

Title 8
LEGAL OPINIONS

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Title 8
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PRELIMINARY NOTE

1. GENERAL

8.001—Title 8 contains a number of forms of legal opinions for use in connection with various types of lending transactions. Form 8F1 cover loans secured by mortgages of realty. Form 8F2 is a simplified form of legal opinion that might be rendered by in-house counsel. Form 8F3 is an example of a legal opinion that may be given in connection with the issue of notes by a corporation and includes language commonly used when relying on opinions of counsel in jurisdictions other than Ontario. Form 8F4 is an example of a legal opinion to be given in connection with the granting of security over personal property under the *Personal Property Security Act* (Ontario). Form 8F5 provides a number of qualifications that may be appropriate in any enforceability opinion, depending on the parties and the provisions of the documents.

8.002—The Toronto Opinions Group (known as “TOROG”) consists of a group of lawyers (primarily from the Toronto offices of the larger firms) who have substantial experience in negotiating third party opinions and dealing with opinion issues generally. This group has been meeting regularly since 2001, as well as exchanging emails and posting on a shared (but not public) forum. Sub-groups have been formed from time to time to address particular opinion issues and report back to the larger group. Consensus has been reached among the participants with regard to recommended language for limited partnership opinions, choice of law/enforcement of foreign judgment opinions, opinions involving the *Securities Transfer Act* (Ontario), officer’s certificates and qualifying for compliance with the *Personal Information Protection and Electronic Documents Act*.¹

1. See www.slaw.ca/torogmemos for links to these materials. For opinions involving the *Securities Transfer Act* (Ontario), see also Scavone, “Drafting Opinions on the *Securities Transfer Act*, 2006: Issues and Challenges” in *Drafting Opinions for Commercial Transactions* (OBA, October 30, 2007).

8.003—Also, the group reached consensus on a reasonable qualification to use during an Ontario government strike that made it impossible to get status certificates or make PPSA registrations, and an acceptable qualification to deal with the *Limitations Act*, 2002 when it came into force.¹

1. The general consensus in the group is that, since the October 19, 2006 amendments to the *Limitations Act*, 2002, a special qualification for enforceability opinions on “business

agreements" is probably not needed in every case, but may be appropriate in certain cases; for example, if an agreement purports to allow certain claims to be brought within a time period exceeding the ultimate period in the Act. In practice, most Ontario opinions now include the following truncated form of the qualification: "Enforceability of [the Agreement] is subject to the *Limitations Act* (Ontario)."

8.004—The views expressed in TOROG meetings, subcommittee meetings, emails, postings and written materials represent the views of the individuals participating and may not always reflect the views of their firms. Members of the group do not purport to bind their firms.

8.005—TOROG members have made their recommended language freely available on SLAW to other lawyers and firms in the hopes of furthering standardization and fostering co-operative opinion negotiation.

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FORMS AND PRECEDENTS

REAL ESTATE LOANS

Form of Opinion

8F1

LEGAL OPINION OF BORROWER'S COUNSEL RE MORTGAGE OR CHARGE

(For letterhead of Counsel—Real Property Charge—Construction Loan)

Date:

To: *[insert name and address of Bank acting as Lender, as Administrative Agent and/or Collateral Agent, as appropriate]* (the "Bank")

And to: *[insert name and address of the Bank's legal counsel]*

And to: *[Any other parties as appropriate]*

Dear Sirs/Mesdames:

Re: *[insert name of Borrower]* (the "Borrower")

We have acted as Ontario *[title]* counsel to the Borrower in connection with the lands and premises municipally known as *[insert municipal address]*, in the *[insert municipality]*, Province of Ontario, and more particularly described in Schedule "A" attached hereto (the "Lands").¹

All capitalized terms used but not defined herein have the meanings ascribed to them in the Credit Agreement (as hereinafter defined).

I. Examinations

We have examined originals or copies, certified or otherwise identified to our satisfaction, of the following documents (collectively, the "Documents"):

1. *[describe credit agreement]* (the "Credit Agreement");
2. *[describe mortgage]* (the "Charge");
3. *[describe general assignment of rents]* (the "GAR");

4. [describe specific assignment of lease] (the "SAL") in respect of [describe the lease that is the subject matter of the SAL, including the registration particulars thereof] (the "Lease"); and
5. [Add other transaction documents, as appropriate].

