Your client, a U.S.-based financial institution, is financing a company with offices and assets across the U.S. border, in the province of Quebec. Quebec is the only Canadian province under which secured transactions law is regulated by the Civil Code of Quebec (“CCQ”).

Your immediate reaction is to engage Quebec counsel to assist with structuring the Quebec security package. The CCQ may be unfamiliar territory...and, instinctively, seem quite “foreign.” A closer look however may prove that despite the differences between Article 9 of the Uniform Commercial Code (“UCC”) concepts and formalities and those of the CCQ, the functionality is essentially the same: ensuring the “security” of your interest in the financing transaction. Our goal is to “demystify” Quebec secured transactions concepts and demonstrate how they are not so foreign after all. A word of caution before venturing into Quebec secured transactions territory: this article does not purport to cover all the intricacies of the Quebec secured transactions regime, but to highlight some of the most-commonly encountered features in typical cross-border transactions involving Quebec assets or Quebec debtors.

This article is the first of a two part series. This first part will canvass the security vehicles most commonly used in Quebec. The second part will present particular secured transactions issues and how they are dealt with in the Quebec context.

In contrast to Article 9 of the UCC and the Personal Property Security Acts of the Canadian provinces, in principle, Quebec does not use a functionalist approach to characterize rights in personal property. In other words, the CCQ does not necessarily apply to any transaction which is intended to create a security interest in personal property. Hence, in principle, sale agreements (e.g. conditional sales contracts) and leases (whether “true leases” or “financing leases,” as such terms are understood under the UCC) are not treated as “security” under the CCQ. Also, it is notable that “collateral assignments” (assignments of property for the purpose of securing the performance of an obligation) are not valid under the CCQ.

I. Quebec Security Vehicles

Let’s take a closer look at the ways creditors can obtain security interests in the province of Quebec. The most common structures are hypothecs and “title retention” devices. A hypothec creates a “real right” in the secured collateral. At first, the term “hypothec” may seem and sound quite exotic...However, a closer look at its origin reveals yet another reality. The term is actually of Greek origin referring to the “mortgage of property in which the debtor was allowed to keep, but not alienate, the property.” In contrast, title retention devices are title/ownership-based rights. Leases, leasing contracts and installment sales (conditional sale contracts) are title retention devices.

A. Hypothecs

Hypothecs are the conceptual and functional equivalent of security interests. Unlike Article 9 of the UCC, the CCQ does not provide for specific collateral categories. Hypothecs can charge a “universality” or specific personal (movable) property, corporeal (tangible) or incorporeal (intangible) and immovable (real) property. An “immovable hypothec” refers to a “mortgage.” Hypothecs can be without delivery (non-possessory) or with delivery (possessory/pledge/control).

Briefly, under Quebec conflict of laws principles, if the debtor financed is “domiciled” in Quebec or has assets located in Quebec, Quebec law would govern the creation and perfection of the security. How are hypothecs created and perfected?
(i) Creation

Attachment
The CCQ does not speak of “attachment” per se. However the elements of attachment are found in the CCQ:

- the debtor must have rights in the charged property (the CCQ refers to “title” in the collateral i.e. “right of ownership,” which in turn includes the right to dispose of the property); hence, a hypothec can charge “after-acquired property,” but the hypothec “attaches” when the grantor acquires “title” to the collateral;
- the debtor must agree to grant the hypothec to the secured party; an “act constituting a hypothec” (i.e. written security agreement) is required to create a hypothec without delivery, otherwise the agreement is null. In principle, pledges are created by physical delivery of the property or title to the creditor; however written agreements are customary for evidentiary purposes. In January 2009, “control” was also introduced in the CCQ as a method of creating and perfecting security against securities and security entitlements.\textsuperscript{xiv}

Security Agreement
As is the case under Article 9 of the UCC, the security agreement must contain a “sufficient” description of the personal property collateral. In contrast to Article 9 of the UCC, the “sufficiency” is not defined. The CCQ indicates that if the hypothec charges a universality, the agreement must indicate the “nature” of the universality.\textsuperscript{xv} This can be done using a generic description (i.e. the universality of the grantor’s claims) or referring to a category of assets bearing common characteristics (i.e. the universality of the grantor’s equipment).\textsuperscript{xvi} However, an all present and after-acquired personal property grant clause (i.e. the universality of the grantor’s present and after-acquired movable property) is also considered a “sufficient” description – the criteria being that third parties are able to easily determine the charged property.

