

Province of B.C. Amends Personal Property Security Act
To Allow Encumbrances Against Fishing Licences

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In the Pearse/McRae Report released in 2004, it was noted that historically the fishing industry has suffered from poor access to financial resources and services. This was in part because of the fact that the common law did not consider licences to be property. As a result, lending institutions were very reluctant to accept licences as collateral. Although the Pearse/McRae Report suggested a remedy for this situation in 2004 in the form of a formal licence registry to be maintained by the Department of Fisheries and Oceans, the problem was not remedied until 2008 when the Supreme Court of Canada released the decision of *Saulnier v. Royal Bank of Canada*, 2008 SCC 58. This case held that although a fishing licence was not property at common law, for the purpose of the expanded definitions in both the *Bankruptcy and Insolvency Act* and the Nova Scotia *Personal Property Security Act*, a fishing licence was considered property and could be encumbered.

This decision was good news in Nova Scotia, but not such good news in British Columbia because the *B.C. Personal Property Security Act* ("PPSA") has a restrictive definition of the term "licence" that limits the application of the Act to licences to harvest timber and Christmas trees. In response, a subcommittee of the maritime section of the B.C. Canadian Bar Association consisting of the author, Brad Caldwell, and Jack Buchan took the initiative of writing to the Ministry of Finance in June of 2009 and seeking an amendment to the Act. The good news for British Columbia is that on November 22, 2011 the Province of B.C. passed Bill 5, which expands the definition of "licence" in the PPSA so as to allow for the Act to apply to other types of licences, including fishing licences. It is also good news that as a consequence of the *Saulnier* decision the Department of Fisheries has instituted a notice and acknowledgement system whereby recognized financial institutions lending money to a fish harvester can register a notice with DFO. The details of the system are available at http://www.dfo-mpo.gc.ca/fm-gp/initiatives/piifcaf-pifpcca/notice_rfi_avis_ifr-eng.htm.

The amendments to the PPSA are not yet in force. The Government is allowing approximately 6 months for affected parties to decide whether they need to take any action in light of the change. The amendments will be proclaimed by regulation.

By Brad Caldwell (lawyer)