

Licences as Personal Property Under Amendments to the British Columbia PPSA

Posted on January 3, 2012 by [Joshua Lam](#)

The British Columbia (“BC”) legislature has introduced amendments to expressly identify transferable licences as personal property under the BC Personal Property Security Act (the “BC PPSA”). These amendments (the “Amendments”) received Royal Assent on November 24, 2011 and are expected to come into force by regulation in 2012. As a result of the Amendments, the BC PPSA will expressly permit the creation of security interests in transferable licences. In BC, this will facilitate the provision of credit on the security of licences provided as collateral.

The Amendments will expand the definition of “licence” under the BC PPSA to include any transferrable grant of rights entitling the holder of such rights to deal with or acquire personal property or provide services. The expanded definition is intended to capture transferable licences generally, including liquor, fishing and forestry licences, whether issued under a regulatory regime or by private contract.

By expanding the definition of “licences”, the Amendments will provide outcomes similar to the 2008 Supreme Court of Canada decision in *Saulnier v. Royal Bank of Canada* (“Saulnier”), in which a licence to participate in the fishery coupled with a proprietary interest in the fish harvested thereunder was ruled to be a “bundle of rights” sufficient to fit within the extended definitions of “personal property” in the Nova Scotia Personal Property Security Act.

The Personal Property Security Acts (“PPSAs”) of most other Canadian provinces and territories (including Ontario) do not have a definition for the term, “licence”; debtors and creditors in those jurisdictions must rely on the applicability of the factors in *Saulnier* to their particular circumstances in respect of any licences purported to be provided as collateral. The PPSAs of Saskatchewan, the Northwest Territories and Nunavut have definitions of the term, “licence” that are similar to that in the Amendments.

The Amendments will also provide that a licence provided as collateral may be disposed of, retained or held only in accordance with the terms and conditions of such licence and the terms and conditions applicable by law or contract to such licence. The Amendments will require any secured party who wishes to seize a licence on default to provide notice of such seizure to the relevant minister if the licence was granted pursuant to legislation or, in any other case, to the grantor of the licence; notice of seizure to the debtor will continue to be required, as is the case under the current BC PPSA.

It will be interesting to see if the inclusion of the defined term, “licence” in the PPSAs of BC, the Northwest Territories, Nunavut and Saskatchewan leads other Canadian jurisdictions to enact similar legislation.