The security agreement charging personal property can also charge real property. In that case, the agreement must specifically designate the hypothecated real property,\textsuperscript{xvii} be notarized and bear a Quebec notary’s minute number. A hypothec which secures the payment of bonds or other titles of indebtedness in favour of the person holding the power of attorney of the creditors (known as “fondé de pouvoir,” i.e. agent) must also be in a notarial form. This type of hypothec is often used in syndicated transactions. Further discussion of this structure will be made in Part II of this series.

In contrast to UCC and PPSA security agreements, the security agreement creating the hypothec must contain explicit charging language such as “the debtor hereby hypothecates.” The debtor’s intention to create a hypothec is not sufficient. Furthermore, the agreement must indicate the specific sum in Canadian dollars for which it is granted, as well as the interest rate at which the hypothec amount bears interest. If the interest rate is not included, the amount will not bear interest.

Typically, the hypothec amount represents the amount of indebtedness (i.e. total credit facility commitment) plus an additional “bump-up” of 20-25% to cover additional enforcement expenses. If the amount of the indebtedness is in a currency other than Canadian dollars, the foreign exchange rates are factored in to establish the hypothec amount in Canadian dollars. In practice, some lenders require a hypothec amount which is much higher than (or two times) the indebtedness amount in view of possible future increases in the credit facilities.

This is to the lender’s advantage since a hypothec can only charge the collateral for the maximum amount set as the hypothec amount in the security agreement. If the credit facility is subsequently amended and the initial amount is increased beyond such amount, a new security agreement would have to be entered into and published by filing (see “(ii) Publication, Methods” below for
more detail). If the initial security agreement was amended to increase the hypothec amount, once filed, the additional hypothec would only rank from the date of its filing.

(ii) Publications

Methods
A valid hypothec requires publication (perfection) to render it effective against third parties (including a trustee in bankruptcy). The various methods of publication are very similar to those found under Article 9 of the UCC.

Filing is the most common form of publication for all collateral. Publication with “physical delivery” (pledge) is another method of publication and has been typically used for certificated securities collateral. However, with the recent integration in the CCQ (as of January 2009) of publication through control for investment property (which was modeled on Article 8 of the UCC), control is preferred since it grants better rights to the secured party vis-à-vis third parties than filing. In contrast to the UCC and as previously mentioned, publication by control is not available for security in deposit accounts – this also being the case under the PPSA. Hypothecs on such collateral are published by filing.

Security Continuation after Collateral Disposition
As is the case under Article 9 of the UCC, the CCQ also provides for the secured party’s rights on disposition of the collateral. In the case of a transfer (i.e. sale) of the charged collateral to a buyer in the ordinary course of business, the hypothec granted on a universality of property may subsist and extend to any property of the same nature replacing the property “alienated” (transferred) in the ordinary course of business (e.g. sold inventory replaced by new inventory). Accordingly, the buyer takes the property “free” of the hypothec. If the hypothec was granted on specific collateral (not a universality), it may extend to property that replaces it, if a notice identifying the new property is registered. In both cases, if no property replaces the transferred collateral, the hypothec covers the proceeds generated from the transfer, as long as they can be identified.

If the transfer of the charged property occurs outside the “ordinary course of business” (e.g. grantor is in the business of selling raw materials and a hypothec is granted to creditor on a specific piece of equipment; subsequently grantor sells its business to third party; creditor wants to preserve the hypothec on the equipment), then the creditor who wants to preserve the hypothec on the collateral “sold” out of the ordinary course of business and not registered in a file opened under the description of the property must register a notice of “preservation” of the hypothec on such property within 15 days after the creditor is informed in writing of the transfer of the property and the name of the purchaser, or after the creditor consents in writing to the transfer. The creditor must transmit a copy of the notice to the purchaser within the same time containing the name of the debtor or grantor and of the purchaser and a description of the property.

