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Thursday 11 May 2006

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Jeudi 11 mai 2006

Standing committee on the Legislative Assembly

Securities Transfer Act, 2006

Comité permanent de l'Assemblée législative

Loi de 2006 sur le transfert des valeurs mobilières

Chair: Bob Delaney
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

COMITÉ PERMANENT DE L'ASSEMBLÉE LÉGISLATIVE

Thursday 11 May 2006

Jeudi 11 mai 2006

The committee met at 1537 in committee room 1.

SECURITIES TRANSFER ACT, 2006

LOI DE 2006 SUR LE TRANSFERT DES VALEURS MOBILIÈRES

Consideration of Bill 41, An Act to create a comprehensive system of rules for the transfer of securities that is consistent with such rules across North America and to make consequential amendments to various Acts / Projet de loi 41, Loi instituant un régime global de règles régissant le transfert des valeurs mobilières qui cadre avec celui qui s'applique dans ce domaine en Amérique du Nord et apportant des modifications corrélatives à diverses lois.

The Chair (Mr. Bob Delaney): Good afternoon everyone, this is the standing committee on the Legislative Assembly. We are gathered here today for consideration of Bill 41, An Act to create a comprehensive system of rules for the transfer of securities that is consistent with such rules across North America and to make consequential amendments to various Acts.

We have some items on our agenda. We'll begin with the report of the subcommittee.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): The committee's subcommittee met on Thursday, May 4, 2006, to consider the method of proceeding on Bill 41, An Act to create a comprehensive system of rules for the transfer of securities that is consistent with such rules across North America and to make consequential amendments to various Acts. The committee reports eight points:

"1. That the clerk of the committee, with the authorization of the Chair, post information regarding public hearings on Bill 41 on the Ontario parliamentary channel and the committee's website.

"2. That interested parties who wish to be considered to make an oral presentation on Bill 41 contact the clerk of the committee by 12 noon on Wednesday, May 10, 2006.

"3. That the deadline for written submissions on Bill 41 be 5 p.m. on Thursday, May 11, 2006.

"4. That the committee meet for the purpose of public hearings on Thursday, May 11, subject to witness demand.

"5. That witnesses be offered a maximum of 15 minutes for their presentation and that the clerk of the committee, with the authorization of the Chair, may amend the amount of time allocated for witness presentations in order to accommodate all requests to appear.

"6. That the committee meet for the purpose of clause-by-clause consideration of Bill 41 immediately following public hearings on Thursday, May 11, 2006.

"7. That for administrative purposes, proposed amendments should be files with the clerk of the committee by 12 noon on Thursday, May 11, 2006.

"8. That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the sub-committee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings."

The Chair: Shall the report of the subcommittee be adopted? Carried.

ROBERT SCAVONE

The Chair: Our next item on the agenda is a presentation by Mr. Robert Scavone, who will be making a 15-minute deputation to us. Welcome, Mr. Scavone. You have 15 minutes for your deputation. If you choose to use less then the allotted time, the remainder will be divided among the parties to ask you questions. Please introduce yourself to Hansard by stating your name and begin your presentation.

Mr. Robert Scavone: Thank you, Mr. Chairman and committee members. My name is Robert Scavone. I'm a partner with the debt products group of the law firm of McMillan Binch Mendelsohn LLP, in Toronto, and I've practised corporate commercial law since 1987, with an emphasis on structured products, asset securitization and secured financing.

I'd like to thank you for giving me the opportunity to appear before you today to speak in support of Bill 41, the Securities Transfer Act, 2006, which has been referred to your committee. I'm here on my own behalf as a lawyer with a strong professional interest in law reform in this area of commercial law, but I'm also a member of the personal properties security law committee of the business law section of the Ontario Bar Association, which strongly supports this bill. Like many of my colleagues at my own firm and others, I've devoted many hours over the last few years to advocating the reforms set out in Bill 41, and I've worked closely with members of the Uniform Law Conference of

Canada committee that drafted the Uniform Securities Transfer Act, which is the source of Bill 41. I should say that I have not had the opportunity to review the amendments that were tabled this morning, so my comments will be of a more general nature rather than addressing any specific amendments.

First, I'd like to clear up some possible misconceptions about Bill 41 that came to light during the second reading debate in the last two weeks. It's important to keep in mind that this bill does not pretend to be a cure-all for every systemic ill that besets the Canadian capital markets. There are many things it does not do and was not intended to do. It is not securities regulatory law. It won't prevent Enron from happening in Canada. It has nothing to do with securities fraud or hard-working Ontarians being cheated out of their life savings by clever stock manipulators. These are serious problems that may require legislative solutions, but that's not what this legislation is intended to do.

The complaint that this bill does not protect the interests of small investors or promote good corporate governance or separate the adjudicative from the enforcement functions of the OSC is a little like complaining to the electrician who just rewired your house that he didn't fix the leak in your roof, clean out your garage and wash your car. To call this bill "timid" and "tepid," as two honourable members did during the second reading debate, because it doesn't provide for effective prosecution of securities regulatory offences, is a little like calling your plumber timid because when she fixed your drain she didn't also get rid of the neighbourhood drug dealers.

This bill has modest, focused objectives that are no less important because they lack a high public profile. This is framework or facilitative legislation, not prescriptive rule-making. It articulates the legal principles that underlie the transfer of investment securities in the modern capital marketplace so that businesspeople will have the legal certainty they require to get deals done. Like good wiring and good plumbing, this sort of legislation gets noticed only when it's not there or it doesn't work.

The most important reason for supporting this bill is that without this legislation, Ontario's capital markets will continue to labour under a distinct competitive disadvantage to those in the US. New York and every other state of the union have an act that revised article 8 of the Uniform Commercial Code, which is up-to-date legislation that recognizes modern commercial practices in the securities industry and allows parties to predict legal results of their transactions with confidence and certainty.

What we now have is a cobbled-up patchwork of laws that is at least 40 years out of date. Without this legislation, our competitive position in the North American capital markets will be progressively eroded as business flows south. I often see signs of this erosion in my own practice. Complex domestic and cross-border loans or swaps using book-based securities as collateral are often held up for days or even weeks while lawyers debate convoluted qualifications to legal opinions that in the US would be quite straightforward and routine. US lenders and counterparties are often unpleasantly surprised to learn that, in Ontario, a security interest in US treasury bills pledged by an Ontario debtor can only be perfected by registration under the Ontario Personal Property Security Act, and not by possession or control, which would better protect the collateral against the claims of third parties. To ensure priority, the lender or counterparty must instead conduct PPSA searches and seek subordinations and waivers from other creditors that have registered against the debtor, which can be costly and time-consuming. To resolve these uncertainties, the debtor is sometimes required to post an expensive letter of credit. Even domestic lenders balk at accepting publicly traded securities as collateral for loans unless the debtor can produce a physical share certificate, which often is impractical.

To address these problems, Bill 41 borrows from revised article 8 of the UCC, which has worked well in the US over the past decade. This approach has the added benefit of harmonizing our laws with those of our largest trading partner, which should greatly facilitate cross-border transactions. By importing the concept of revised article 8, this bill will completely overhaul the property law aspects of the purchase, sale, pledge and holding of investment securities and other interest in investment property, and bring it in line with modern commercial practices. It will finally provide a sound legal basis for the system through which the vast majority of publicly traded securities are held and settled today, which is often referred to as the tiered or indirect holding system.

