

1982, chapter 55

## AN ACT RESPECTING TRANSFERS OF PROPERTY IN STOCK

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**Bill No. 97**

Introduced by Mr Marc-André Bédard, Minister of Justice

First reading: 25 November 1982

Second reading: 3 December 1982

Third reading: 16 December 1982

**Assented to: 16 December 1982**

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**Coming into force: by proclamation of the Government**

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**Act amended:**

Bills of Lading Act (R.S.Q., chapter C-53)



## CHAPTER 55

An Act respecting the transfer of property in stock

[Assented to 16 December 1982]

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

R.S.Q., c. C-53, title, replaced.

**1.** The title of the Bills of Lading Act (R.S.Q., chapter C-53) is replaced by the following title:

“An Act respecting bills of lading, receipts and transfers of property in stock”.

R.S.Q., c. C-53, ss. 10-57, Scheds. 1, 2, added. Effect of security.

**2.** The said Act is amended by adding, after section 9, the following sections:

**“10.** A security given under this division has effect in respect of third persons only from its registration.

### “DIVISION III

#### “TRANSFERS OF PROPERTY IN STOCK

Transfer of property in stock.

**“11.** A person may, as consideration for a loan or authorized credit, transfer, while retaining possession thereof, any property in stock of his undertaking, whether or not the undertaking deals in goods or services and whether or not it is a commercial undertaking.

“Property in stock”.

“Property in stock” means any moveable property in reserve, including raw materials, property being processed, finished products, animals, wares, property used for packing, and any hydrocarbons or mineral substances, even where such hydrocarbons and mineral substances are still in the ground.

Transferee's rights.

**"12.** The transferee acquires the same rights over the transferred property as those vested in the beneficiary by endorsement of a bill of lading or receipt made under section 1 or section 6.

Transferable property.

**"13.** No transferor may transfer property unless he owns it; however, he may transfer future property, but its transfer has effect only on his becoming its owner.

Replaced property.

**"14.** Property acquired to replace transferred property is the object of the transfer.

Loss or destruction.

A transfer is not deemed to be without an object where all the transferred property is lost or destroyed, if the transferor replaces it within a reasonable time, considering its quantity and nature.

Use of transferred property.

**"15.** Where a transferor transfers fertilizers, ameliorants, seeds, pesticides or weedkillers and subsequently uses them without replacing them, the crop produced during the first harvest following such use is also the object of the transfer.

Mandatory.

**"16.** To carry on the business, the transferor has the powers of a mandatary of the transferee over the transferred property. The transferor remains responsible for any expenditure incurred in carrying on the undertaking.

Prudent administrator.

**"17.** The transferor shall exercise the care of a prudent administrator over the transferred property.

Responsibility.

However, the loss or deterioration of transferred property is the responsibility of the transferor, unless it is by the fault of the transferee.

Indemnity.

**"18.** The indemnity payable by reason of the loss or deterioration of any transferred property belongs to the transferee up to the amount of his claim. Payment made in good faith to the transferor before notification discharges the debtor.

Repair or replacement.

The transferee may allocate the indemnity to the payment of the debt or remit it to the transferor to repair or replace the property contemplated.

Advance repayment.

**"19.** Following any assignment, whether voluntary or judicial, of rights acquired under section 11, and following any subrogation in the same rights, the loan or sums advanced under the authorized credit may be repaid in advance, without notice and without any fine or penalty being exacted by reason of such repayment.

Notice. The repayment may be partial or full and must be made before the thirtieth day after the sending to the transferor of a notice of the transfer or subrogation by registered or certified mail.

Written transfer. **“20.** The transfer must be evidenced in a writing, which may be drafted as in the model in Schedule 1.

Content. **“21.** The writing evidencing a transfer must, in particular, indicate the address of the domicile, the principal place of business or the head office of the transferor, the nature of the property, its class or quality, the place where it is located, and, where applicable, the amount or quantity of property of each class or each quality, and any other information allowing it to be identified in relation to other property of the same nature.

Effect of transfer. **“22.** The transfer has effect against third parties only from its registration.

Registration. **“23.** The registration of a transfer is valid for five years from the date of registration; however, the registration may be renewed before then.

Cancellation. **“24.** The transfer ceases to have effect against third parties if the registration is cancelled or the period provided for in section 23 expires, provided the registration has not been renewed.