Filing Procedure and Formalities
Briefly, filings of movable hypothecs are made at the Register of Personal and Movable Real Rights (“RPMRR”) and are valid for 10 years after the date of their registration, unless renewed. The document filed (electronically or by mail) is called an application for registration. It identifies the debtor and the creditor, describes the charged property, indicates the date and place of signature of the act constituting the hypothec and the hypothec amount. An important issue that arises in many cross-border transactions is the timing of filing. Many creditors need to know that their security is in place, meaning that it is created and filed, prior to funding. To accommodate this concern, UCC and PPSA financing statements are usually filed even before the actual security agreement is executed. Pre-filing is not possible in Quebec: the RPMRR forms require the execution date of the security agreement. Bearing this in mind and the delays in obtaining filing confirmation (it is usually available within a few hours, but can take up to 24 hours, depending on the number of filings that are being processed by the RPMRR on any given day),
lenders should consider whether the filing of a Quebec hypothec is a condition precedent to funding based on the Quebec collateral value.xxv

Filings of hypothecs on real property are made at the land register in the registration division where the mortgaged lot is located and are valid for 30 years after the date of their registration, unless renewed. Registration delays at the land register tend to be a little longer than processing of RPMRR applications (it may take a few days to obtain evidence of filing depending on the registration division), so lenders must once again assess the importance of the collateral in the overall transaction. If the Quebec real property is a significant component of the collateral package, the signing of the deed and filing should occur before funding. If this is not feasible, lenders should consider obtaining title insurance with gap coverage for intervening registrations during the registration “gap” (time between the filing of the documents and the actual registration, which as we noted can be a few days).xxvi

B. Title Retention Devices

(i) Creation

Terminology
Leasing contracts, leases and installment sales (conditional sales) are so-called “title devices.” In 2004, the Supreme Court of Canada held that these transactions are not “security.”xxvii This ruling opened the door to a looming uncertainty over the application to title devices of CCQ articles relating to hypothecs, namely security conflict of law principlesxxviii and the extension of security to proceeds, which is discussed below.

Briefly, the CCQ defines each of these agreements as follows:

Leasing Contract: “[...] contract by which a person, the lessor, puts movable property at the disposal of another person, the lessee, for a fixed term and in return for payment. The lessor acquires the property that is the subject of the leasing from a third person, at the demand and in accordance with the instructions of the lessee. Leasing may be entered into for business purposes only.”xxix

Lease: “[...] contract by which a person, the lessor, undertakes to provide another person, the lessee, in return for a rent, with the enjoyment of a movable or immovable property for a certain time. The term of a lease is fixed or indeterminate.”xxx

Unlike the UCC and the PPSA, the CCQ does not distinguish between “true leases” and “financing leases.”

Instalment Sale (conditional sale agreement): “[...] a term sale by which the seller reserves ownership of the property until full payment of the sale price.”xxx

Determining the nature of the contract is an important step in ensuring that registration is effected in the requisite delays, if and where applicable.

(ii) Publication

As already mentioned, given the uncertainty in applying security conflicts of law rules to title devices, if the contract you are examining has any relation to the province of Quebec (e.g. Quebec is lessee’s/buyer’s domicile, contract is governed by Quebec law, property leased/purchased is located in Quebec), then it is prudent to make the relevant filing at the RPMRR. What are the “relevant” filings for title devices?
Filing Formalities

The lessor’s “rights of ownership” under a leasing contract must be registered at the RPMRR to be effective against third parties. Such rights become effective against third parties from the date of the leasing contract provided they are published within 15 days.

The rights resulting from a lease may be published. However, leases with a term of more than 1 year in respect of a road vehicle (e.g. personal vehicle, motorcycle, aircraft) or other movable property determined by regulation, or of any movable property required for the service or operation of an enterprise, subject, in the latter case, to regulatory exclusions, must be registered. The rights resulting from such leases become effective against third parties from the date of the lease provided they are published within 15 days.

Similar to leases, the instalment seller’s ownership rights (known as “reservation of ownership” rights for publication purposes) in respect of a road vehicle or other movable property determined by regulation, or in respect of any movable property acquired for the service or operation of an enterprise, has effect against third persons only if it has been published. Such effect operates from the date of the sale provided the reservation of ownership is published within 15 days.

In all lease, leasing contract or instalment sale filings, the assignment (transfer) of rights under such contracts (e.g. in scenarios where a third party is financing the transaction entered into between the lessor or seller and the lessee or buyer) is also registrable. Such filing is in fact advisable if the assignee wants to make its rights effective against third parties, which includes the buyer. In fact, in most cases, the reservation of ownership right and its assignment to a financier are provided in the same contract and are registered simultaneously.

In transactions where “master” agreements are used to govern the sale, lease (of a term of more than one year) or leasing contract between two businesses of a “universality of movable property of the same kind,” the CCQ provides that a single (one-time) registration is available to protect the relevant rights of the lessor or seller. No specific delay is set out in the CCQ for this type of registration. This registration preserves the rights for a period of 10 years; the period may be extended if the registration is renewed.