The existing law dates from an age when security trades were largely paper-based, when trading volumes were low and owning a share meant you held an engraved share certificate with your name on it. This is known as the direct holding system, and it still works well for private companies. But to deal with the dramatic increase in trading volumes in the 1960s and 1970s, an indirect or tiered holding system evolved, whereby a single physical security certificate for a whole issue, known as a global certificate, is registered in the name of a clearing agency such as the Canadian Depository for Securities Limited, CDS, and is immobilized. Transfers of that position in that security in the clearing agency are now effective electronically on a net basis between participants such as banks and investment dealers, which in turn hold those positions for the account of other brokers or their clients.

This system has resulted in much greater efficiencies and trading volumes than would be possible through a paper-based system, but the legal basis for the system is unclear. There have been some changes to our law, but they're not adequate. Twenty years ago, section 85 was added to the Business Corporations Act to respond to the growing use of indirectly held security. It does so by deeming transfers of position through CDS to be the legal equivalent of physical delivery. This makes it legally possible to be in possession of a book-based security,

even though it has no physical existence. The transfer or pledge is deemed to occur once the appropriate entries are made on the records of CDS.

But this solution was far from perfect. It's unclear what the appropriate entries actually are. Section 85 doesn't deal well with the multiple tiers of intermediaries through which securities are actually held today. It breaks down if both beneficial owners happen to have the same broker, because there's no transfer from one participant to another. It doesn't apply to such common non-corporate securities as limited partnership units or income trust units. Many provisions do not clearly apply to government securities, and the deeming rules only work if the book-based securities happen to be settled through CDS and not some other clearing agency such as DTC in the US or Euroclear or Clearstream in Europe.

One of the biggest gaps in the existing law is in the rules governing conflict of laws, which determine which jurisdiction governs a multi-jurisdiction transaction. For example, if a Toronto-based bank takes a pledge of securities issued by a French company, settled through the Clearstream system in Luxembourg, from a debtor domiciled in Pennsylvania, using documents governed by New York law, it's nearly impossible to come up with a single, clear answer as to where the pledge should be perfected or, in fact, whether it should even be considered a pledge at all.

Under the PPSA, perfection of a possessory security interest in a security is governed by the law of the jurisdiction in which the security is situated. But no one really knows where a book-based security is situated. There are about half a dozen answers to that question. This uncertainly means that the secured party has no assurance as to where or how to perfect its security interest so as to obtain priority over competing creditors. As a lawyer, I have to include pages of unsatisfactory qualifications in my legal opinions, advise clients to perfect their security interest in every possible jurisdiction that may have a connection, and then hope for the best. All this adds needless delay, legal expense and uncertainty to transactions where a high premium is placed on speed of execution, cost-effectiveness and certainty.

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What are the basic concepts of Bill 41? This is complex and technical legislation and I don't pretend to be able to explain it fully in a few minutes, but it may be helpful for your purposes to focus on three core concepts that deal with the tiered holding systems. These are the concepts of security entitlement, control, and the new conflict-of-law rules.

"Security entitlement" is the term used to describe the bundle of rights held by someone who holds interest in securities indirectly through a broker or another securities intermediary such as a bank or clearing agency. These are set out in part VI of the bill. In the direct holding system, these rights were actually embedded in the physical security certificate itself. In the indirect holding system, the rights arise through a web of contracts with a series of intermediaries such as brokers and clearing agencies, and can be asserted by the investor or the entitlement holder only against the most immediate intermediary, such as a broker, not against the actual issuer.

These concepts are a much more accurate reflection of how the tiered holding system actually works in practice than the fictions of deemed possession and constructive delivery in the existing law. Despite the indirect nature of an entitlement holder's interest, a security entitlement does confer most of the same benefits as holding the underlying security directly. The securities intermediary is required to carry out the instructions of the entitlement holder, pass through interest and dividends, exercise voting rights, and comply with entitlement orders to dispose of the securities. A security entitlement is actually a property interest in the underlying security, not just a bundle of contractual rights against the particular intermediary. The intermediary is required to hold enough of the underlying securities to satisfy the claims of all entitlement holders and owes them a duty of care.

The second important concept of Bill 41 is control, which replaces possession as the means of establishing a superior claim to a security or security entitlement. If you have control of investment property, you have the right to dispose of it without further involvement of the original owner. You can still take control over a certificated security through physical possession, but to take control over a security entitlement you must either become the entitlement holder or enter into what's known as a control agreement, whereby the intermediary agrees to comply with entitlement orders from you without further consent from the entitlement holder.

The main benefit of control is that it will provide an easy and certain way to perfect the security interests and security entitlements that will take priority over security interests perfected by registration. This will enable banks and other lenders to accept publicly traded securities as collateral for loans without having to insist on obtaining a physical certificate and without fear that their interests will be defeated by another lender or purchaser without notice of their interest.

The third major innovation of Bill 41 is that it will provide clear and easily applied conflict-of-law rules that will set out what law governs the perfection of security interests and security entitlements. Perfection of a security interest will be governed by the security intermediary's jurisdiction. This is determined by a set of cascading rules that looks first to the jurisdiction set out in the agreement with the intermediary, and then to a number of other factors if the preceding one does not apply. The new rules will end the expensive guessing game that lenders and lawyers now have to engage in when faced with a pledge of book-based securities involving multiple jurisdictions.

Implementing the Securities Transfer Act in Ontario will be the first step towards adopting truly uniform legislation in this area across Canada which will promote interprovincial trade and reduce transaction costs. Staff at the Ministry of Government Services are actively working with their counterparts in other provinces to

ensure almost verbatim uniformity of language across the country. I understand that this goal has largely been attained. This high degree of uniformity is itself a remarkable achievement and something never before accomplished in modern complex, commercial legislation in Canada. To maintain its leadership role in the Canadian capital markets, it's essential that Ontario be the first province to enact this legislation.

The Chair: Mr. Scavone, just to let you know, you've got about two minutes.

Mr. Scavone: I have about 10 seconds to go.

In conclusion, Mr. Chairman and committee members, I would urge you to do everything you can to move this bill through the legislative process as expeditiously as possible. It's an idea whose time has come and an idea whose implementation is vital to Ontario's future.

Thank you. In the time remaining, I'd like to entertain any questions.

The Chair: Thank you. We would perhaps have time for just one very brief question from Mr. Tascona.

Mr. Joseph N. Tascona (Barrie–Simcoe–Bradford): I want to thank you for coming here today, Mr. Scavone. I noticed that you ended up in the press release for December 1, 2005, put out by the Ministry of Government Services, where you comment on the bill. How did you end up in the press release for this?

Mr. Scavone: I was asked by Allen Doppelt to comment on the bill. That's how my name got in the press release.

Mr. Tascona: Who's Allen Doppelt, for clarification?

Interjection.

Mr. Tascona: Okay. Thank you.

The Chair: Let it be noted for the record that Allen Doppelt has identified himself as senior counsel for the securities branch in the ministry.

Mr. Scavone, you are welcome to stay and watch the minutiae of the clause-by-clause consideration of the bill. I want to thank you very much for your extremely interesting presentation. There is no doubt that you have mastered the technicalities of this, and you certainly understand its implications in the cross-border transfer of securities. Thank you once again. I hope you can stay for a little while.

Are there any comments, questions or amendments to any section of the bill, and if so, to what section?

Mrs. Liz Sandals (Guelph–Wellington): Before we start in on the amendment package, I thought I might just explain where these come from, because it looks quite daunting. In fact, I think there is maybe one section where there are a couple of subclauses that have a somewhat substantive amendment. Most of the amendments come as a result of, now that Alberta has tabled its legislation and BC is about to table legislation, our lawyers and staff having been able to work with their lawyers and staff in order to get further uniformity of language, which leads to a number of the amendments.

There's a couple of places where we're correcting cross references to other acts, a little bit of grammar, a little bit of spelling, and then the other thing that you will notice is that there are a number of changes in the French translation. That's because Quebec will be using, and we want to be consistent with, the international convention on securities approved by the UN in terms of their French language usage. We're adopting that French language usage, so there are some changes to our normal translation that we're going to amend in the French.

