

**CANADIAN
PERSONAL PROPERTY
SECURITY LAW**

Bruce MacDougall



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Canadian Personal Property Security Law

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**CANADIAN
PERSONAL PROPERTY
SECURITY LAW**

for my great friend and teacher, Dr. Knut Heister

ABOUT THE AUTHOR

Bruce MacDougall is Professor of Law at the University of British Columbia. He has been teaching Contracts and Commercial Law for over two decades. He has taught these courses both in the common law jurisdictions of Canada and in Quebec, and has also taught them in the United States, England and Thailand. A Rhodes Scholar, and formerly a lawyer in both Ontario and British Columbia, he has been actively involved in continuing legal education programs and has received the teaching excellence award at the University of British Columbia. He was also Law Clerk to Justice Le Dain at the Supreme Court of Canada and has been involved in law reform projects on commercial law in British Columbia. He serves on the Judicial Council of the Tsawwassen First Nation.

PREFACE

Personal property secured transactions is not an “easy” area of the law whatever the statutory regime that regulates it. The nature of personal property and the multiple ways in which it can be used in a credit context make it inherently intricate. The main regime that governs these matters in common law jurisdictions in Canada, the *Personal Property Security Act* (“PPSA”), is not an overly long statute but it contains a multitude of terms and rules, exceptions and qualifications, ambiguities and complexities. The terms or definitions used in the statute can seem particularly intimidating on first introduction. Alongside this regime has recently come, in most jurisdictions, the *Securities Transfer Act* that supplements the PPSA in its regulation of one very important type of personal property, namely, investment property. This new statute is at least as intricate as the PPSA. It has necessitated major changes in the PPSA itself, resulting in new layers of rules, complexities, and so on. Atop this perhaps forbidding situation is the jurisdictional tangle that can result from secured transactions being an area of joint federal and provincial competency. The main federal statute, the *Bank Act*, represents a rather archaic regulatory system using quite different concepts, terms and approaches than those in the PPSA.

So, given this less-than-rosy picture, why deal with secured transactions at all?

First, of course, it is vital to modern economic life. Recent global economic difficulties have demonstrated (again) the importance of efficient and effective credit regimes, and secured transactions law is at the heart of this. This is, not surprisingly, an important area of practice.

Second, however, secured transactions law is intellectually challenging, interesting and (ultimately) satisfying. In over two decades of teaching and consulting in this area, I never fail to learn something new. My students and fellow practitioners never cease to come up with new “posers” that require a rethinking of a given matter. This book is my contribution to addressing both the complexity and the logic of this area of law for both those who practice and those who learn, if there is such a distinction.

The book sets out a logical form for treating this law and is structurally based on a successful earlier version that covered only British Columbia law. Various charts and tables draw together in brief form many of the main topics in secured transactions. The charts especially are intended to demonstrate a logic and structure to what are otherwise quite complicated matters. There is also a full treatment of the common law of personal property in which personal property secured transactions law is rooted.

Often the PPSA regime is treated as a self-contained island (or even fortress) quite divorced from the common law personal property law that generated it. The common law of personal property, however, forms an important residual source of rules and principles for the PPSA. Most concepts in the statute are in fact derived from the common law or equity, and they can often be better understood against this traditional background.

The book is designed to be easy to use. Users of the earlier British Columbia version found the number of headings useful and most of that structure has been kept. There is much cross-referencing to places where further discussion of certain topics can be found elsewhere in the book. To avoid too much need to flip back and forth within the book, however, some repetition of material exists.

The book sets out a comprehensive treatment of secured transactions law in the common law Canadian jurisdictions, including references to all case law of any significance. There have been a number of developments in recent years at senior courts in Canada and those developments are discussed here. Aside from the changes brought about by the adoption of the *Securities Transfer Acts*, there have been few legislative changes of late, apart from a change to some priorities issues in the *Bank Act*. Some legislative changes are doubtless needed, particularly to reflect the more electronic way in which commercial life is now conducted, but the fair degree of standardization in legislation across jurisdictions should be preserved if at all possible.

I want to thank all, including many students, who have sent me comments and questions over the years. I never cease to be amazed at the perplexing issues the personal property security regime generates. I particularly want to thank Mike Todd at Gowlings in Vancouver for his suggestions and for his enthusiasm for this subject. I also thank the staff at the University of British Columbia law library for their generous and unfailing assistance.

Bruce MacDougall
September 2014

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