The Charge, GAR and SAL are hereinafter collectively referred to as the "Electronic Documents".

In acting as such counsel and in connection with the opinions expressed in this letter, we have also examined the following consents, acknowledgements and assumption agreements given or entered into in connection with the granting of the Electronic Documents (collectively, the "Consents"):²

(a) [List all Consents];

II. Registrations and Searches

In acting as such counsel and in connection with the opinions expressed in this letter, we submitted the Electronic Documents for registration against the interest of the Borrower in and to the Lands in the Land Registry Office, [Land Titles Division / Registry Division] of [insert particulars] (No. [insert particulars]) (the "Land Registry Office") on [insert date of registration]. The Electronic Documents were received for registration by the land registrar for the Land Registry Office as follows:

<u>Electronic Document</u>	<u>Instrument Number</u>
Charge	[insert particulars]
GAR	[insert particulars]
SAL	[insert particulars]

In acting as such counsel and in connection with the opinions expressed in this letter, we have also:

1. conducted a search of title of the Lands³ [and the abutting lands thereto]⁴ as disclosed by the records on public file in the "Land Registry Office" necessary for providing the opinions hereinafter set forth;
2. conducted searches to ascertain the subsistence of such corporate predecessors in title during their respective periods of ownership of the

Lands or parts thereof necessary for providing the opinions hereinafter set forth;⁵

3. conducted searches for executions at the Sheriff's Office for the Land Registry Office against the Borrower;⁶
4. other than those searches set out in the summary of the responses to our off-title searches attached hereto as Schedules "C" (the "Off-Title Search Responses"), we have made no:
 - (a) enquiries with respect to the compliance of the Lands or any improvements thereon with any laws, by-laws, regulations or requirements of any federal, provincial, municipal or other authority and in particular, but without limitation, we have made no enquiries with respect to any zoning, building, planning, environmental, traffic or access requirements, nor have we enquired as to the existence or likelihood of any work orders, notices of compliance or other similar regulatory requirements; and
 - (b) off-title enquiries with respect to the existence of any [*Liens*]⁷ not disclosed by the records on public file in the Land Registry Office, including, without limitation, off-title enquiries as to any realty or other taxes, charges, rates, assessments, local improvement charges or hydro or other utility charges, which may give rise to a lien against the Lands; and
5. conducted such other searches and considered such questions of law as we considered necessary or desirable in connection with the opinions hereinafter expressed.

III. Assumptions and Reliance

In all of our searches and examinations and in connection with the opinions expressed in this letter, we have assumed:

- (i) the genuineness of all signatures, the legal capacity of natural persons executing any document, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as copies, whether facsimile, photostatic, certified or otherwise;
- (ii) the accuracy and completeness of the records maintained by any office of public record, including, without limitation, the Land Registry Office;
- (iii) that each party to any of the Electronic Documents, other than the Borrower, is formed and existing under the laws of its jurisdiction of

formation and has duly authorized, executed and delivered the Electronic Documents to which it is a party and that the Electronic Documents constitute valid and legally binding obligations of such parties, enforceable against each of them in accordance with their terms; and

- (iv) the due authorization, execution, delivery and enforceability of the Electronic Documents *vis-à-vis* the Borrower, which is dealt with in our opinion to you (the "Transaction Opinion") of even date herewith.⁸

IV. Scope of Opinions

We express our opinions herein only with respect to the laws of the Province of Ontario and the federal laws of Canada applicable therein in effect on the date hereof.

V. Opinions

Based and relying upon the foregoing, and subject to the qualifications hereinafter expressed, we are of the opinion that as of [insert date and time of last Electronic Document submitted for registration] (the "Search Time"):

1. The Borrower is the registered owner of and has a good and marketable title in fee simple in and to the Lands free and clear of all charges, mortgages, liens, claims and encumbrances except for the charges, mortgages, liens, claims and encumbrances listed in Schedule "B" attached hereto, the matters disclosed by the Off-Title Search Responses, the Electronic Documents and the matters hereinafter set forth.
2. The Charge is and constitutes in favour of the [Bank / Collateral Agent / Administrative Agent] a good and valid [insert priority of Charge, e.g. first] fixed charge of the interests of the Borrower in and to the Lands free and clear of all charges, mortgages, liens, claims and encumbrances except for the charges, mortgages, liens, claims and encumbrances listed in Schedule "B" attached hereto, the matters disclosed by the Off-Title Search Responses and the matters hereinafter set forth.
3. The GAR is and constitutes in favour of the [Bank / Collateral Agent / Administrative Agent] a general assignment of all of the right, title, benefit and interest of the Borrower in and to the [Leases and Rents] (as defined therein) free and clear of all charges, mortgages, liens, claims and encumbrances except for the charges, mortgages, liens, claims and encumbrances listed in Schedule "B" attached hereto, the Charge, the

matters disclosed by the Off-Title Search Responses and the matters hereinafter set forth.

