted in any agreement or instrument which purports to sever from the agreement or instrument any provision which is prohibited or unenforceable under Applicable Law without affecting the enforceability or validity of the remainder of the agreement or instrument.

6.10 **Penalties and Forfeitures.** Courts in British Columbia have the power to grant relief from penalties and forfeitures generally and we express no opinion herein as to the enforceability of any provision of the Security Agreement which provides for the payment of any amount which may be characterized by a court as a penalty.

6.11 **Conclusiveness of Determinations.** We express no opinion as to the enforceability of any provision of the Security Agreement which asserts that any certificate or determination shall be conclusive or which purports to confer a unilateral or unfettered discretion. Without limiting the foregoing, any determination made or provided under the Security Agreement may be subject to challenge on the grounds of a failure to exercise discretion reasonably and in good faith or of fraud, collusion or mistake.

6.12 **Reasonable Time to Pay or Perform Obligation.** Notwithstanding any provision to the contrary contained in the Security Agreement, including those which provide that a given payment or other amount is payable on demand, the Secured Party may be required to give the Debtor a reasonable time to pay or perform any obligation prior to taking any action to enforce any of its rights or remedies in respect thereof.

6.13 **Interest Act (Canada).** Under Section 4 of the *Interest Act* (Canada), except as to mortgages on real property, whenever any interest is made payable at a rate or percentage per day, week, month, or at any rate or percentage for any period less than a year, no interest exceeding five percent per annum shall be payable unless the contract contains an express

statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent.

- 6.14 **Post Judgment Interest.** Under the *Court Order Interest Act* (British Columbia) post judgment interest on any judgment awarded or enforced in British Columbia may be limited to a prescribed rate.
- 6.15 **Criminal Interest.** No opinion is expressed herein as to the enforceability of the Security Agreement or the creation of the Security Interest if the “interest” (as that term is understood for the purposes of Section 347 of the *Criminal Code* (Canada)) which is payable to or to be received by the Secured Party or which is intended to be secured by the Security Agreement, would constitute interest at a “criminal rate” within the meaning of Section 347 of the *Criminal Code* (Canada).
- 6.16 **Inherent Power of Courts.** Courts in British Columbia may decline to hear an action if it is contrary to public policy (as such phrase is understood in British Columbia) for it to do so, or if it is not the proper forum to hear such action or concurrent proceedings are brought elsewhere.
- 6.17 **Judgment Currency.** Judgments of the courts of British Columbia may be awarded only in Canadian dollars and, accordingly, to the extent that any obligation evidenced or secured by the Security Agreement is payable in a currency other than Canadian dollars, any judgment in respect thereof will be stated in Canadian dollars and will require conversion of the amount constituting the obligation secured into Canadian dollars at a rate of exchange which may be other than the rate in effect on the date of payment.
- 6.18 **Entire Agreement Clauses.** Notwithstanding any provision in the Security Agreement which states that such agreement constitutes the entire agreement between the parties thereto, a court may in certain circumstances give effect to other agreements or obligations, whether written or oral, between the parties.
- 6.19 **Exclusive Jurisdiction of Courts.** We express no opinion as to the enforceability of any provision of the Security Agreement which purports to confer exclusive jurisdiction over any action or proceeding arising out of or relating to the Security Agreement on the courts of a specified jurisdiction or waiving any objection that a party might otherwise be entitled to assert to the jurisdiction of such courts.
- 6.20 **Secured Party Liability.** To the extent that it becomes a mortgagee in possession and notwithstanding provisions to the contrary contained in the Security Agreement, the Secured Party may become liable for loss of or damage to Collateral if it fails to take reasonable care in the custody and

preservation of Collateral in its possession. The Secured Party may further be held liable if it fails to exercise a contractual power of sale in relation to Collateral or other property charged by the Security Agreement in good faith and in a commercially reasonable manner, notwithstanding provisions to the contrary contained in the Security Agreement.

