

Reforming Personal Property Security Law

By: Tamara Buckwold and Roderick Wood

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Every Canadian province and territory, except for Quebec, has enacted a Personal Property Security Act. Although there are minor variations across jurisdictions, these statutes are substantially uniform. Alberta's *Personal Property Security Act*, [RSA 2000, c P-7](#) (PPSA) originally came into force in [October 1990](#). Its enactment transformed secured transactions law in Alberta by sweeping away many of the restrictions and limitations that impeded the use of secured credit. It replaced the piecemeal approach that formerly governed with a comprehensive and rational system that fostered certainty, transparency and flexibility. The success of the legislation is confirmed by the transplantation of the Canadian model into other jurisdictions such as New Zealand and Australia.

Although the PPSA produced a significant improvement in the law, experience with the legislation over the course of the last three decades has revealed several instances where improvements or clarifications are desirable. In some cases, the need for reform is driven by technological advances. When the PPSA was first enacted, electronic banking and electronic commerce were in their infancy. In other cases, judicial decisions have revealed ambiguities in the legislation that have produced uncertainty. Further, the statute simply did not anticipate the kinds of controversies that would be litigated in the future, and therefore did not provide rules for the resolution of these types of disputes.

The Canadian Conference on Personal Property Security Law (CCPPSL) is an organization of provincial and territorial government officials and academics. It has played a leading role in the design of the PPSA model that is used in Alberta. In 2017 the CCPPSL issued *Proposals for Changes to the Personal Property Security Acts*, [CanLIIDocs 3526](#). These proposals have now been fully implemented in [Saskatchewan](#) and partially implemented in [British Columbia](#) and [Ontario](#). Other provinces will likely be guided by the CCPPSL Report and it is timely for Alberta to update its PPSA.

In *Personal Property Security Law*, [Report for Discussion #35](#), the Alberta Law Reform Institute (ALRI) reviews the changes proposed by the CCPPSL and their adoption in Saskatchewan, British Columbia and Ontario. ALRI recommends that the CCPPSL changes be adopted in Alberta with slight modification as necessary. In addition, ALRI recommends that the parallel provisions in the *Civil Enforcement Act*, [RSA 2000, c C-15](#) be amended alongside the PPSA.

ALRI is currently consulting on the proposed changes and welcomes feedback to support, improve or oppose the recommendations. This is a technical area of the law and will benefit from the practical experience and expertise of lawyers involved in secured financing.

The major areas of reform are as follows:

- The rules that govern negotiable property are rationalized and expanded to address electronic transfer of funds.
- The concept of electronic chattel paper is introduced to facilitate paperless transactions where this form of property is sold or used as collateral.
- The rules that govern purchase-money security interests are clarified and expanded to provide greater guidance on this crucial form of financing. The changes enhance the ability of secured parties to claim purchase-money security interests in inventory, and preserve purchase-money security interest status in a refinancing.
- The rules governing the transfer of collateral to buyers and others are rationalized and improved.
- Secured financing is facilitated through amendments that clarify that valuable assets such as licences may be used as collateral, that eliminate red tape requirements that unnecessarily increase the administrative costs of secured finance, and that improve the ability of secured parties to take steps to protect their interest.
- The rights of account debtors asserting set-off against secured parties are clarified and strengthened.
- A number of uncertainties in the rules that determine priorities between secured parties and other competing claimants are clarified so as to produce greater certainty and predictability.
- The choice of law rules are revised, and the method for determining the location of the debtor is changed so as to align with the new approach adopted in British Columbia, Saskatchewan and Ontario. This produces greater certainty in the law and avoids the deleterious effects of forum shopping that will inevitably arise if provinces and territories employ different choice of law rules.
- The registration provisions are improved to better achieve the underlying goals of the registry system, namely the publication of information in a manner that will allow effective risk-assessment by affected parties.

Consultation on the report is open until 1 March 2021. You can send comments to ALRI at the address below:

Alberta Law Reform Institute
402 Law Centre
University of Alberta
Edmonton, AB T6G 2H5
Phone: (780) 492-5291
E-mail: lawreform@ualberta.ca
Website: www.alri.ualberta.ca

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