Registration of rights under a master agreement preserves all the rights of the seller/lessor or transferee (e.g. financier) in the sold or leased property and in the universality of movable property of the same kind that may be involved in sales/leases or transfers in the ordinary course of business between two enterprises following the registration. On the basis of the “buyer in the ordinary course of business” rule, such reservations, rights or transfers do not have effect against a third person who acquires any such property in the ordinary course of business of the seller's enterprise.

Consequences of No Filing or Late Filing

Lessors and sellers (and their assignees) need to be “awake” to the 15 day delay provided to register the rights relating to title devices. As we will further discuss below, where filing of rights is required, failure to file or late filings (outside the 15 day window) can have a negative impact on the lessor or the seller. Even where filing is not specifically required, filing is recommended in order to make it harder for a third party to assert that it is a “buyer in good faith.” Under the CCQ, if tangible property is sold in the ordinary course of business (e.g. an instalment sale buyer sells the property to a third party), the true owner (initial seller who sold property to buyer) must reimburse the third party-buyer in good faith for the price it paid. In contrast to the PPSA and UCC, the CCQ creates a presumption of knowledge of any right that is registered in respect of property that is being acquired by a person. Furthermore, the CCQ prevents a person who does not consult the appropriate register from invoking an argument of “good faith” to rebut the presumption.

If not registered where mandatory, rights under a lease or a leasing contract are not effective against third parties. This means that a lessor cannot claim the leased property in the hands of a
third party. Curiously, the Supreme Court of Canada has decided that a trustee in the lessee’s bankruptcy is not a “third party,” enabling the lessor to claim back its property from the hands of a trustee even if the lessor did not file its rights under the lease.xxxvi

For instalment sales, if the reservation of ownership had to be filed but was not, the seller or assignee may claim back the property only if it is always in the hands of the original buyer when it is claimed. As with leases, the Supreme Court of Canadaxxxvii ruled that a trustee in bankruptcy, in its capacity as representative of the bankrupt-purchaser is not a third party. Accordingly, the seller can claim the property from the hands of the trustee even in the absence of a reservation of ownership filing. However, the Court acknowledged that its ruling would not apply in future cases given the amendments made to the Canadian bankruptcy legislationxxxviii following the facts of the case. As the Court stated, the amendments made to the BIA’s definition of “secured creditor” “equate a reservation of ownership in an instalment sale with a security for the trustee’s purpose.” Practically speaking, vendors must file their reservation of ownership in order to attain the status of “secured creditors” under the BIA and benefit from all the protections afforded to such creditors (e.g. priority in the distribution of property to the various claimants).

Also, if the reservation of ownership had to be filed but filing was made outside the 15 day delay, the seller or assignee may take the property back only if it is in the hands of the original buyer, unless the reservation was published before the sale of the property by the original buyer, in which case, the seller or assignee may take the property back from the hands of a subsequent purchaser. Note however that in all these scenarios, similar to leases and leasing contracts, the seller or assignee takes the property back in the state it is in at the time when it is taking it back, subject to such rights and charges with which the original buyer may have encumbered it at the time of filing of the reservation of ownership and which had already been filed. An example to better illustrate: an instalment sale agreement is executed between seller (S) and buyer (B) and is registered after the 15 day delay; B granted a hypothec without delivery to creditor (C) on all its property before the execution and registration of the instalment sale agreement. S’s right to claw back the property would be subject to C’s rights as secured party.

Seeing how registration is an important step in protecting the rights of an instalment sale vendor, a lessor or their respective financiers, it is crucial to advise your clients to provide Quebec counsel with a copy of the signed agreement as soon as possible after execution. The 15 day window is not a lengthy one and should not be missed where applicable!

**Extension of Filing Benefits to Proceeds?**
Before concluding Part I of this article, there is one more issue that we would like to address with which creditors may struggle: does the publication of the rights arising under a lease, instalment sale or leasing contract extend to “proceeds,” as is the case for hypothecs discussed above? Practically speaking, would an equipment or inventory financier be able to argue that its “rights” include any proceeds resulting from the sale of the leased or sold property? Unlike the case of hypothecs where the general rule is that a hypothec may extend to proceeds, such a rule does not exist for instalment sales, leasing contracts and leases. So where does this leave the equipment or inventory financier who registers its rights resulting from the lease or instalment sale agreement, but the subject property is subsequently sold by the purchaser? The Supreme Court of Canada has stated that according to general Quebec civil law principles, there does not exist a real right or a right to follow property which extends to money or proceeds (e.g. trade-ins) of sold property. However, some case law has recognized the owner’s right to claim damages (equivalent to the value of the sold property) against the purchaser. Bottom line: to avoid an endless debate on the subject, the financier should consider obtaining a hypothec on the debtor’s “claims” (i.e. accounts) and where relevant and possible, enter into subordination agreements with other secured creditors who benefit from a prior rank on the debtor’s claims.

