



June 30, 2006

The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance
L'Esplanade Laurier
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Minister:

Re: Repeal of *Bank Act* sections 427 to 429

I am writing on behalf of the National Business Law Section of the Canadian Bar Association to recommend the collateral security provisions in sections 427 to 429 of the *Bank Act* be repealed. In so doing, we endorse the recommendation of the Law Commission of Canada in its 2004 report entitled, *Modernizing Canada's Secured Transactions Law: The Bank Act Security Provisions*.

Bank Act security served Canadians well when it was first developed in the 1890s to enable farmers, fishers, loggers and others to raise funds using their specified assets as security for loans.

In the absence of adequate provincial and territorial secured transactions regimes, the *Bank Act* security provided a mechanism to allow Canadian chartered banks to lend to resource-based businesses and more recently, to manufacturers and vendors of inventory. The historic vacuum is now gone. As of the late 1990's, nine provinces and three territories had adopted personal property security statutes, and Quebec had revised its legislation with comparable security over moveables. The continuance of *Bank Act* security in the presence of the provincial and territorial security regimes causes two problems:

- (i) an unequal playing field among financial institutions with only chartered banks entitled to obtain *Bank Act* security, valid across all of Canada; and
- (ii) difficulties in resolving priority disputes in insolvency situations with competition between the federally-regulated powers of banks and security based on title concepts, as against provincially-regulated security interests that, in personal property security jurisdictions, ignore title in determining priority.

The historic need for *Bank Act* security is gone. Sections 427 to 429 of the *Bank Act* should be repealed to level the playing field among lenders and assist with certainty in determining priority among secured creditors.

We would be pleased to discuss this proposal in greater detail with your officials.

Yours very truly,

(Original signed by Tamra Thomson on behalf of Catherine Wade)

Catherine E. Wade
Chair
National Business Law Section

cc: Nicholas Le Pan, Superintendent of Financial Institutions Canada