- 6.21 **Costs and Expenses.** Courts in British Columbia have discretionary powers with respect to the awarding of costs, notwithstanding any provision regarding the recovery of costs in the Security Agreement. Without limiting the foregoing, provisions in the Security Agreement which provide for the recovery of fees and expenses from the Debtor may be restricted by a court to a reasonable amount, and legal fees and disbursements may be subject to taxation.
- 6.22 **Limitation Periods.** The enforceability of the Security Agreement is subject to applicable limitation periods.
- 6.23 **Licences, Approvals, Permits Etc.** We express no opinion as to any licences, franchises, permits, consents, approvals, registrations, filings or other authorizations or exemptions that may be required in connection with the carrying on of the business of the Debtor. Without limiting the foregoing, we express no opinion as to whether it may be necessary, in connection with the enforcement of the Security Agreement, for the Secured Party, or any person proposing to acquire, own or operate all or any part of the Collateral, to obtain any licence, franchise, permit, consent, approval, registration, filing or other authorization or exemption.

Validity and Perfection of Security Interests/Collateral

- 6.24 **PPSA - Validity/Enforceability.** The validity and enforceability of the Security Interest and any rights or remedies of the Secured Party pursuant thereto or in connection therewith are subject to and may be limited by:
 - 6.24.1 the PPSA which sets out procedures for the enforcement of security agreements and imposes duties with respect to the exercise of rights or remedies thereunder, including a duty to exercise or discharge rights, remedies, duties and obligations in good faith and in a commercially reasonable manner. Such procedures and duties are in most cases applicable notwithstanding waivers or contrary terms in the Security Agreement;
 - 6.24.2 any estoppel based on incorrect information given in response to a demand for information made pursuant to Section 18 of the PPSA; and
 - 6.24.3 Sections 30, 31 and 31.1 of the PPSA, which provide that, in certain circumstances, a security interest may not be enforceable

against, respectively, a person who buys or leases goods from the Debtor in the ordinary course of business, a person who acquires money, instruments, documents of title or chattel paper from the Debtor or a protected purchaser of securities (as defined in the *Securities Transfer Act* (British Columbia).

6.25 **PPSA - Collateral.** We express no opinion as to the creation, validity, enforceability, perfection, effect of perfection or registration of any Security Interest, nor have we effected any registrations in any office of public record (other than the registration of the Financing Statement), with respect to:

- 6.25.1 any real property or interest therein or any Collateral which is now or hereafter becomes a fixture or crop;
- 6.25.2 any other property of a nature described in section 4 of the PPSA;
- 6.25.3 an international interest or other interest in aircraft objects within the meaning of the Convention on International Interests in Mobile Equipment signed in Cape Town on November 16, 2001 and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment;
- 6.25.4 property for which, pursuant to applicable conflicts rules (including without limitation the conflicts rules of the PPSA), the validity, perfection and the effect of perfection are governed by the laws of a jurisdiction other than British Columbia;
- 6.25.5 property being proceeds which are not identifiable or traceable;
- 6.25.6 permits, quotas, governmental authorizations or other property which are not personal property; and
- 6.25.7 property, such as contractual rights, which by its terms or by reason of its nature or the nature of the business of the Debtor, cannot be the subject of a security interest without consent, authorization or approval of third parties.

6.26 **Investment Property.** We have not taken any steps in connection with the Secured Party taking delivery or obtaining control of any investment property included in the Collateral.

6.27 **Security Over Accounts.** The validity and enforceability of any Security Interest and any rights or remedies of the Secured Party pursuant thereto or in connection therewith as against an account debtor or any Collateral which is an account are subject to and may be limited by:

- 6.27.1 a failure to provide notice of the applicable Security Interest and proof thereof to the applicable account debtor;
- 6.27.2 the terms of the contract between the Debtor and the applicable account debtor and any defence or claim arising out of the contract or a closely connected contract;
- 6.27.3 any other defence or claim of the applicable account debtor against the Debtor accruing before the account debtor has knowledge of the applicable Security Interest; and
- 6.27.4 common law and statutory restrictions relating to the assignment of debts owed by the Crown.

