

Proposed Financial System Review Act to Address Priority of Bank Act Security.

December 2, 2011 by [Kashif Zaman](#)

The *Bank Act* (Canada) (the “Act”) and a number of other federal statutes relating to financial institutions must, by law, be reviewed every five years. The most recent review process has culminated in [Bill S-5](#) (the Bill) which is entitled the *Financial System Review Act* (the FSRA). The Bill had first reading in the Senate on November 23, 2011, and requires second and third readings in the Senate, first through third readings in the House of Commons and then Royal Assent before the FSRA can come into effect.

Bank Act Security and the Impact of Recent Judgments

Part VIII of the Act provides banks listed under Schedules I and II of the Act, and authorized foreign banks, the right to advance funds on the security of certain collateral listed in section 427 of the Act.

Last year the Supreme Court of Canada (SCC) issued [two decisions](#) in which it determined that an unperfected *Personal Property Security Act* (PPSA) security interest had priority over a subsequent but perfected security interest under section 427 of the Act. The result of these SCC decisions undermined the utility of the Act security and has resulted in its non-use by Canadian banks.

Proposed Amendments

The Bill includes proposed amendments to the Act security regime addressing the priority of the Act security in light of these SCC decisions. In summary, the Act, when amended, will include a statement that security properly taken under the Act has priority over a PPSA security interest (or any other security interest) that was unperfected at the time the Act security was taken except if the relevant bank, when it acquires the Act security, has knowledge of such unperfected security interest. It remains to be seen whether Canadian banks are satisfied with the legal effect of such proposed amendments such that Act security will once again be used.