

**BUSINESS LAW BULLETIN**

November 2006

THE SECURITIES TRANSFER ACT IS ALMOST HERE: GET STARTED WITH START

On November 1, 2006, the Ontario government announced that Ontario's new *Securities Transfer Act, 2006* (the "STA") will come into force on January 1, 2007. Modelled closely on Revised Article 8 of the U.S. Uniform Commercial Code, the STA will modernize the law that governs the transfer and pledging of investment securities, especially those held indirectly through intermediaries such as brokers and clearing agencies for which the investor never receives a paper certificate. Until now that law has been confused and incomplete, and as a result, the legal certainty demanded by the capital markets has been sadly lacking for transactions secured by pledges of "book-based" securities. Opinions have been difficult, sometimes impossible, to give, and as a result lenders have often been unwilling to take such securities as collateral, even though hundreds of billions of dollars of value are locked up in publicly traded corporate stocks and bonds that are held and settled through clearing agencies such as The Canadian Depository for Securities Limited.

The New Legislation is Useful but Complex

The STA will bring much needed certainty and precision to this area of the law, but the legislation itself (along with conforming amendments to other statutes such as the *Personal Property Security Act* and the *Business Corporations Act*) is necessarily difficult and complex. Initially most lawyers and their clients will face a fairly steep learning curve as they struggle with a whole new way of looking at securities that exist mainly as electronic ledger entries. The STA introduces a number of new concepts – the "security entitlement" (the bundle of rights held by an indirect holder); "control" (the generic term that replaces the antiquated concept of "possession" as the means of perfecting security interests in securities); and the "control agreement", which is one way that a lender or other secured party can obtain control. It sets out new conflict of laws rules that will make it much easier to determine with confidence where a security interest in indirectly held securities must be perfected. It includes new but complex priority rules that will settle competing claims to the same investment property.

McMillan Binch Mendelsohn LLP can provide you with the advice and guidance you'll need to navigate the unfamiliar terrain of the STA, understand how it will affect your corporate, secured lending or derivatives business processes and develop a set of best practices to derive maximum benefit from the new legislation.

Our firm was one of the first to advocate passage of the STA as part of the broader business law reform initiative that we spearheaded in 2004 and 2005. We have detailed knowledge of the new rules and have worked closely with officials in the Ontario government as the STA made its way through the legislative process.

MBM START: a Focused Approach to the New Laws

To help our clients transition to the new world of the STA, we've formed a Securities Transfer Act Readiness Team, or *START*, a group of seasoned financial services, corporate and tax lawyers with a broad and deep understanding of this important new legislation.

START will be publishing bulletins from time to time over the next few months to highlight some of the key provisions of the STA and discuss their practical impact on your business.

Meanwhile, for more information about how START can help you get a head start on the STA, please contact one of our team leaders below.

Written by Robert M. Scavone

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

© Copyright 2006 McMillan Binch Mendelsohn LLP

START Team Readiness:

Robert M. Scavone	416.865.7901	rob.scavone@mcmbm.com
Wayne D. Gray	416.865.7842	wayne.gray@mcmbm.com

McMILLAN BINCH MENDELSON

TORONTO | TEL: 416.865.7000 | FAX: 416.865.7048

MONTRÉAL | TEL: 514.987.5000 | FAX: 514.987.1213

www.mcmbm.com