4. The SAL is and constitutes in favour of the [Bank / Collateral Agent / Administrative Agent] an assignment of all of the right, title, benefit and interest of the Borrower in and to the Lease free and clear of all charges, mortgages, liens, claims and encumbrances except for the charges, mortgages, liens, claims and encumbrances listed in Schedule "B" attached hereto, the Charge, the GAR, the matters disclosed by the Off-Title Search Responses and the matters hereinafter set forth.
5. Save and except for the Consents, no consents, acknowledgements or assumption agreements are required by the terms of any of the specific charges, mortgages, liens, claims and encumbrances described in Part 2 of Schedule "B" attached hereto in connection with the granting and registration of the Electronic Documents or the creation of the charges, mortgages, liens, claims and encumbrances created by the Electronic Documents.

VI. Qualifications

The opinions expressed above are subject to the following qualifications:

- (a) They are subject to such interests, irregularities, easements, rights-of-way, discrepancies, encroachments, projections and other matters as might be disclosed on an up-to-date plan of survey of the Lands. We confirm that in rendering the opinions set out herein, we have reviewed both Parts 1 and 2 of the Surveyor's Real Property report for the Lands dated [date] and prepared by [name of surveyor], Ontario Land Surveyor, [describe survey] and the foregoing disclosed no irregularities, easements, rights-of-way, discrepancies, encroachments, projections or other matters affecting the Borrower's title to the Lands, [save and except as follows]:
 - (i) [describe any irregularities, easements, rights-of-way, discrepancies, encroachments, projections or other matters, if any].
- (b) The opinion as to the ownership of or title to any property, right or interest owned or held by the Borrower or purported to be owned or held by the Borrower is limited to that in paragraph above and, except as set forth in paragraphs V.2, II.3 and II.4 above, we express no opinion as to the creation, priority, perfection or preservation of the security created pursuant to the Electronic Documents, including, without limitation, with respect to any personal property (as such term is defined in the *Personal Property Security Act*

(Ontario) (the "PPSA")) and the application of the PPSA thereto, which matters are addressed in the Transaction Opinion.

- (c) Insofar as the opinions hereinbefore set forth are made as of the Search Time, we confirm for greater certainty that the priority opinion set out in paragraphs V.2, V.3 and V.4 above do not extend to monies advanced or obligations incurred subsequent to the Search Time.
- (d) Pursuant to Section 23(3) of the *Land Registration Reform Act* (Ontario) and Section 78(2) of the *Land Titles Act* (Ontario), the registration of the Electronic Documents in the Land Registry Office is subject to the discretion of the land registrar to reject such registration in the 21-day period following registration. We are not aware of anything that would cause such land registrar to exercise such discretion.

VII. Limitation

This opinion is furnished solely for the benefit of the addressees hereof in connection with the matters contemplated by the Credit Agreement and may not be circulated to, or relied upon by, any other person or used for any other purpose. *[However, the Collateral Agent and the Administrative Agent are authorized to distribute copies of this opinion to any person who from time to time becomes a successor Collateral Agent, Administrative Agent, or a Lender within the meaning of and pursuant to the provisions of the Credit Agreement, each of whom may rely on this opinion in the same manner and to the same extent as if this opinion had been addressed to such person.]*⁹

Yours truly,

[Name of Law Firm]

SCHEDULE "A"

LEGAL DESCRIPTION OF LANDS

[Insert legal description]

SCHEDULE "B"

ENCUMBRANCES

Part 1 - General Encumbrances

1. The subsisting reservations, conditions and qualifications contained in the original Crown grant in respect of the Lands.
2. [Select the applicable qualifications based on whether the lands]

[If the Lands are within the Registry Act, insert the following]:

Any lease to which subsection 70(2) of the *Registry Act* (Ontario) applies.