6.28 **PPSA - Serial Numbered Goods.** To the extent the Collateral includes any serial numbered goods (as that term is defined in the regulations under the PPSA) which are not identified in the Financing Statement by serial number as contemplated in the regulations under the PPSA, the Security Interest may not be perfected so as to give the Security Interest priority over certain third party interests in respect of any such now owned or after acquired serial numbered goods which constitute equipment in the hands of the Debtor.

Other Matters

6.29 **PPSA - Receivers.** In appointing a receiver, receiver-manager or receiver and manager pursuant to the Security Agreement, the Secured Party may only appoint a person who satisfies the requirements of Section 64(2) of the PPSA.

7. RELIANCE

The opinions and advice expressed herein are provided solely for the benefit of the addressees in connection with the transactions contemplated by the Security Agreement and may not be used nor relied upon by the addressees for any other purpose or by any other person for any purpose whatsoever, in each case without our prior written consent.⁵ .

⁵ Note that, depending on the circumstances of a given transaction, the opinion provider may be asked to expand the scope of the reliance limitation. For example, a lender might request that its successors and assigns also have the benefit of and be permitted to rely on the opinion, particularly in circumstances in which a loan secured by the Security Agreement is or is expected to be syndicated or participated to other lenders. In such circumstances, language such as the following could be used to achieve this "..., except that copies of this opinion letter may be delivered to, and the opinions and advice expressed herein, as of the date hereof, may be relied upon by, any

Yours very truly,

permitted assignee of or successor to the rights and interests of the Secured Party or any permitted participant of the interests of the Secured Party, in each case, under the Security Agreement.” The question of whether any requested expansion of the reliance limitation is appropriate or should be accepted is one to be considered by the opinion provider taking into account the broader circumstances of the subject transaction.

SCHEDULE A

Definitions

In this Opinion Letter:

“Collateral” means, collectively, all of the personal property to which the PPSA applies which is expressed in the Security Agreement to be the subject of the Security Interest;

“PPSA” means the *Personal Property Security Act* (British Columbia) and the regulations thereto as in effect at the date hereof;

“Security Interest” means the security interest created under the Security Agreement;

The terms, “account”, “chattel paper”, “control”, “crops”, “delivery”, “documents of title”, “equipment”, “fixture”, “goods”, “instrument”, “inventory”, “investment property”, “licence”, “money”, “securities intermediary” and “serial numbered goods”, shall, unless otherwise defined herein, each have the meaning ascribed to such terms in the PPSA or the *Securities Transfer Act* (British Columbia), as applicable.

SCHEDULE B
PPSA Registration

Name of Debtor	Registration No.	Registration Date	Registration Period	Expiry Date

SCHEDULE C

Requirements for Further and Subsequent Registrations

1. **Financing Change Statements.** Registering financing change statements as contemplated by the PPSA is necessary to establish or preserve the priority of a security interest in the following circumstances:
 - 1.1 within 15 days after the Secured Party obtains knowledge of a change of name of the Debtor named in a financing statement;
 - 1.2 within 15 days after the Debtor transfers all or part of its interest in any of the Collateral with the consent of the Secured Party and, in any event, within 15 days after the Secured Party obtains knowledge that all or part of the Debtor's interest in any of the Collateral has been transferred (which may include transfer by operation of law); and
 - 1.3 if any Collateral which is serial numbered goods (as defined in the regulations) but is not described as "vehicle collateral" in the PPSA registration is not or ceases to be inventory;
 - 1.4 registering financing change statements may be desirable:
 - 1.4.1 if the Secured Party transfers all or part of the security interest to another person; or;
 - 1.4.2 if the Secured Party changes its name or address.
2. **Unauthorized Discharges.** If the registration of a financing statement is discharged without authorization or in error, the perfection and priority of the Secured Party's security interest will be adversely affected. These consequences may be mitigated by re-registering the security interest immediately and, in any event, within 30 days after such discharge.
3. **Copies of Financing Change Statements.** Copies of financing change statements in respect of the PPSA Registration must be sent to the Debtor unless the Debtor has waived in writing the right to receive a copy of such financing change statements.