So other than the one that's slightly substantive, which I'll note when I get there, those reasons which I just outlined are the reason behind all the amendments.

Ms. Mossop is going to help me by reading things that pertain to French, and when I run out of voice, I may panic and hand them out in all directions for people to read into the record. But I believe we begin with Ms. Mossop.

Ms. Jennifer F. Mossop (Stoney Creek): I move that the French version of the bill be amended by striking out "droit opposable" and "droits opposables" wherever they appear in the following provisions and substituting in each case "droit intermédié" and "droits intermédiés," as the case may be:

Subsection 1(2) of the bill
Clause 17(1)(b) of the bill
Subsections 17(2) and (3) of the bill
Subsections 25(1) and (2) of the bill
Section 26 of the bill
Subclause 29(b)(ii) of the bill
Clause 41(b) of the bill
Paragraph 2 of subsection 45(3) of the bill
Section 50 of the bill
Paragraph 3 of section 51 of the bill
Subsections 55(1) and (2) of the bill
Subsections 95(1), (2), (3) and (4) of the bill
Section 96 of the bill
Subsection 97(1) of the bill
Clause 97(2)(a) of the bill
Clause 97(4)(b) of the bill
Subsections 97(5) and (6) of the bill
Subsections 98(1) and (5) of the bill
Clause 101(2)(a) of the bill
Subsection 101(3) of the bill
Clause 102(1)(a) of the bill
Subsection 104(1) of the bill
Paragraphs 1 and 2 of subsection 104(3) of the bill
Subsections 105(1), (2) and (3) of the bill

The definition of « intérêt bénéficiare » in subsection 1(1) of the Business Corporations Act, as set out in subsection 106(1) of the bill

The definition of « bien de placement » in subsection 1(1) of the Personal Property Security Act, as set out in subsection 123(4) of the bill

Clauses 1(2)(c) and (e) of the Personal Property Security Act, as set out in subsection 123(9) of the bill

Clauses 7.1(1)(c) and (2)(c) of the Personal Property Security Act, as set out in section 126 of the bill

Subclause 11(2)(a)(ii) of the Personal Property Security Act, as set out in section 129 of the bill

Subsection 11(4) of the Personal Property Security Act, as set out in section 129 of the bill

Subsection 11.1(1) of the Personal Property Security Act, as set out in section 129 of the bill

Subsection 19.1(1) of the Personal Property Security Act, as set out in section 131 of the bill

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Subclause 22.1(2)(b)(iii) of the Personal Property Security Act, as set out in section 134 of the bill

Subsections 28(8), (9) and (10) of the Personal Property Security Act, as set out in section 136 of the bill

Clause 30.1(4)(b) of the Personal Property Security Act, as set out in section 138 of the bill

Subsection 30.1(5) of the Personal Property Security Act, as set out in section 138 of the bill

Subsection 56(7) of the Personal Property Security Act, as set out in section 139 of the bill

Subsections 14(1) and (4) of the Execution Act, as set out in subsection 143(1) of the bill

Subsections 15(1) and (2) of the Execution Act, as set out in subsection 143(1) of the bill

Subsection 19(7) of the Execution Act, as set out in subsection 143(2) of the bill

Not that I'm in a hurry.

The Chair: Nicely done. Not a single mistake in it.

Are there any questions or comments, first of all? Shall the amendment carry? Carried.

I'm almost tempted to ask, shall we give her a hand for reading all of that correctly.

Are there any comments, questions or amendments to section 1?

Mrs. Sandals: I move that subsection 1(1) of the bill be amended by adding the following definition:

"'communicate' means,

"(a) send a signed writing, or

"(b) transmit information by any other means agreed to by the person transmitting the information and the person receiving the information,

"and 'communication' has a corresponding meaning; ('communiquer', 'communication')"

The Chair: Questions and comments? Shall the amendment carry? Carried.

Ms. Mossop: I move that the French version of the definition of "entitlement holder" in subsection 1(1) of the bill be struck out and the following substituted:

"« titulaire du droit » La personne désignée nommément aux registres de l'intermédiaire en valeurs mobilières comme détentrice d'un droit intermédié opposable à cet intermédiaire. S'entend en outre de la personne qui obtient un droit intermédié par l'effet de l'alinéa 95(1)b) ou c). (« entitlement holder »)"

The Chair: Have you finished the reading?

Ms. Mossop: Oui, yes.

The Chair: Questions and comments? Shall the amendment carry? Carried.

Mrs. Sandals: I move that the definition of "entitlement order" in subsection 1(1) of the bill be struck out and the following substituted:

"'entitlement order' means a notice communicated to a securities intermediary directing the transfer or redemption of a financial asset to which the entitlement holder has a security entitlement; ('ordre relatif à un droit')"

The Chair: Questions and comments? Shall the amendment carry? Carried.

Mr. Tascona: I have a question directed to the staff. Why did you change the definition there from "person" to "a notice?" What was the reasoning behind that? You changed the definition. Why did you do that? The language is pretty specific as to why. "Entitlement order" was already defined. You changed the definition of "entitlement order." What's the reason you changed that? You were referring to a person identified in the records of a securities intermediary as the person having the security entitlement and you changed it to mean "a notice communicated to a securities intermediary directing the transfer or redemption." Why have you moved away from identification of a person to—

The Chair: Please begin by identifying yourself for Hansard.

Mr. Allen Doppelt: I'm Allen Doppelt, senior counsel, legal services branch, Ministry of Government Services. This amendment was one of the ones that was made as a result of the change to the notice provisions in section 3 of the bill. That's the reason the wording was changed. The only change in "entitlement order" in the original wording in the first reading of the bill is "means a notice given," and it's been changed to "a notice communicated."

Mr. Tascona: I don't really see much change there.

Mr. Doppelt: That's the only change; the one word in the definition of "entitlement order."

Mr. Tascona: "Notice communicated."

Mr. Doppelt: Instead of "notice given." You have the new definition of "communicate."

Mr. Tascona: I saw the new definition—

The Chair: Further questions?

Mr. Tascona: Mr. Chairman—"send a signed writing". What is a signed writing? Is that a written letter? Is that what "a signed writing" means under the definition of "communicate" under (a)?

Mr. Doppelt: Yes.

Mr. Tascona: Would that be simply a written letter signed?

Mr. Doppelt: It could be, yes.

Mr. Tascona: What else could it be?

Mr. Doppelt: Well, no, that's what it would be, and then in clause (b) would be by other means, electronic means for example, as long as both parties agree to it.

Mr. Tascona: I know (b) is electronic.

Mr. Doppelt: Right.

Mr. Tascona: But (a) is a signed writing. So that could be a letter that's signed.

Mr. Doppelt: It could be. Usually the act refers to notices that are required to be given for various purposes. That would be the signed writing.

Mr. Tascona: Right. The signature of an individual.

Mr. Doppelt: Well, for example, if someone was sending a notice as the registered owner objecting to, or sending a notice to the issuer to prevent the security from

being transferred, they would send a notice and it would be—

Mr. Tascona: I know. I'm just saying it's a signed writing. Who signs it? Is it an individual—

Mr. Doppelt: The person, yes.

Mr. Tascona: —or it is a corporation?

Mr. Doppelt: No, it would be the person who's required to communicate it, to send it.

Mr. Tascona: So it's signed by a human being.

Mr. Doppelt: Yes.

Mr. Tascona: Then (b) is strictly an electronic transformation.

Mr. Doppelt: Likely, yes. That would be the other means, likely electronic.

The Chair: Further questions and comments on the government motion on page 4. Shall the amendment carry? Carried.