The rights of any person to the Lands or any part of it through necessity, length of adverse possession, continuous use or improvements, prescription, misdescription or boundaries settled by convention.

[If the Lands are within Land Titles Conversion Qualified ("LTCQ"), insert the following]:

As of [Date], being the date upon which the Lands were converted to Land Titles Conversion Qualified, the Lands are subject to: (i) the limitations, qualifications and reservations contained in subsection 44(1) of the *Land Titles Act* (Ontario), save and except for the provisions of subparagraph 11 (subdivision control), subparagraph 14 (dower rights), provincial succession duties and escheats or forfeiture to the Crown; (ii) the rights of any person who would, but for the *Land Titles Act* (Ontario), be entitled to the Lands or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention; and (iii) any lease to which subsection 70(2) of the *Registry Act* (Ontario) applies. After such date, the Lands are subject to the limitations, qualifications and reservations contained in subsection 44(1) of the *Land Titles Act* (Ontario), save and except for the provisions of subparagraph 11 thereof (subdivision control) and escheats or forfeiture to the Crown.

[If the Lands are within Land Titles Absolute, insert the following]:

The limitations, qualifications and reservations contained in subsection 44(1) of the *Land Titles Act* (Ontario) save and except subparagraph 11 thereof (subdivision control) and escheats or forfeiture to the Crown.

[If the Lands are within Land Titles Absolute Plus, insert the following]:

- The limitations, qualifications and reservations contained in subsection 44(1) of the *Land Titles Act* (Ontario), save and except for the provisions of subparagraph 3 (adverse possession), subparagraph 11 (subdivision control), subparagraph 14 (dower rights), provincial succession duties and escheats or forfeiture to the Crown.
3. Liens for taxes, rates, assessments or governmental or public utility charges or levies not yet due and payable.
 4. Any municipal by-laws or regulations affecting the Lands or their use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
 5. Any and all interests (including liens, charges, adverse claims, security interests or other encumbrances) of any nature whatsoever now or hereafter claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of any province of Canada, or by any other governmental department, agency or authority under or pursuant to any applicable legislation, statute or regulation which in each and every case is not registered in the Land Registry Office.
 6. Any and all licenses, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto including, without limitation, agreements, easements, licences, rights of way and interests in the nature of easements for sidewalks, public ways, sewers, drains, utilities, gas, steam and water mains or electric light and power, or telephone and telegraphic conduits, poles, wires and cables which, in each and every case, are not registered in the Land Registry Office.
 7. The priority of any liens under the *Construction Lien Act* (Ontario) (the "CLA") to the extent of any deficiency in the hold backs required to be made under the CLA or to the extent provided by section 78(3) of the CLA.
 8. Where the registered owner is or a previous owner was a railway company, any interest that may be or may have been created by an instrument deposited in the office of the Secretary of State of Canada or the Registrar General of Canada, as the case may be, under section 81 of the *Railway Act* (Canada), or any predecessor thereof.

9. Any unregistered lease, interest, claim or encumbrance of which the addressee has actual notice.

Part 2 - Specific Encumbrances

[List specific encumbrances]

SCHEDULE "C"

SUMMARY OF OFF-TITLE SEARCH RESPONSES

We conducted the following off-title searches in connection with the Lands, the responses to which are summarized below. The following summaries are subject to the qualifications, limitations, reservations and exceptions set forth in each of the responses, copies of which [have been previously provided to you / are being provided to you contemporaneously herewith].⁹

Realty Taxes: We received a tax certificate dated [Date] from the [Insert] certifying the following:

Assessment Roll No. [Insert]

Legal Description on Tax Roll: [Insert]

Assessed Owner on Tax Roll: [Insert]

[Previous] Year's Taxes: [Insert]

[Current] Year's Taxes: [Insert]

Other Information, if any: [Describe any capping, rebates, credits, pre-authorized payment plans, etc.]

Building: We received a [Describe response, including Date], providing the following information: [Describe status of permits, work orders, investigations, violations, etc., as reported.]

Committee of Adjustment: We received a [Describe response, including Date], providing the following information: [Describe applications and decisions for variances and consents, as reported.]

Zoning:

We received a [Describe response, including Date], providing the following information: [Describe zoning classification as reported.]

