

## In 2004, Don't Forget to Renew Your Security Agreements Originally Registered in 1994

*In 2004, ten (10) years after the coming into force of Bill 38, the movable security you may have published in 1994 should be renewed, the maximum opposability period for such movable security registrations at the Register of Personal and Movable Real Rights (the "Register") being ten (10) years from the date of registration at the Register.*

We remind you that since the coming into force of Bill 38 titled "*An Act Respecting the Implementation of the Reform of The Civil Code*" on January 1<sup>st</sup>, 1994, section 134 thereof, regarding security already existing under the *Civil Code of Lower Canada*, states:

- conventional securities other than certain transfers of claims (on present and future rents produced by an immovable, on transfers of indemnities provided by the insurance contracts covering the rents, or on bills of lading) became conventional movable or immovable hypothecs, depending on the nature of the property charged;
- hypothecs created by will became conventional hypothecs;
- legal or judicial hypothecs became legal hypothecs if the new legislation attached this quality to the claims on which they are based;

- legal hypothecs in favour of minors or persons of full age under tutorship or curatorship continued to be legal hypothecs as long as the tutor or curator did not offer another security of sufficient value; and
- privileges became either prior claims or legal hypothecs depending on the quality attributed by the new legislation to the claims on which they were based.  
However:

- the privilege of the seller of an immovable became a legal hypothec; and
- the privilege of the lessor of an immovable, other than a residential immovable, on the furniture became a legal hypothec.

At such time, hypothecs on property which, by reason of new legislation had changed in nature, had to be published in the appropriate register within twelve (12) months of Bill 38's coming into force, that is by December 31<sup>st</sup>, 1994, in order to conserve their rank.

Under the same Bill, transfers of property in stock, pledges of agricultural and forest property, assignments of book debts, commercial pledges and other security in movable property created and registered under prior law also had to be renewed

within twelve (12) months, that is by December 31<sup>st</sup>, 1994. Failure to renew the prior forms of security meant that the rights preserved by the original registration would have no effect, upon the expiry of a term of fifteen (15) months after the coming into force of the new legislation, that is March 31<sup>st</sup>, 1995, in respect of other creditors or subsequent purchasers, in good faith whose claims are regularly published.

The result was a rush to publish the above-mentioned types of security in order to maintain one's rights in the collateral secured thereunder. It is therefore again time to act diligently and renew the movable security registered in 1994.

We note, however, that the privilege of the lessor on an immovable that had been renewed into a legal hypothec as a result of Bill 38 will automatically expire at most ten (10) years after its registration date in 1994 without any possibility for renewal.

### **A Simple and Inexpensive Renewal Process**

The renewal process is simple, quick and inexpensive. The Register does not require any signed documents. All that is needed is a copy of the certified statement of the existing registration and confirmation that the legal names of the parties have not changed.



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Of course, if the legal name of one or both of the parties has changed since 1994, we recommend that a change of name be registered at the Register before renewing the registration of your movable security.

*Lavery, de Billy* can help you deal efficiently with the renewal process by putting at your disposal experts in movable security financings. Our fees for renewing registrations are competitive.

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