Mrs. Sandals: I move that the English version of the definition of "instruction" in subsection 1(1) of the bill be struck out and the following substituted:

"'instruction' means a notice communicated to the issuer of an uncertificated security that directs that the transfer of the security be registered or that the security be redeemed; ('instructions')"

The Chair: Questions and comments? Shall the amendment carry? Carried.

Mrs. Sandals: I move that subsection 1(1) of the bill be amended by adding the following definition:

"'knowledge' means actual knowledge, and 'know' and 'known' have corresponding meanings; ('connaissance', 'connaître', 'connu')"

The Chair: Questions and comments? Shall the amendment carry? Carried.

Ms. Mossop: I move that the French version of the definition of "security entitlement" in subsection 1(1) of the bill be struck out and the following substituted:

"« droit intermédié » Les droits et l'intérêt de propriété du titulaire du droit à l'égard d'un actif financier qui sont précisés à la partie VI. (« security entitlement »)"

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 1, as amendment, carry? Carried.

Section 2. Ms. Sandals.

Mrs. Sandals: I move that section 2 of the bill be struck out and the following substituted:

"Meaning of valid security

"2. A security is valid if it is issued in accordance with the applicable law described in subsection 44(1) and the constating provisions governing the issuer."

Is that a word, "constating?"

Mr. Doppelt: Yes.

Mrs. Sandals: Okay, we'll keep that word in then.

The Chair: Questions and comments?

Mr. Michael Prue (Beaches–East York): All I can see in the difference is that you've deleted (b). Why?

Mr. Doppelt: Clause (b) has been deleted because of the changes to section 57 of the act.

Mr. Prue: And we'll get to that.

Mr. Doppelt: Yes. At that point, if you have a question, I can explain why.

The Chair: I was hoping somebody would explain what "constating" means.

Mr. Doppelt: "Constating" or "basic provisions" would be the provisions in the incorporating document for a corporation.

The Chair: Thank you. Questions and comments? Shall the amendment carry? Carried.

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Mrs. Sandals: Thank you. I move that—

The Chair: Let me back up just one moment, please.

Shall section 2, as amended, carry? Carried.

Sorry. Mrs. Sandals.

Mrs. Sandals: I move that section 3 of the bill be struck out and the following substituted:

"Notice

"3.(1) For the purposes of this act, a person has notice of a fact if,

"(a) the person has knowledge of it;

"(b) the person has received a notice of it; or

"(c) information comes to the person's attention under circumstances in which a reasonable person would take cognizance of it.

"Giving a notice

"(2) A person gives a notice to another person by taking such steps as may be reasonably required to inform the other person in the ordinary course, whether or not the other person comes to know of it.

"Receiving a notice

"(3) A person receives a notice when,

"(a) the notice comes to the person's attention;

"(b) in the case of a notice under a contract, the notice is duly delivered to the place of business through which the contract was made; or

"(c) the notice is duly delivered to any other place held out by that person as the place for receipt of those notices.

"When notice is effective for a transaction

"(4) Notice, knowledge or a notice received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting the transaction and, in any event, from the time when it would have been brought to the attention of that individual if the organization had exercised due diligence.

"Same

"(5) For the purpose of subsection (4), an organization exercises due diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with those routines.

"Same

"(6) For the purpose of subsection (4), due diligence does not require an individual acting for the organization to communicate information unless,

"(a) that communication is part of the individual's regular duties; or

"(b) the individual has reason to know of the transaction and that the transaction would be materially affected by the information."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 3, as amended, carry? Carried.

There being no proposed amendments for sections 4, 5, 6 and 7, may I have consent for block consideration of sections 4 through 7, inclusive? Agreed.

Shall sections 4 through 7 carry? Carried.

Section 8.

Mrs. Sandals: I move that subsections 8(2) and (3) of the bill be struck out and the following substituted:

"Crown privileges, immunities

"(2) Nothing in this act shall be construed as affecting any privilege or immunity, at common law, in equity or under any other act, of the crown in right of Canada, the crown in right of Ontario or the crown in right of any other province of Canada, or of any servant of the crown.

"Securities issued by governments before act is in force

"(3) The provisions of this act that apply to an issuer of a security do not apply to a government or any agency of it as an issuer in respect of a security issued before this section comes into force, except as otherwise expressly provided in the terms and conditions of the security."

I mentioned that there was one clause where the amendment was somewhat substantive. In this case, 8(2), we're removing the word "right" before "privilege." The effect of that is, if the government is actually in the position of being an investor, then Bill 41, in essence, applies to the government in the same way as any other investor.

Subsection 8(3): In plain language, my understanding is that the effect of that is that Bill 41 applies to an individual who holds a province of Ontario bond, for example, so that individuals holding government securities would have their rights affected.

They will tell you if I've got this totally fouled up.

The Chair: Questions and comments?

Mr. Tascona: These amendments with respect to the crown—why are the exceptions needed under 8(2) and (3)?

Mr. Colin Nickerson: My name is Colin Nickerson. I manage the securities policy unit of the industrial and financial policy branch of the Ministry of Finance. I have with me Nick Smook, who is a lawyer in the ministry's legal services branch.

Just by way of general comment, there are existing privileges and immunities that apply to the crown that differ from the treatment, for example, of a public company. So the first subsection that we're dealing with here is intended to carry forward that treatment and make sure that crown immunities—for example, immunity from the jurisdiction of foreign courts, which arise at common law, or various other privileges and immunities—aren't affected by the bill and continue on.

Mr. Tascona: So the crown is treated differently than a public company. Give me an example of a financial instrument that the crown would be issuing that would receive different treatment than a public company.

Mr. Nick Smook: My name's Nick Smook. I'm senior legal counsel with the Ministry of Finance legal services branch. I've also been counsel to the Ontario Financing Authority on all the province's debt issues since 1991.

An easy example, to answer your question: The Uniform Securities Transfer Act contemplates, in certain circumstances, people who have lost their securities or who have decided they have a claim against someone else's security giving a notice to an issuer or preventing the issuer from allowing it to be transferred to someone else to try and crystallize their rights. That individual, in certain circumstances, is given the opportunity of getting an injunction against the issuer. Under the Proceedings Against the Crown Act, you cannot get an injunction against the crown. This provision was intended to clarify that the crown was not losing that statutory immunity from injunction, by implication, through the other sections of the act that appear to contemplate issuers being subject to an injunction.

Colin's right: There are other immunities and privileges that the crown has. In addition, ministers of the crown similarly have the same immunities, to the extent that if you could get one against the minister, it would allow you effectively to get the same remedy against the crown itself. A lot of the immunities are set out in the Proceedings Against the Crown Act, but others do exist in common law.

The point to remember, both in (2) and (3), is that the intention of these subsections is to ensure that, to the extent the act implements changes from the existing state of affairs, they only go as far as we intend them to go. The door is open in (3), for example, should the crown and its investors decide that it makes sense for certain parts of the act to begin to apply to these existing securities, so that we can amend the terms of the securities and provide that they apply.

An example, in connection with (3): If anybody gives an issuer notice of an adverse interest in a share or a provincial bond that, let's say, you subscribe to, that you're the registered holder, as soon as they give us the adverse notice, if you try to negotiate it to someone else, we're under a statutory obligation to track that, to give notice to the person who's given us the notice of an adverse claim and give them an opportunity of providing us with security or getting some other declaratory relief against us.

The simple fact is, we don't play by those rules now; we never have. We haven't set up our controls within the Ontario Financing Authority or with any of our fiscal agents to be able to respond effectively to that kind of notice of an adverse claim. So our position is, for those existing securities, it's status quo: You don't have a right to stop us from effecting a transfer by giving us a notice of an adverse claim, unless the province and all the noteholders agree that that provision should start to apply to those securities.