Agreement Compliance:

We received a [Describe response, including Date], providing the following information: [For each instrument identified in Part 2 of Schedule "B" for which agreement compliance was sought, describe status, as reported.]

Unregistered Hydro Easements:

Hydro One Networks Inc.:

Our search conducted on Hydro One Network Inc.'s website based on the legal description of [Insert description used in search] revealed [no / the following] unregistered easements in favour of Hydro One Networks Inc.: [Describe, if any, and conclude whether same affect the Lands.]

Municipal Hydro:

By [Describe response, including Date], we were advised that [it claims no rights with respect to unregistered easements.] [it claims the following unregistered easements: Describe]

Electrical Safety Authority ("ESA"):

By [Describe response, including Date], the ESA advised that it has [no / a] record of [active notifications / permits, etc.] on file against the Lands. [If any, describe details, as reported.]

Conservation Authority:

By [Describe response, including Date], the [Describe which Conservation Authority] advised that the Lands [are / are not] located within an area regulated by them. [If regulated, describe details, as reported.]

Fire Department:

We received a [Describe response, including Date], providing the following information: [Describe zoning classification as reported.]

Health Department:

We received a [Describe response, including Date], providing the following information: [Describe zoning classification as reported.]

Crown Patent:

We obtained a copy of the patent from the Crown [Dated], to the patentee, [Describe], conveying [Describe].

Technical Standards & Safety Act ("TSSA"):

By [Describe response, including Date], the TSSA advised that it has a record of [no / an] [active notification / permits, etc.] on file against the Lands. [If any, describe details, as reported.]

Utility Arrears:**Water / Sewer Arrears:**

We received a [Describe response, including Date], providing the following information: [Describe list of accounts and status thereof.]

Hydro Arrears:

We received a [Describe response, including Date], providing the following information: [Describe list of accounts and status thereof.]

Gas Arrears:

We received a [Describe response, including Date], providing the following information: [Describe list of accounts and status thereof.]

1. Use "title" if the firm is not general counsel to the Borrower.
2. See the opinion in paragraph 5 below.
3. When the Lands are within the Registry system, title counsel must determine how far back it is appropriate to search title. In this regard, counsel for the Bank may require title counsel to elaborate on the scope of title counsel's searches.
4. Title counsel must determine whether a *Planning Act* (Ontario) search is required to give the required opinions. In this regard, counsel for the Bank may require title counsel to elaborate on the scope of title counsel's searches.
5. Title counsel must determine how far back it is appropriate to search corporate predecessors. In this regard, counsel for the Bank may require title counsel to elaborate on the scope of title counsel's searches.
6. Title counsel must determine what searches are required (i.e., against the Borrower only, against the Borrower and certain predecessors in title, and, where the Lands are within a condominium, against the condominium corporation). In this regard, counsel for the Bank may require title counsel to elaborate on the scope of title counsel's searches.
7. Use the relevant defined term from the Credit Agreement.

8. This opinion assumes that title counsel is also giving a transaction opinion to the Bank. See Form 8F4 for an example. The two opinions are sometimes combined.
9. Extension of the reliance paragraph is generally a matter for negotiation and will depend, in part, on the nature of the transaction and the expectation of the parties as to securitizations, participations, etc.
10. Not all searches are appropriate in all cases. The foregoing list is not exhaustive, either. The off-title searches conducted will be the subject of negotiation between counsel and their clients; it will depend, in part, on the type of property and the municipality in which the Lands are located.

Corporate Debt

8F2

LEGAL OPINION OF IN-HOUSE COUNSEL¹

(For letterhead of Borrower)

Date:

To: *[insert name and branch address]*

(the "Lender")

And: *[insert name and address of Lender's legal counsel]*

Dear Sirs/Mesdames:

Re: *[insert name and address]*

(the "Borrower")

I am the Vice President and General Counsel of the Borrower. In that capacity, I am familiar with the loan agreement dated *[date]* (the "Loan Agreement") made between the Lender and the Borrower and the related security agreements and other documents listed below. All capitalized terms used but not defined herein have the same meaning as in the Loan Agreement.