While you are assimilating the above concepts... we leave you with the following questions which we will address in the subsequent part of this article on Quebec secured transactions... so stay tuned for Part II...
- How can you protect your client’s interest in goods sold to a Quebec buyer? How is a purchase money security interest treated under Quebec law?

- Have you ever had a consignment agreement governed by New York law with property being consigned to a Quebec-based consignee? How do you protect your client’s rights as consignor in Quebec?

- How is security structured in Quebec in the context of a syndicated lending transaction? Are you familiar with the concept of “fondé de pouvoir”?

- Which conflict of law rules should the lender be aware of when structuring a cross-border transaction with significant assets in Quebec?

- How are sales (assignments) of accounts receivables treated and perfected in Quebec?

1 This article will discuss security granted by a company, not an individual.

2 Note that throughout the article, for comparative purposes, next to the CCQ term/concept we provide in parenthesis, the UCC concept which presents the closest similarity.

3 All Canadian provinces and territories (except Quebec) have a Personal Property Security Act. The Acts are essentially similar with some variations. For more on this, see Cuming, Walsh & Wood, Personal Property Security Law (Irwin 2005). For the purposes of this article, references to the PPBA are references to the Ontario PPBA, R.S.O. 1990, Chapter P.10 (PPBA).

4 Note, however, that there have been cases which re-characterized transactions involving sale or lease agreements as secured transactions. Such discussion is beyond the scope of this article.

5 C.C.Q. art. 1801.

6 Trusts within the CCQ meaning can also be used as a security vehicle. This form is not discussed in the article. Note that the terms “title retention” are placed in quotation marks because they are the terms that are generally used when referring to leases, leasing contracts and instalment sales (conditional sales), but not specifically employed in the CCQ.

7 C.C.Q. art. 2660. The hypothec confers on the creditor the right to follow the property into whosoever hands it may be, to take possession of it or to take it in payment, or to sell it or cause it to be sold and, in that case, to have a preference upon the proceeds of the sale ranking as determined in the CCQ.

8 BLACK’S LAW DICTIONARY (8th ed. 2004).

9 Hypothecs are consensual or non-consensual (the CCQ lists the “legal” hypothecs which include claims of persons having taken part in the construction or renovation of an immovable (construction liens) and claims under a judgment (judgment liens)). This article focuses on consensual hypothecs.

10 The CCQ does not define this term. Essentially, parties are free to determine the scope of the universality. In a typical secured transaction with a hypothec on the “universality” of the grantor’s (company) assets, the secured party would benefit from security on all of the grantor’s business assets. Note that specific universalities can also be created, i.e. a hypothec on the universality of claims (accounts) from a specific account debtor. Curiously, in a 1996 Quebec Superior Court case, the Court refused to characterize 95% of the claims of an assignor from the same account debtor as an assignment of a “universality.” Further discussion on the Quebec assignment of claims regime will be made in Part II of this series.

11 The debtor’s “domicile” (i.e. head office) is the relevant criteria for the creation and perfection of security on intangible property and mobile goods. See C.C.Q. art. 3015.

12 Situs is the relevant criteria for the creation and perfection of security on tangible property. See Art. 3102 C.C.Q. For investment property, the rules are similar to Article 9 of the U.C.C.; for more on this, see Kiriakoula Hatzikiriakos, Security on Investment Property: New Quebec Legislation, Apr. 3, 2009, http://www.internationallawoffice.com.

13 The CCQ’s conflict of law rules address the “validity” (creation), “publication” (perfection) and “effects” of publication (i.e. effectiveness against third parties, the ranking of rights and the protection of third parties in good faith).

14 Unlike the UCC, “control” is not available for deposit accounts. For more on the new legislation dealing with security in investment property, see Kiriakoula Hatzikiriakos, “Security on Investment Property: New Quebec Legislation,” see supra note xii.