Applicable provisions. **“25.** Sections 22 to 24 apply to any assignment, whether voluntary or judicial, of rights acquired under section 11 and to any subrogation in the same rights.

Insufficient ground. **“26.** In no case may a transfer, even if it has been registered, be set up against a purchaser who, in the ordinary course of business of the transferor, purchases transferred property.

Latent defects. In no case may the transferee be bound for latent defects.

Unpaid claim. **“27.** The transferor must indicate to the transferee in the writing evidencing the transfer any claim of an unpaid vendor affecting the transferred property, and any claim so indicated takes precedence over the rights of the transferee.

Precedence of rights. Subject to section 26, the rights of the transferee take precedence over all rights granted over the property by the transferor subsequently to the transfer, and they follow the property into whatever hands it may pass.

Precedence of rights. However, in the event of the bankruptcy of the transferor pursuant to the Bankruptcy Act (Revised Statutes of Canada, 1970, chapter B-3), his employees' claims for wages, salary or other remuneration owed them for a period of not over three months immediately preceding the bankruptcy take precedence over the rights

of the transferee. The same rule applies to any claim of a farmer or a farm producer held against the transferor under the conditions and for the purposes and the amount provided for in subparagraph *b* of paragraph 6 of section 178 of the Act respecting banks and banking (Statutes of Canada, 1980-81-82, chapter 40).

Amalgamation      “**28.** The amalgamation of undertakings does not affect the rights of a transferee over the property transferred to him.

Copy.              “**29.** The return to a lessor of a duplicate or copy of the writing evidencing a transfer is equivalent to the notice given under article 1639 of the Civil Code.

Unfulfilled obligations.      “**30.** If a transferor in possession of transferred property fails to fulfil his obligations under the loan or authorized credit towards the transferee, the transferee is entitled to possess the property. If the transferor fails to remit the property to him, the transferee may on a motion obtain a judicial order enjoining the transferor to remit the property to the transferee. The motion may be presented without service before the judge in chambers or the special prothonotary.

Opposition.        Opposition to the judicial order must be in accordance with the rules set down in the Code of Civil Procedure for opposition to seizure before judgment. It is heard by preference in practice division.

Processing of property.      “**31.** The transferee may terminate the processing of property of which he takes possession. Similarly, he may proceed to harvest standing crops or extract hydrocarbons or mineral substances that are the object of the transfer.

Animals.            “**32.** Where transferred property taken into possession by a transferee is an animal, the transferee, in the best interests of the transferor and taking account of circumstances, may care for it or slaughter it.

Sale of property.      “**33.** The transferee shall sell the property diligently and in the best interests of the transferor; for that purpose he may sell it by bulk sale or separately.

Sale of property.      “**34.** A transferee may himself sell the property he has taken into possession by agreement or by a call for tenders, or cause it to be sold by auction or public auction.

Notice.             “**35.** In no case where the transferee elects to sell the transferred property himself may the sale be effected until five days after he has sent notice of it to the transferor at his last known address by registered or certified mail, unless the property is perishable or he considers that such formality could result in a significant reduction of its value.

Call for tenders.      “**36.** A transferee who proceeds by way of a call for tenders may do so through the newspapers or by invitation.

- Content.           **“37.** A call for tenders must contain sufficient information to permit any interested person to tender a bid at the proper time and place.
- Highest bid.           **“38.** The transferee is bound to accept the highest bid unless conditions attached to it make it less advantageous than a bid tendered for a lower price, or unless none of the bids tendered to him are for a reasonable price, considering the nature and value of the property.
- Auction.           **“39.** A transferee who proceeds by way of auction or public auction shall do so at the date, time and place fixed in a notice sent to the transferor at his last known address by registered or certified mail, and then published not less than five days before the date fixed for the sale in accordance with the rules provided in article 139 of the Code of Civil Procedure.
- Recovery of possession.           **“40.** At any time before the sale, the transferor may retake possession of the transferred property by repaying to the transferee the loan or the sums advanced under the authorized credit as well as the interest, costs and accessory expenses; repossession in this manner extinguishes the rights of the transferee over the property.
- Costs.           **“41.** The transferor is responsible for the reasonable costs incurred by the transferee in the exercise of his rights under sections 30 to 32 and his right to sell the property.
- Proceeds of the sale.           **“42.** The transferee shall allocate the proceeds of the sale to payment of the costs contemplated in section 41, payment of the claims having precedence over his rights up to the net proceeds of the sale, and payment of the debt and the accessory expenses.
- Surplus.           Where there is a surplus of money after the allocation in the first paragraph, the transferee shall remit it to the transferor; where, on the other hand, the proceeds of the sale are insufficient to pay the costs, the debt and the accessory expenses, the transferee preserves a personal claim against the transferor for the remainder due to him and is subrogated, where such is the case, in all the rights of the persons to whom he paid claims pursuant to the first paragraph, up to the amounts paid.
- Rendering of account.           **“43.** Not later than eight days after the sale of the property, the transferee shall render account of the proceeds of the sale to the transferor.
- Contestation.           The account rendered may be contested in the manner established in the Code of Civil Procedure.