Examinations

In connection with this opinion, I have examined originals, or copies certified or otherwise identified to my satisfaction, of and I have seen to the due execution by the Borrower of the following:

- (a) the Loan Agreement;

- (b) the following security agreements and instruments (the "Security Agreements") conferring mortgages, charges, assignments and other forms of security interest (the "Security Interests") more particularly described in the Security Agreements in respect of the Borrower's obligations under the Loan Agreement: *[list]*;
- (c) the following additional agreements, documents and instruments *[list]*;
- (d) the constating documents and the by-laws of the Borrower; and
- (e) such other records or certificates of the Borrower or of public officials as I have considered necessary or appropriate as a basis for the opinions stated in this letter.

The documents listed in paragraphs (a), (b), and (c) above are referred to collectively herein as the "Loan Documents".

Opinions

Based upon and subject to the foregoing and subject to the qualifications set out below, I am of the opinion that:

1. The Borrower is incorporated under the laws of Ontario and has not been dissolved.² The Borrower has the corporate power and authority to own or lease its property in Ontario.
2. The Borrower has the corporate power and authority to borrow in the manner and amount contemplated by the Loan Agreement and to enter into and to perform its obligations under the Loan Documents.
3. The execution and delivery by the Borrower of the Loan Documents and the performance of its obligations thereunder are within its corporate powers, do not contravene its statute of incorporation, certificate and articles of incorporation or by-laws, and have been duly authorized by all necessary corporate action.
4. Neither the execution and delivery by the Borrower of the Loan Documents nor borrowing thereunder or performance of its obligations thereunder will violate any law, rule or regulation having the force of law applicable to the Borrower.
5. No consent, approval or authorization of or other action by any governmental authority or regulatory body is required in connection with the execution, delivery or validity of or enforceability against the Borrower of any of the Loan Documents under the laws of Ontario.
6. Each of the Loan Documents constitutes a valid, legally binding and enforceable obligation of the Borrower.

Qualifications³

The opinions set forth above are subject to the following qualifications:

- (a) My opinions herein may be limited by the application of bankruptcy, insolvency, winding-up, reorganization, arrangement, moratorium or other similar laws (including, without limitation, the *Personal Property Security Act* (Ontario)) relating to or affecting creditors' rights, remedies and obligations generally and the equitable or statutory power of the courts to stay proceedings before them, to stay the execution of judgments and to grant relief against forfeiture.
- (b) My opinions herein are subject to and may be limited by general principles of equity. Without limiting the generality of the foregoing, the availability of any particular remedy and the ability to recover certain costs, damages and expenses are subject to the discretion of the a court in the Province of Ontario. In particular, nothing in this opinion is to be taken as indicating that the remedy of, or any order for, specific performance or the issue of any injunction will be available.

Law

I am qualified to practice law only in the Province of Ontario. Accordingly, this opinion is limited to the laws of the Province of Ontario and the laws of Canada applicable therein.

Limitation

This opinion is furnished for the exclusive use of the persons to whom it is addressed, and may not be disclosed to or relied upon by any other person, except with my prior written consent.

Yours truly,

[Name of Firm]

1. This is a simplified form of opinion and does not include creation or perfection of security interest. See Form 8F4 for those opinions and the appropriate qualifications.
2. This language is used for a corporation incorporated under the *Business Corporations Act* (Ontario). For corporations incorporated under the *Canada Business Corporations Act*, see Form 8F4.
3. Additional qualifications may be appropriate, depending on the terms of the Loan Documents. See Form 8F5.

8F3
LEGAL OPINION OF BORROWER'S COUNSEL
RE ISSUE OF NOTES

(Note Issue—Letterhead of Issuer's Counsel)

Date:

To:

Dear Sirs/Mesdames:

Re: The Issue of [insert description] Notes

We have acted on behalf of [name] (the "Issuer") in connection with the issue and sale by the Issuer of its [describe notes - e.g., unsecured, subordinate, negotiable] (the "Notes").

Examinations

In connection with this transaction, we have examined [the Information Memorandum], the governing legislation of the Issuer, the constating documents and the by-laws of the Issuer and the originals, or copies certified or otherwise identified to our satisfaction, of corporate records of the Issuer, certificates of public officials and of authorized representatives of the Issuer, together with such other records, agreements, instruments and documents as we have considered necessary or advisable as a basis for the opinions stated herein.