The Chair: Further questions and comments?

Shall the amendment carry? Carried.

Shall section 8, as amended, carry? Carried.

I request consent for block consideration of sections 9 through 16, as no amendments are proposed. Agreed? Agreed.

Shall sections 9 through 16 carry? Carried.

Shall section 17, as amended, carry, with the French amendment carried at the top of the meeting? Carried.

1620

May we consider sections 18 through 24 as a block as there are no amendments proposed? Agreed? Shall sections 18 through 24, inclusive, carry? Carried.

Section 25.

Mrs. Sandals: I move that the English version of clause 25(1)(c) of the bill be amended by striking out "having previously acquired control of the security entitlement" and substituting "having previously obtained control of the security entitlement."

The Chair: Shall the amendment carry?

Interjection.

The Chair: I'm sorry, questions and comments. I beg your pardon.

Mr. Tascona: You've changed the language from "acquired" to "obtained." My view of "acquired" would be that there be a monetary component, perhaps, to the word "acquired," as opposed to "obtained," which would be something you may have gotten through another method, a judgment or a transfer. What was the purpose of the change between "acquired" and "obtained"?

Mr. Doppelt: The purpose is to be consistent with the rest of the act. Whenever it refers to control, the act speaks in terms of obtaining control.

Mr. Tascona: So you missed that one. Okay.

The Chair: Further questions and comments? Shall the amendment carry? Carried.

Shall section 25, as amended, including the French amendment referred to earlier, carry? Carried.

Shall section 26, as amended with the French amendment earlier, carry? Carried.

We have an opportunity to block-consider sections 27 and 28. Do we have consent to block-consider sections 27 and 28? Agreed. Shall sections 27 and 28 carry? Carried.

Shall section 29, as amended with the French amendment, carry? Carried.

There being no amendments proposed to sections 30 through 40, do I have consent to block-consider sections 30 through 40? Agreed.

Shall sections 30 through 40 carry? Carried.

Shall section 41, as amended with the French amendment, carry? Carried.

Shall section 42 carry? Carried.

Shall section 43 carry? Carried.

Section 44.

Mrs. Sandals: I move that section 44 of the bill be struck out and the following substituted:

"Conflict of laws

"Law governing validity of security

"44(1) The validity of a security is governed by the following laws:

"1. If the issuer is incorporated under a law of Canada, the law, other than the conflict of law rules, of Canada.

"2. If the issuer is the crown in right of Canada, the law, other than the conflict of law rules, of Canada.

"3. If the issuer is the crown in right of a province in Canada, the law, other than the conflict of law rules, of the province.

"4. If the issuer is the commissioner of a territory in Canada, the law, other than the conflict of law rules, of the territory.

"5. In any other case, the law, other than the conflict of law rules, of the jurisdiction under which the issuer is incorporated or otherwise organized.

"Law governing other matters re securities

"(2) The law, other than the conflict of law rules, of the issuer's jurisdiction governs,

"(a) the rights and duties of the issuer with respect to the registration of transfer;

"(b) the effectiveness of the registration of transfer by the issuer;

"(c) whether the issuer owes any duties to an adverse claimant to a security; and

"(d) whether an adverse claim can be asserted against a person,

"(i) to whom the transfer of a certificated or uncertificated security is registered, or

"(ii) who obtains control of an uncertificated security.

"Issuer may specify law of another jurisdiction

"(3) The following issuers may specify the law of another jurisdiction as the law governing the matters referred to in clauses (2)(a) to (d):

"1. An issuer incorporated or otherwise organized under the law of Ontario.

"2. The crown in right of Ontario.

"Law governing enforceability of security

"(4) Whether a security is enforceable against an issuer despite a defence or defect described in sections 57 to 59 is governed by the following laws:

"1. If the issuer is incorporated under a law of Canada, the law, other than the conflict of law rules, of the province or territory in Canada in which the issuer has its registered or head office.

"2. If the issuer is the crown in right of Canada, the law, other than the conflict of law rules, of the issuer's jurisdiction.

"3. If the issuer is the crown in right of a province in Canada, the law, other than the conflict of law rules, of the province.

"4. If the issuer is the commissioner of a territory in Canada, the law, other than the conflict of law rules, of the territory.

"5. In any other case, the law, other than the conflict of law rules, of the jurisdiction under which the issuer is incorporated or otherwise organized.

"Definition

"(5) In this section,

"'issuer's jurisdiction' means the jurisdiction determined in accordance with the following rules:

"1. If the issuer is incorporated under a law of Canada, the province or territory in Canada in which the issuer has its registered or head office or, if permitted by the law of Canada, another jurisdiction specified by the issuer.

"2. If the issuer is the crown in right of Canada, the jurisdiction specified by the issuer.

"3. If the issuer is the crown in right of a province in Canada, the province or, if permitted by the law of that province, another jurisdiction specified by the issuer.

"4. If the issuer is the commissioner of a territory in Canada, the territory or, if permitted by the law of that territory, another jurisdiction specified by the issuer.

"5. In any other case, the jurisdiction under which the issuer is incorporated or otherwise organized or, if permitted by the law of that jurisdiction, another jurisdiction specified by the issuer."

The Chair: Questions or comments? Shall the amendment carry? Carried.

Shall section 44, as amended, carry? Carried.

Section 45, Mrs. Sandals.

Mrs. Sandals: I'm catching my breath.

The Chair: Ms. Mossop.

Ms. Mossop: I move that subsection 45(1) of the bill be struck out and the following substituted:

"Matters governed by law of securities intermediary's jurisdiction

"(1) The law, other than the conflict of law rules, of the securities intermediary's jurisdiction governs,

"(a) acquisition of a security entitlement from the securities intermediary;

"(b) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

"(c) whether the securities intermediary owes any duty to a person who has an adverse claim to a security entitlement; and

"(d) whether an adverse claim may be asserted against a person who,

"(i) acquires a security entitlement from the securities intermediary, or

"(ii) purchases a security entitlement, or interest in it, from an entitlement holder."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 45, as amended with the French amendment, carry? Carried.

Section 46, Ms. Sandals.

Mrs. Sandals: I move that section 46 of the bill be amended by striking out "other than the rules governing the conflict of laws" and substituting "other than the conflict of law rules."

The Chair: Questions and comments?

Mr. Tascona: I have to ask you, why did you change the language on that? What did you change? It means almost the same, to me.

Mr. Doppelt: It was done as a result of discussion with the other provinces that are working on this legislation, to simplify the wording. It really isn't a substantive change at all; it's really drafting stuff.

Mr. Tascona: Okay. Thanks.

The Chair: Shall the amendment carry? Carried.

Shall section 46, as amended, carry? Carried.

Shall section 47 carry? Carried.

Section 48.

Ms. Mossop: I move that subsection 48(2) of the bill be amended by striking out "giving a notice of seizure to the issuer" and substituting "serving a notice of seizure on the issuer."

The Chair: Questions and comments? Seeing none, shall the amendment carry? Carried.

Shall section 48, as amended, carry? Carried.

Mr. Prue: We all deserve a medal at the end of this.

The Chair: The thought has crossed the mind of the Chair. The Chair observes that if you think we deserve a medal, try to imagine what these people sitting here at the table must have been going through for months. These guys are the heroes.

Mr. McMeekin: Mr. Chair, I hope this is on TV.

The Chair: Like most things pertaining to securities legislation, this is done in near perfect anonymity, other than that which is preserved by Hansard.

Section 49: Questions and comments?

1630

Mrs. Sandals: I move that section 49 of the bill be amended by striking out "giving a notice of seizure to the issuer" and substituting "serving a notice of seizure on the issuer."