Regulation. “44. The Government may, by regulation, prescribe the information that must be contained in a call for tenders contemplated in section 37, the procedure to be followed and the time limits to be observed in carrying out that mode of proceeding.

Coming into force. The regulation shall come into force ten days after its publication in the *Gazette officielle du Québec* or on any later date fixed therein.

“DIVISION IV

“REGISTRATION

Computerized register. “45. The registrar of the registration division of Montréal shall keep a computerized register of the registrations provided for by this Act.

Content. “46. The register must contain, in alphabetical order, the name of each endorser and transferor, his address, the nature of the deed, the name of the registry office where the notice was presented, and the number, date and time of the entry in the register.

Registration of rights. “47. Every registration of rights provided for by this Act shall be made by the entry of those rights in the register.

Notice. “48. Every person wishing to have a right entered in the register shall do so by presenting two duplicates of a notice, prepared in accordance with one of the models shown in Schedule 2, in the registry office of a registration division established under the Territorial Division Act (R.S.Q., chapter D-11).

Duties of the registrar. “49. If a notice is presented in a registry office where a computerized system is used, the registrar of the office himself shall immediately enter the information required by section 46 in the register. He shall then certify the entry on both duplicates of the notice, indicating the number, date and time of the entry, remit one of the duplicates to the person who requested the entry and transmit the other to the registrar of Montréal, who shall deposit it in his records.

Duties of the registrar. “50. If a notice is presented in a registry office where no computerized system is used, the registrar of the office shall immediately inform the registrar of Montréal. The registrar of Montréal shall immediately enter the information required by section 46 in the register.

Duties of the registrar. The information may be relayed by any usual means, including telefacsimile or telephone. Where the information has been relayed verbally, the registrar of Montréal shall so indicate in the register and, upon receipt of a duplicate or facsimile of the notice, shall verify the entry in the register, and correct it if necessary.

Duties of  
the  
registrar.

“**51.** Following the entry in the register, the registrar of Montréal shall immediately, in the manner determined in section 50, inform the registrar having received the notice, and the latter shall certify, on both duplicates, the entry of the notice in the register, indicating the number, date and time of the entry and, where such is the case, the fact that the information was relayed to him verbally; one of the duplicates shall be remitted to the person who requested the entry and the other shall be transmitted to the registrar of Montréal, who shall deposit it in his records.

Correc-  
tions.

If the duplicates have been certified following verbal information, any registrar may make any necessary corrections by means of a certified statement of the notices entered in the register.

Priority of  
rank.

“**52.** Notwithstanding article 2130 of the Civil Code, the date and time of entry in the register determine the priority of rank. The registrar of Montréal shall enter in the book of presentations the date and time of entry in the register.

Cancellat-  
ion.

“**53.** Two duplicates of a document intended to cancel an entry in the register must be presented in one of the registry offices referred to in section 48. The cancellation is made in accordance with Chapter V of Title Eighteenth of Book Third of the Civil Code; however, where a security registered under section 10 ceases to have effect pursuant to section 8 or where the registration of a transfer is no longer valid pursuant to section 23, the registration thereof is cancelled by means of a requisition to that effect presented by any interested person.

Applicable  
provisions.

Mention of the cancellation must be entered in the register and sections 49 to 51 apply, *mutatis mutandis*.

Sworn  
witnesses  
unrequired.

“**54.** The fifth paragraph of article 2131 of the Civil Code does not apply to documents presented for registration under this Act.

Certified  
statement.

“**55.** Any person may obtain a certified statement of the registered notices from any registry office. The statement consists of a computerized statement of the uncanceled entries appearing on the register.