15 Compare C.C.Q. art. 2697, with U.C.C. § 9-108.

16 Note that if certain specific vehicles (i.e. passenger vehicles) are being charged, they must be described by serial number, except if they are caught via a hypothec charging present and after-acquired property.

17 Under the CCQ, an immovable hypothec is valid only so far as the security agreement specifically designates the hypothecated property. If the security agreement charges all property (real and personal) of the grantor, the hypothec will only rank in respect of each immovable property from the time of the hypothec’s filing against each immovable property. If additional real property is acquired after the security agreement is filed, then a notice containing the description of the
immovable acquired and a reference to the agreement creating the hypothec is filed at the land register. See C.C.Q. art. 2949.

xvii Note that the CCQ provides some special rules for the effectiveness of a hypothec on claims against the account debtors (the creditor must set up its hypothec against such debtors in the same way as an assignment of claims; this will be further discussed in Part II) and of a hypothec on life insurance policy rights (registration of the hypothec is not sufficient; notice of the hypothec to the insurer renders the hypothec effective against the insurer and third parties).

xviii Compare U.C.C. §§ 9-315, 9-320, with C.C.Q. art. 2674.

xix Note that the CCQ does not use the terms “takes free” as is the case under Article 9-320 of the UCC. The CCQ rules on “sales” oblige the seller to discharge the property sold of all hypothecs, declared or registered, unless the buyer assumes the debt secured.

xx This is the principle of “real subrogation.”

xvii Article 2674 of the Civil Code of Quebec does not impose any delay for registration, in contrast to Article 9, section 315(d) of the Uniform Commercial Code.

xx The RPMRR is composed of name files and descriptive files. A name file shall be opened for each grantor named in an application for registration. A descriptive file shall be opened only for a road vehicle listed in the Regulation respecting the register of personal and movable real rights (e.g., passenger vehicles, motorcycles, and taxis). O.C. 1594/93, G.O.Q.1993.II.6215, as amended by Regulation to Amend the Regulation Respecting a Registration System or the Keeping of a Register, O.C. 907/99, 1999 G.O.Q.II.2719.

xx C.C.Q. art. 2700.

xxv For more on the RPMRR, see https://www.rdprm.gouv.qc.ca/rdprmweb/html/engls_publication.asp.

xxv For more on the Quebec Land Register, see http://www.mrnf.gouv.qc.ca/english/land/register/index.jsp.

xxvii Ouellet (Trustee of ) [2004] 3 S.C.R. 348 (leases); Lefebvre (Trustee of); Tremblay (Trustee of) [2004] 3 S.C.R. 326 (installment sales).

xxviii See supra notes 11-12. The conflict of law rule relating to “real property” rights and their publication is the “situs” (or place of destination if the real rights are in transit). C.C.Q. art. 3097.

xxix C.C.Q. art. 1842.

xxx C.C.Q. art. 1851.

xxxi C.C.Q. art. 1745.

xxxii See Register of Personal and Moveable Real Rights, R.P.M.R.R. 15-15.01; see also, supra note xiii.

xxxiii The CCQ defines “enterprise” as “the carrying on by one or more persons of an organized economic activity, whether or not it is commercial in nature, consisting of producing, administering or alienating property, or providing a service.” C.C.Q. art. 1525.

xxxiv C.C.Q. art. 2961.1. In contrast, there is no similar rule for an installment sale, lease or leasing contract filing (made individually, not pursuant to a “master agreement”). The lessor/seller retains the right to follow the property in the hands of a buyer in the ordinary course of business: see discussion in following paragraphs of text.


xxxvi See Lefebvre case cited supra note xxvii.

xxxvii See Ouellet case cited supra note xxvii.


xx See discussion above supra note 20.


sii Despite this decision, there have been subsequent cases extending the owner’s rights on the proceeds of sale of the subject property where the contractual relationship between the vendor and the buyer is structured as a “mandate” (vendor mandates the buyer to sell the property; vendor stops being the owner when the property is sold by the buyer; vendor has a right to the proceeds of sale) and even where there was no specific mandate (e.g., cases rendered under article 427 of the Bank Act, 1991, c. 46 which provides security available only to Canadian chartered banks and foreign bank subsidiaries incorporated under the Bank Act when lending to manufacturers, wholesale or retail purchasers, shippers or dealers, and farmers, fishers and forestry producers. The bank takes security against the articles the debtor manufacturers, uses or deals in.).