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Publisher's Note

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Richard McLaren

Secured Transactions in Personal Property in Canada (3rd Edition)

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. Releases are alternately updated by case law and commentary. In addition, the legislation is regularly updated.

This release adds three new cases to the Case Law section in Volume 1. In addition, this release includes an update to the commentary in Chapters 5 (Perfection) and 7 (Priority).

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Highlights

- **Perfection: Perfection by Possession** — This case involved a dispute between an applicant and several respondents over a truck and its accompanying equipment. The applicant had a registered security interest in the goods at all relevant times and a valid and enforceable option to purchase the truck back. This option was affirmed twice by the Saskatchewan Court of Queen’s Bench. The first respondent, with whom the applicant had formed the governing contract, had ceased operations. The applicant was unable to locate the goods for several years, only to find that they were in the possession of the second respondent. The second respondent refused the applicant’s request to purchase the truck and instead sold it to the third respondent. Upon a supplemental application, the court held that the second respondent did not have a security interest or a valid claim of lien in the goods; at best, it had a distraint on 2529’s goods for unpaid rent as landlord. The second respondent had not followed the proper procedure for selling distrained goods, while the applicant’s registered security interest had remained in force for the duration of the ordeal. The court ordered the third respondent to deliver the goods to the applicant, and the applicant to pay the fair market value of the goods, fixed by the court in a previous order, into court on a partially indemnified basis: *Hydrodig Canada Inc. v. 101202529 Saskatchewan Ltd.*, 2019 CarswellSask 257, 10 P.P.S.A.C. 190.
- **Priority: Priorities Between Secured Parties and Other Claimants — Lien Claimants — Liens Generally — Possession** — The perfection of security interests by possession prior to the date of bankruptcy prevented transfers of property from being voidable transactions that could be recovered by the bankruptcy trustee. The Alberta Court of Queen’s Bench concluded that the two vehicle transfers made to family members, within the same year that bankruptcy was declared, were not voidable transactions because the security interest created under the PPSA allowed for an exemption under s. 95(2.1) of the *Bankruptcy and Insolvency Act*. The court found that the family members’ security interest in the vehicles was created by the bankrupt’s pledge of collateral and that the transfers were perfected by possession and voluntary transfer by the bankrupt. Despite the loans having been made to the company and not the bankrupt, the court held that a line could not be drawn between the company and the bankrupt given the bankrupt’s personal liability for wages and taxes owed to third

parties. Moreover, the person who owes the payment or performance obligation does not need to be the same as the debtor: *Pereira (Re)*, 2019 CarswellAlta 1667, 10 P.P.S.A.C. 201.

