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### **SECURED TRANSACTIONS IN PERSONAL PROPERTY IN CANADA (3rd EDITION)**

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#### **What's New in this Update:**

This six-volume work provides a complete practitioner's manual to the personal property security regimes of Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and the Atlantic provinces. As a textbook, it contains detailed analysis of the finer and more complex academic aspects of personal property security law. As a handbook, it sets out the mechanics for registering and searching documents under the various provincial statutes. Finally, as a law reporter, it features the full text of all relevant case law together with expertly prepared headnotes. In addition, the legislation is regularly updated.

This release features updates to commentary in Chapter 3 (Scope), 9 (Secured Party's Rights), 15 (Secured Party Remedies), Chapter 17 (Registration — Alberta ), updates to Personal Property Security Regulation, Alta. Reg. 95/2001, and adds three cases to Appendix M.

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## Highlights:

- **Scope — Included Transactions — Security Interests Within the Scope — Types of Security Interests — s. 2(a) — Security Interests Created by Assignment, Lease or Consignment — True Leases** Whether a lease constitutes a true lease can also be important in determining whether property is included in a receivership. For instance, in *Royal Bank of Canada v. Faissal Mouhamad Professional Corporation*, the Alberta Court of King’s Bench had to decide whether a lease was a true lease or financing lease because if it was the former the property would not form part of the receivership proceedings. In this case, RBC had a registered security interest in all present and after acquired property of two related corporations. Six years later, an individual with connections to the two corporations entered into sale and security agreements with Patterson Dental Canada Inc. (“Patterson”) to purchase equipment. The agreements gave Patterson a registered security interest in the equipment until the equipment was paid for in full. The individual leased the equipment to 52 Dental Corp. (“52 Dental”). Shortly thereafter, RBC amended its registration to add the individual and 52 Dental as additional debtors. Patterson amended its registration to add 52 Dental as a debtor when it came aware of the lease between the individual and 52 Dental some months later. When the corporations and 52 Dental later became insolvent, RBC argued that the lease between the individual and 52 Dental was a financing lease and the equipment was the property of 52 Dental, not the individual. The Court disagreed, holding that the lease was a true lease as it did not contain a purchase price or purchase option date, specified that the lessee would return the equipment to the lessor upon termination of the lease, and there were no provisions in the lease that conveyed equity. The Court concluded that 52 Dental did not own equipment and the equipment did not form part of the receivership: *Royal Bank of Canada v. Faissal Mouhamad Professional Corporation*, 2024 ABKB 460, 18 P.P.S.A.C. (4th) 71 (Alta. K.B.).
- **Secured Party’s Rights — Rights and Duties After Default — Secured Party’s Rights on Default — The Right to Possession: s. 62(a)—Seizure by Sheriff or Civil Enforcement Agency Only** — In *Grisdale v. 816-838 11th Avenue SW*, the Alberta Court of King’s Bench considered whether the Applicants’ use of s. 62 of the PPSA was valid given their failure to engage a civil enforcement agency for the seizure of the secured equipment. The Applicants sought to seize and sell equipment secured under a General Security Agreement after purchasing the secured debt. They provided notice of their intent to claim the equipment as partial satisfaction of the debt, but before they could remove it, the Respondent — the landlord of the business — seized the equipment due to overdue rent. The central issue was the validity of the Applicants’ use of s. 62 of the PPSA, R.S.A. 2000, c. P-7 with the Respondent arguing that their notice was

invalid because it claimed partial satisfaction and lacked involvement from a civil enforcement agency. The Court held that under the PPSA, creditors must engage a civil enforcement agency when exercising their rights, as outlined in part 2 of the *Civil Enforcement Act*, R.S.A. 2000, c. C-15. Citing *CriticalControl Solutions Corp. v. 954470 Alberta Ltd.*, the Court determined that the Applicants' attempt to seize the equipment was invalid, affirming the landlord's right to do so. The application was thus dismissed.

- **Secured Party Remedies — Remedies Under the Act — Appointment of Receivers — Introduction** — In *Canamax Holding v. Nonghao Freight Inc.*, the Federal Court applied the tripartite test from *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994] 1 S.C.R. 311, 54 C.P.R. (3d) 114 (S.C.C.) when considering a motion for an interlocutory injunction. The Court found that a serious issue was present to satisfy the first component of the test. To establish a serious issue, the Applicant has the burden of showing that the matter is not destined to fail, or that it is “neither vexatious nor frivolous”. To establish the second part of the test, the Applicants argued that they would suffer irreparable harm in three possible ways: (i) the vehicle is rare and valuable, (ii) the loss of this vehicle, and subsequent inability to deliver the vehicle to the purchaser will cause reputational damage to the business, or (iii) dismissing the motion would condone the illegal activity that has taken place: *Canamax Holding v. Nonghao Freight Inc.*, 2022 FC 2416, 18 P.P.S.A.C. (4th)71 (F.C.).

## ProView Developments

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