The Chair: Questions and comments?

Mr. Tascona: I take it this is just form.

Mr. Doppelt: Yes, although service is a more formal process—

Mr. Tascona: Much more formal.

Mr. Doppelt: —than simply giving a notice, and that's consistent with the wording of executions acts across the country. So that's why the change was made.

Mr. Tascona: Okay. Thank you.

The Chair: Shall the amendment carry? Carried.

Shall section 49, as amended, carry? Carried.

We're moving.

Section 50.

Mrs. Sandals: I move that section 50 of the bill be amended by striking out "giving a notice of seizure to the securities intermediary" and substituting "serving a notice of seizure on the securities intermediary."

The Chair: Questions and comments?

Shall the amendment carry? Carried.

Shall section 50, as amended, carry with the French amendment? Carried.

Section 51.

Mrs. Sandals: I move that section 51 of the bill be amended by striking out "giving a notice of seizure to the secured party" in the portion before paragraph 1 and substituting "serving a notice of seizure on the secured party."

The Chair: It sounds as provocative as anything we've heard so far today. Questions and comments?

Shall the amendment carry? Carried.

Shall section 51, as amended, with the French amendment, carry? Carried.

There being no amendments to section 52, shall section 52 carry? Carried.

Section 53, questions and comments?

Ms. Mossop: I move that the French version of subsection 53(1) of the bill be struck out and the following substituted:

« Règles de la preuve : valeurs mobilières avec certificat

« (1) Les règles de la preuve énoncées au présent article s'appliquent aux instances judiciaires portant sur des valeurs mobilières avec certificat et intentées contre leur émetteur. »

The Chair: Questions and comments? They must be in French, I suppose.

Shall the amendment carry? Carried.

Mrs. Sandals: I move that subsections 53(2) and (3) of the bill be struck out and the following substituted:

"Admission of signatures

"(2) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary endorsement is admitted.

"Same

"(3) A signature on a security certificate is presumed to be genuine and authorized but, if the effectiveness of the signature is put in issue, the burden of establishing that it is genuine and authorized is on the party claiming under the signature."

The Chair: Questions and comments?

Mr. Tascona: I understand what you're trying to do under subsection 53(2), but how specific are we dealing with here? "Unless specifically denied in the pleadings": Are you saying, "I deny paragraph 5 of the statement of claim," or do you have to be even more specific than that in terms of why you're denying it?

Mr. Doppelt: Actually, this is a continuation of a provision that's already in our existing Business Corporations Act. It says "specifically denied." It means you deny that the person whose signature is claimed to be on the certificate in fact signed it.

Mr. Tascona: No, I know, but we're talking about pleadings here, so we're talking about a claim.

Mr. Doppelt: Right, in legal proceedings, yes.

Mr. Tascona: You changed this from "unless specifically put in issue in the pleadings."

Mr. Doppelt: Right, to "denied," and that was for uniformity of language with the other provinces' legislation.

Mr. Tascona: So it would be as simple as saying, "I deny this paragraph in the claim."

Mr. Doppelt: I think, actually, "put in issue" and "denied" fundamentally have the same meaning, but for consistency of language with the other proposed securities transfer acts—the same wording is used in the Alberta bill.

Mr. Tascona: Okay. Thanks.

The Chair: Further questions and comments?

Shall the amendment carry? Carried.

Ms. Mossop: I move that the French version of subsections 53(4) and (5) of the bill be struck out and the following substituted:

« Recouvrement sur présentation du certificat

« (4) Sur production des certificats de valeur mobilière dont la signature est admise ou prouvée, leur détenteur obtient gain de cause, sauf si le défendeur soulève un moyen de défense ou l'existence d'un vice mettant en cause la validité de ces valeurs mobilières.

« Preuve de l'inopposabilité du moyen de défense ou du vice

« (5) Si l'existence de moyens de défense ou d'un vice mettant en cause la validité des valeurs mobilières est établie, il incombe au demandeur d'en prouver l'inopposabilité:

« a) soit à lui-même;

« b) soit à la personne dont il invoque les droits. »

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 53, as amended, carry? Carried.

Section 54?

Ms. Mossop: I move that the French version of paragraph 3 of subsection 54(3) of the bill be struck out and the following substituted:

« 3. Dans le cas d'un certificat de valeur mobilière qui a été volé, il a agi tout en étant avisé de l'opposition. »

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 54, as amended, carry? Carried.

Shall section 55, as amended with the French amendment, carry? Carried.

Section 56.

Mrs. Sandals: I move that subsection 56(2) of the bill be struck out and the following substituted:

"Same

"(2) A reference described in clause (1)(b) does not by itself constitute notice to a purchaser for value of a defect that goes to the validity of the security, even if the security certificate expressly states that a person accepting it admits notice."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 56, as amended, carry? Carried.

Section 57.

Mrs. Sandals: I move that section 57 of the bill be struck out and the following substituted:

"Enforcement of security

"Unauthorized signature

"57(1) An unauthorized signature placed on a security certificate before or in the course of issue is ineffective except that the signature is effective in favour of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by,

"(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security certificate or of any similar security cer-

tificate or with the immediate preparation for signing of any of those security certificates; or

"(b) an employee of the issuer, or of any persons referred to in clause (a), entrusted with responsible handling of the security certificate.

"Limitation re unauthorized signature—securities issued by governments

"(2) Where an unauthorized signature described in subsection (1) is placed on a security certificate issued by a government or agency of it, the signature is ineffective except that the signature is effective in favour of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by an employee of the issuer entrusted with responsible handling of the security certificate.

"Defect going to validity

"(3) A security issued with a defect going to its validity is enforceable against the issuer if held by a purchaser for value and without notice of the defect and, in the case of such a security issued by a government or agency of it, if there has been substantial compliance with the legal requirements governing the issue."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 57, as amended, carry? Carried.

Section 58.

Mrs. Sandals: I move that section 58 of the bill be struck out and the following substituted:

"Lack of genuineness of certificated security

"58. Except as otherwise provided in subsection 57(1) or (2), lack of genuineness of a certificated security is a complete defence, even against a purchaser for value and without notice of the lack of genuineness."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 58, as amended, carry? Carried.

There being no amendments proposed to sections 59 to 61, inclusive, do I have consent for block consideration? Agreed.

Shall sections 59 through 61, inclusive, carry? Carried.

Section 62.

1640

Mrs. Sandals: I move that clause 62(b) of the bill be struck out and the following substituted:

"(b) the security is an uncertificated security and the registered owner has been given a notice of the restriction by a person required to give such notice in order to make the restriction effective."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 62, as amended, carry? Carried.

There being no proposed amendments to sections 63 through 66, inclusive, consent for block consideration? Agreed.

Shall sections 63 through 66, inclusive, carry? Carried.

Section 67.

Mrs. Sandals: I move that subsections 67(1), (2) and (3) of the bill be struck out and the following substituted:

"Overissue

"(1) Except as otherwise provided in subsections (2) and (3), the provisions of this act that make a security enforceable against an issuer despite a defence or defect or that compel a security's issue or reissue do not apply to the extent that the application of such provision would result in an overissue.

"Same

"(2) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue of a security, or a person entitled to enforce a security against an issuer despite a defence or defect as provided under section 57, 58 or 59 or under a similar law of another jurisdiction, may compel the issuer to purchase the security and deliver it, if certificated, or register its transfer, if uncertificated, against surrender of any security certificate the person holds.

"Same

"(3) If an identical security not constituting an overissue is not reasonably available for purchase, a person entitled to issue of a security, or a person entitled to enforce a security against an issuer despite a defence or defect as provided under section 57, 58 or 59 or under a similar law of another jurisdiction, may recover from the issuer the price that the last purchaser for value paid for the security with interest from the date of the person's demand."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 67, as amended, carry? Carried.