Assumptions and Reliance

1. We have assumed the authenticity of all documents submitted to us as originals and the conformity to originals of all copies of documents submitted to us.
2. We have relied, without independent investigation, upon a certificate of an officer of the Issuer with respect to factual matters.
3. For the purposes of our opinion in paragraph 1 as to the existence of the Borrower, we have relied solely on a certificate of status issued pursuant to the *Business Corporations Act* (Ontario) dated [insert date] and assumed that such certificate remains accurate on the date hereof.

4. *[If relying on local counsel opinions]*: With respect to matters in this opinion governed by the laws of any jurisdiction other than Ontario, we have relied on *[list local counsel letters by jurisdiction]* (the "Local Counsel Letters") and our opinion is subject to any assumptions, qualifications and limitations in the Local Counsel Letters.

Law

As we are qualified only in the Province of Ontario, we express no opinion as to the laws of any other jurisdiction.

Opinions

Based upon and subject to the foregoing and subject to the qualifications hereinafter expressed, we are of the opinion that,

1. The Issuer is incorporated under the laws of Ontario and has not been dissolved. The Issuer has the corporate power and authority to issue and sell the Notes.
2. All necessary corporate actions and proceedings have been taken by the Issuer to authorize the execution, issuance and sale of the Notes, and the borrowing and performance by the Issuer of its obligations as contemplated in the Notes.
3. The execution and delivery by the Issuer of the Notes and the borrowing and performance of its obligations thereunder do not contravene its statute of incorporation, certificate and articles of incorporation or by-laws.
4. Each Note, *[in the form of the specimen contained in the Information Memorandum]*, has been duly executed on behalf of the Issuer and, when validated by an authorized issuing agent and delivered for value by or on behalf of the Issuer, will constitute a valid and binding obligation of the Issuer enforceable in accordance with its terms.
5. The Issuer may offer and sell the Notes,
 - (a) *[insert description of permitted investors]*

without filing or registration with any securities commission or other governmental or public body or authority in *[any of those Provinces]*.

[Alternate]: The issue and sale of the Notes is exempt from the prospectus requirements of the *Securities Act* (Ontario) pursuant to National Instrument 45-106 – Prospectus Exemptions.

Qualifications¹

The opinions set forth above are subject to the following qualifications:

- (a) Our opinions herein may be limited by the application of bankruptcy, insolvency, winding-up, reorganization, arrangement, moratorium or other similar laws relating to or affecting creditors' rights, remedies and obligations generally and the equitable or statutory power of the courts to stay proceedings before them, to stay the execution of judgments and to grant relief against forfeiture.
- (b) Our opinions herein are subject to and may be limited by general principles of equity. Without limiting the generality of the foregoing, the availability of any particular remedy and the ability to recover certain costs, damages and expenses are subject to the discretion of a court in the Province of Ontario. In particular, nothing in this opinion is to be taken as indicating that the remedy of, or any order for, specific performance or the issue of any injunction will be available.

Limitation

This opinion is furnished for the exclusive use of the persons to whom it is addressed, and may not be disclosed to or relied upon by any other person, except with my prior written consent.

Yours truly,

[Name of Firm]

1. Insert other appropriate qualifications based on the terms of the Notes. See Form 8F5.

8F4

**LEGAL OPINION OF BORROWER'S COUNSEL
RE SECURITY INTEREST UNDER PPSA**

**[For letterhead of Counsel – personal property security –
secured loan and guarantee]**

Date:

To: *[insert name and address of Bank acting as Lender, as Administrative Agent and Collateral Agent, as appropriate]* (the "Bank")

And to: *[Any other parties as appropriate]*

Dear Sirs/Mesdames:

Re: *[insert name of Borrower]* (the "Borrower") and *[insert name of Guarantor]* (the "Guarantor")

We have acted as *[special]* Ontario counsel to the Borrower, the Guarantor and *[add other parties, if appropriate]* in connection with the Documents (as hereinafter defined) to which they are parties.¹

All capitalized terms used but not defined herein have the meanings ascribed to them in the Credit Agreement.

I. Examinations

We have examined originals or copies, certified or otherwise identified to our satisfaction, of the following documents (collectively, the "Documents"):

1. *[describe credit agreement]* (the "Credit Agreement").
2. *[describe guarantee, if any]* (the "Guarantee").
3. General Security Agreement dated *[insert date]* executed by the Borrower (the "GSA").
4. *[Add other transaction documents, as appropriate]*²

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such public and corporate records, certificates,

