



PROPOSED AMENDMENTS TO THE PERSONAL PROPERTY SECURITY ACT

Better Access to Credit for Businesses with Transferrable Licences

On October 4, 2011, Bill 5, the *Personal Property Security Amendment Act 2011* was introduced in the British Columbia legislature.

The proposed amendments expand the definition of “licence” in the *Personal Property Security Act* (“PPSA”), and clarify that all transferrable licences regarding personal property may be used as collateral to secure loans in British Columbia, and that lenders will be able to register a security interest in the licence in the B.C. Personal Property Registry.

The proposals also include changes to the notice of seizure provisions so that the secured party, in addition to providing notice to the debtor, will be required to provide a copy of the notice of seizure, if the licence was granted under specific legislation, to the minister responsible for the administration of such legislation, and in any other case, to the grantor of the licence.

Other proposed amendments to the PPSA limit the secured party’s right to retain, hold or dispose of collateral that is a licence, pursuant to the terms and conditions of the licence and the terms and conditions that, by law or contract, apply to that licence.

These proposed changes were triggered by the 2008 Supreme Court of Canada decision, *Royal Bank of Canada v. Saulnier*, where the court held that fishing licences were “property” for the purposes of

the federal *Bankruptcy and Insolvency Act* and Nova Scotia’s *Personal Property Security Act*. This decision permitted fishing licences to be pledged as security for bank loans allowing for easier access to loans and facilitating the expansion of fishing businesses in Nova Scotia.

In British Columbia, the law in this area has been unclear. In order to keep in line with the other provinces, these proposed changes should make access to credit easier for business owners with transferrable licences, reduce time and costs for credit transactions, and facilitate expansion of such businesses.

These amendments will apply to and benefit business owners that have retail liquor, commercial fishing, forestry, security business and guide outfitter licences, and other types of transferable licences.

Any licence issuers that do not wish their licences to be subject to the PPSA will be able to include a condition in the licence that it is non-transferable.

At this time it is not known if the Bill will be passed as introduced, or when it might come into force. The Alexander Holburn Banking and Lending Practice Group will be monitoring developments.

For more information, please contact [Mandy Cheema](mailto:mcheema@ahbl.ca) at 604-484-1730 or mcheema@ahbl.ca.