Shall section 68 carry? Carried.

Section 69.

Ms. Mossop: I move that the French version of subsection 69(3) of the bill be amended by striking out "connaissait" and substituting "était avisé."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 69, as amended, carry? Carried.

There being no amendments proposed for sections 70 through 85, I request consent for block consideration of sections 70 through 85, inclusive. Agreed.

Shall sections 70 through 85, inclusive, carry? Carried.

Section 86.

Ms. Mossop: I move that the English version of clause 86(1)(d) of the bill be struck out and the following substituted:

"(d) any applicable law relating to the collection of taxes has been complied with;"

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 86, as amended, carry? Carried.

Shall section 87 carry? Carried.

Section 88.

Ms. Mossop: I move that subsection 88(1) of the bill be amended by striking out "giving a notice to the issuer" in the portion before clause (a) and substituting "communicating a notice to the issuer."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 88, as amended, carry? Carried.

Section 89.

Ms. Mossop: I move that the French version of subsection 89(1) of the bill be amended by striking out "remet promptement" in the portion before paragraph 1 and substituting "donne promptement."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 89, as amended, carry? Carried.

Shall section 90 carry? Carried.

Section 91.

Ms. Mossop: I move that subclause 91(1)(b)(ii) of the bill be amended by striking out "after a demand made" at the beginning and substituting "after a demand."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 91, as amended, carry? Carried.

Shall section 92 carry? Carried.

Section 93.

Ms. Mossop: I move that clause 93(a) of the bill be amended by striking out "give notice" and substituting "give a notice."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Ms. Mossop: I move that the English version of clause 93(b) of the bill be amended by striking out "receiving notice" and substituting "receiving a notice."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 93, as amended, carry? Carried.

Shall section 94 carry? Carried.

Section 95.

Ms. Mossop: I move that the English version of clause 95(3)(a) of the bill be amended by striking out "specifically endorsed" and substituting "specially endorsed."

The Chair: Questions and comments?

Mr. Tascona: That change there, is that just a typographical error? Is that what you're saying?

Mr. Doppelt: It's a typographical error. There's no such thing as "specifically endorsed."

Mr. Tascona: What does "specially endorsed" mean?

Mr. Doppelt: Well, when a security is specially endorsed, it would be endorsed by being signed in favour of a specific person, as opposed to being endorsed in blank where you just simply sign it. That's the fundamental difference: You specially endorse it in favour of a particular person.

Mr. Tascona: Okay. Thank you.

The Chair: Shall the amendment carry? Carried.

Shall section 95, as amended, with the French amendment, carry? Carried.

Shall section 96, as amended, with the French amendment, carry? Carried.

Shall section 97, as amended, with the French amendment, carry? Carried.

Shall section 98, as amended, with the French amendment, carry? Carried.

Shall section 99 carry? Carried.

Shall section 100 carry? Carried.

Shall section 101, with the French amendment, carry? Carried.

Shall section 102, with the French amendment, carry? Carried.

Shall section 103 carry? Carried.

Section 104.

Mrs. Sandals: I move that subsection 104(2) of the bill be struck out and the following substituted:

"Same

"(2) If a legal proceeding based on an adverse claim could not have been brought against an entitlement holder under section 96, a legal proceeding based on the adverse claim may not be brought against a person who purchases a security entitlement, or interest in it, from the entitlement holder."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Mrs. Sandals: I move that subparagraph 2 i of subsection 104(3) of the bill be amended by striking out "securities entitlement" and substituting "security entitlement."

The Chair: Questions and comments? Shall the amendment carry?

Shall section 104, as amended, with the French amendment, carry? Carried.

Shall section 105, with the French amendment, carry? Carried.

Shall section 106, with the French amendment, carry? Carried.

There being no amendments proposed for sections 107 through 116, inclusive, shall these sections be treated as a block motion? Agreed.

Section 117.

1650

Mrs. Sandals: I move that the portion of subsection 67(2) of the Business Corporations Act before clause (a) of that subsection, as set out in subsection 117(1) of the bill, be amended by striking out "as described in paragraph 1 of subsection 87(1) of the Securities Transfer Act, 2005" and substituting "as described in section 87 of the Securities Transfer Act, 2005."

The Chair: Questions and comments?

Shall the amendment carry? Carried.

Shall section 117, as amended, carry? Carried.

There being no proposed amendments to sections 118 through 122, inclusive, shall these be considered in a block? Agreed.

Shall sections 118 through 122 carry? Carried.

Section 123.

Ms. Mossop: I move that the French version of the definition of "security entitlement" in subsection 1(1) of the Personal Property Security Act, as set out in subsection 123(8) of the bill, be struck out and the following substituted:

"« droit intermédié » s'entend au sens de la Loi de 2005 sur le transfert des valeurs mobilières. ('security entitlement') »"

The Chair: Questions and comments?

Shall the amendment carry? Carried.

Shall section 123, as amended, plus the French amendment, carry? Carried.

Shall section 124 carry? Carried.

Section 125.

Mrs. Sandals: I move that section 125 of the bill be struck out and the following substituted:

"125. Clause 5(1)(b) of the act is amended by striking out 'a security'."

The Chair: Questions and comments?

Shall the amendment carry? Carried.

Shall section 125, as amended, carry? Carried.

Section 126.

Mrs. Sandals: I move that section 7 of the Personal Property Security Act, as set out in section 126 of the bill, be struck out and the following substituted:

"Conflict of laws—law of debtor's jurisdiction

"7(1) The validity,

"(a) of a security interest in,

"(i) an intangible, or

"(ii) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others; and

"(b) of a non-possessory security interest in an instrument, a negotiable document of title, money and chattel paper,

"shall be governed by the law of the jurisdiction where the debtor is located at the time the security interest attaches.

"Change of location

"(2) If a debtor relocates to another jurisdiction, a security interest perfected in accordance with the applicable law as provided in subsection (1) continues perfected until the earliest of,

"(a) 60 days after the day the debtor relocates to another jurisdiction;

"(b) 15 days after the day the secured party receives notice that the debtor has relocated to another jurisdiction; and

"(c) the day that perfection ceases under the previously applicable law.

"Location of debtor

"(3) For the purposes of this section and section 7.1, a debtor shall be deemed to be located at the debtor's place of business if there is one, at the debtor's chief executive office if there is more than one place of business, and otherwise at the debtor's principal place of residence."

The Chair: Questions and comments?

Mr. Tascona: Under "Change of location" it says, "(2) If a debtor relocates to another jurisdiction, a security interest perfected in accordance with the applicable law as provided in subsection (1) continues perfected until the earliest of"—so you've got "60 days after the day the debtor relocates to another jurisdiction; (b) 15 days," and then you have the use of the wording "and" for "(c) the day that perfection ceases under the previously applicable law." I take it that any of these situations can apply. So why are you using the word "and"?

Mr. Doppelt: This is restoring the subsection to the current wording that has been in the Personal Property Security Act for many years. It's because of the three items; it's whichever occurs first. That's just a matter of legislative drafting.

Mr. Tascona: I know that. I just wonder, how did they ever come up—you know from the history of it—with 60 days in (a)? How did they ever come up with that time period?

Mr. Doppelt: Well, the whole point of this provision is, it's usually a case where, for example, a debtor owns a car. Let's say the person moves from Manitoba to Ontario. It's for the benefit of the secured creditor, who may not have knowledge that the debtor has moved, then—

Mr. Tascona: No, I understand that.

Mr. Doppelt: Right. But the point is that they're given a period in which that secured creditor is fully protected, that whole 60-day period.

Mr. Tascona: But why did they come up with 60 days?

Mr. Doppelt: It was just viewed as a reasonable period of protection in which, even without knowledge, the security interest would become unperfected unless a registration occurred in Ontario.

Mr. Tascona: It would seem to me—and there's not going to be any change to this—it would have been more fair if (b) provided where the person gets notice; 15 days after the person gets notice. It's entirely possible the person doesn't get notice until after the 60 days, so whatever was perfected has been lost.

Mr. Doppelt: Right. But remember, the person who's at risk would be, for example, a buyer of the car in Ontario. As they search in the Ontario Personal Property Security Registration, they're not going to discover that registration, and if they buy within that 60-day period, they're at risk. Once those 60 days are up, then they would take clear of it, because the security interest would no longer be protected. That's been in the act since 1967, actually, and there are similar rules in every Personal Property Security Act across Canada.

Mr. Tascona: Has that part ever been litigated?

Mr. Doppelt: I don't think there has been much litigation concerning this provision.

The Chair: Further questions and comments? Shall the amendment carry? Carried.

Mrs. Sandals: I move that the English version of section 7.1 of the Personal Property Security Act, as set out in section 126 of the bill, be amended by striking out "is governed" wherever it appears in subsections (1) and (2) and substituting in each case "shall be governed."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Mrs. Sandals: I move that subsection 7.1(3) of the Personal Property Security Act, as set out in section 126 of the bill, be struck out and the following substituted:

"Determination of jurisdiction

"(3) For the purposes of this section,

"(a) the location of the debtor is determined by subsection 7(3);

"(b) the issuer's jurisdiction is determined under section 44 of the Securities Transfer Act, 2005;

"(c) the securities intermediary's jurisdiction is determined under section 45 of the Securities Transfer Act, 2005."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Mrs. Sandals: I move that paragraph 1 of subsection 7.1(4) of the Personal Property Security Act, as set out in section 126 of the bill, be amended by striking out "for purposes of this provision, this part, this act or the law of that jurisdiction" and substituting "for purposes of the law of that jurisdiction, this act or any provision of this act."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Mrs. Sandals: I move that the English version of paragraph 2 of subsection 7.1(4) of the Personal Property Security Act, as set out in section 126 of the bill, be amended by striking out "is governed" and substituting "shall be governed."

The Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 126, as amended, plus the French amendment, carry? Carried.

Well done. We made it through it.

Shall section 127 carry? Carried.

Section 128.

Ms. Mossop: I move that section 8.1 of the Personal Property Security Act, as set out in section 128 of the bill, be struck out and the following substituted:

"Interpretation—law of jurisdiction

"8.1 For the purposes of sections 5 to 8, a reference to the law of a jurisdiction is a reference to the internal law of that jurisdiction, excluding its conflict of law rules."

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The Chair: Questions and comments?

Shall the amendment carry? Carried.

Shall section 128, as amended, carry? Carried.

Shall section 129, with the French amendment, carry? Carried.

Shall section 130 carry? Carried.

Shall section 131, with the French amendment, carry? Carried.

Shall section 132 carry? Carried.

Shall section 133 carry? Carried.

Shall section 134, with the French amendment, carry? Carried.

Shall section 135 carry? Carried.

Shall section 136, with the French amendment, carry? Carried.

Section 137: Ms.Mossop.

Ms. Mossop: I move that section 28.1 of the Personal Property Security Act, as set out in section 137 of the bill, be struck out and the following substituted:

"Rights of protected purchaser

"28.1(1) This act does not limit the rights that a protected purchaser of a security has under the Securities Transfer Act, 2005.

"Same

"(2) The interest of a protected purchaser of a security under the Securities Transfer Act, 2005, takes priority over an earlier security interest, even if perfected, to the extent provided in that act.

"Same

"(3) This act does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under the Securities Transfer Act, 2005."

The Chair: Questions and comments?

Shall the amendment carry? Carried.

Shall section 137, as amended, carry?

Section 138.

Ms. Mossop: I move that subclause 30.1(4)(b)(iii) of the Personal Property Security Act, as set out in section 138 of the bill, be struck out and the following substituted:

"(iii) if the secured party obtained control through another person under clause 25(1)(c) of the Securities Transfer Act, 2005, when the other person obtained control; or"

The Chair: Questions and comments?

Shall the amendment carry? Carried.

Further amendments.

Ms. Mossop: I move that the English version of subsection 30.1(8) of the Personal Property Security Act, as set out in section 138 of the bill, be amended by striking out "is governed" and substituting "shall be governed."

The Chair: Questions and comments?

Shall the amendment carry?

Shall section 138, as amended, plus the French amendment, carry? Carried.

Section 139.

Ms. Mossop: I move that subsection 56(7) of the Personal Property Security Act, as set out in section 139 of the bill, be amended by striking out "clause 1(2)(d) of this act" and substituting "subclause 1(2)(d)(ii) of this act."

The Chair: Comments?

Shall the amendment carry? Carried.

Shall section 139, as amended, plus the French amendment, carry? Carried.

Shall section 140 carry? Carried.

Shall section 141 carry? Carried.

Shall section 142 carry? Carried.

Section 143.

Ms. Mossop: I move that subsection 14(3) of the Execution Act, as set out in subsection 143(1) of the bill, be struck out and the following substituted:

"Seizure includes dividends, other rights to payment

"(3) Every seizure and sale made by the sheriff shall include all dividends, distributions, interest and other rights to payment in respect of the security, if issued by an issuer incorporated or otherwise organized under

Ontario law, or in respect of the security entitlement and, after the seizure becomes effective, the issuer or securities intermediary shall not pay the dividends, distributions or interest or give effect to other rights to payment to or on behalf of anyone except the sheriff or a person who acquires or takes the security or security entitlement from the sheriff."

The Chair: Questions or comments?

Shall the amendment carry? Carried.

Further amendments?

Ms. Mossop: I move that the definition of "seized security" in subsection 16(9) of the Execution Act, as set out in subsection 143(1) of the bill, be amended by striking out "or security entitlement."

The Chair: Questions and comments?

Shall the amendment carry? Carried.

Shall section 143, as amended, plus the French amendment, carry? Carried.

Shall sections 144 through 146, inclusive, carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 41, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

Just before we all adjourn, I think on behalf of investors, institutions, brokers, lawyers, underwriters, clients, banks and everyone involved in the exchange of securities, I want to thank those of you who have come before us today. I commend you on what must surely have been a very painstaking and arduous task, carried out without a whole lot of public visibility. We need world-class financial markets to enable Ontario to allow our entrepreneurs and our best companies to grow and expand. For that, the fuel is money, and your work is going to help make Ontario's capital market as efficient as the people, the investors and the companies that this act will serve. On behalf of the committee I tell you, well done.

Mrs. Sandals: Thank you, Chair, for keeping us moving along expeditiously.

The Chair: With that in mind, we're adjourned.

The committee adjourned at 1706.

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Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

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Mr. Mario Sergio (York West / York-Ouest L)

Substitutions / Membres remplaçants
Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)
Mrs. Liz Sandals (Guelph–Wellington L)
Mr. Joseph N. Tascona (Barrie–Simcoe–Bradford PC)

Also taking part / Autres participants et participantes
Mr. Allen Doppelt, senior counsel, legal services branch, Ministry of Government Services
Mr. Colin Nickerson, senior manager, securities policy, industrial and financial policy branch,
Mr. Nick Smook, senior counsel, legal services branch,
Ministry of Finance

Clerk / Greffière
Ms. Tonia Grannum

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Mr. Philip Kaye, research officer, Research and Information Services
Ms. Susan Klein, legislative counsel, Ministry of the Attorney General