Issue of  
the  
statement.

Where the request is made to an office contemplated in section 50, the registrar of that office shall forward it to the registrar of an office contemplated in section 49, who shall issue the statement after having certified it.

Facsimile.

“**56.** Where a notice or a document has been relayed between registrars by telefacsimile, every resulting facsimile is deemed to be a true copy of the notice or document relayed and is proof of its contents without any need to prove the signature or the certificate which may be affixed thereto.

“DIVISION V  
“ADMINISTRATION OF THE ACT

Minister. “57. The Minister of Justice is responsible for the administration of this Act.

“SCHEDULE 1  
(section 20)

TRANSFER OF PROPERTY IN STOCK

I, the undersigned.....  
(transferor)

.....  
(address of domicile, principal place of business or head office)

in consideration of a loan or authorized credit for  
an amount of.....dollars (\$) )  
that is made to me by.....  
(transferee)

.....  
(address)  
transfer to the latter the property hereinafter described of which  
I am now or shall become owner:

(Description of property)

Present property:

Future property:

The property is located at .....

(Enter here any other clauses agreed by the parties)

I consent to this transfer under Division III of the Act respecting bills of lading, receipts and transfers of property in stock (R.S.Q., chapter C-53).

I guarantee that the property of which I am owner and that is hereby transferred is discharged of all transfers and privileges, except

.....  
(identification of existing privileges)

and I pledge that the future property of which I shall become owner and that is also transferred hereby is discharged of all transfers and privileges.

Made at....., on.....19.....

\_\_\_\_\_  
*(signature of transferor)*

\_\_\_\_\_  
*(signature of transferee)*

“SCHEDULE 2  
*(section 48)*

NOTICE OF A SECURITY UNDER DIVISION II  
OR OF A TRANSFER OF PROPERTY IN STOCK

To the registrar of the registration division of .....

.....,  
*(name of the office)*

notice is given that .....,  
*(endorser or transferor)*

.....,  
*(address)*

has (endorsed a receipt or a bill of lading, or transferred property in stock) under section (6 or 11) of the Act respecting bills of lading, receipts and transfers of property in stock (R.S.Q., chapter C-53) in favour of.....,  
*(beneficiary or transferee)*

.....,  
*(address)*

dated .....  
*(date)*

This notice is given to you under section 48 of the said Act, so that it may be entered in the register contemplated in section 45 of the said Act.

Made at....., on.....19.....

\_\_\_\_\_  
(signature)

NOTICE OF RENEWAL OF THE REGISTRATION OF A TRANSFER OF PROPERTY IN STOCK

To the registrar of the registration division of .....

.....  
(name of the office)

notice is given that .....  
(transferor)

.....  
(address)

has transferred property in stock, notice of which was registered in the registry office of the registration division of Montréal on .....

under number....., that the notice was registered less than five years ago, and that it is expedient to renew the registration of the notice.

This notice is given to you under section 48 of the Act respecting bills of lading, receipts and transfers of property in stock (R.S.Q., chapter C-53), so that it may be entered in the register contemplated in section 45 of the said Act.

Made at....., on.....19.....

\_\_\_\_\_  
(signature)

NOTICE OF A VOLUNTARY OR JUDICIAL ASSIGNMENT  
RELATING TO A TRANSFER OF PROPERTY IN STOCK

To the registrar of the registration division of .....  
.....  
(name of the office)

notice is given that the rights from the transfer of property in stock by  
.....  
(transferor)

.....  
(address)

notice of which was registered in the registry office of the registra-  
tion division of Montréal on .....

....., under number.....,  
in favour of .....  
(first transferee)

have been the object of an assignment of rights (voluntary or  
judicial) in favour of .....  
(new transferee)

.....  
(address)

This notice is given to you under section 48 of the Act respect-  
ing bills of lading, receipts and transfers of property in stock (R.S.Q.,

chapter C-53), so that it may be entered in the register contemplated in section 45 of the said Act.

Made at....., on.....19.....

\_\_\_\_\_  
(signature)

NOTICE OF A SUBROGATION RELATING TO A TRANSFER OF PROPERTY IN STOCK

To the registrar of the registraton division of .....

.....  
(name of the office)

notice is given that the rights arising from the transfer of property in stock by.....  
(transferor)

.....  
(address)

notice of which was registered in the registry office of the registra- tion division of Montréal on ....., under number .....

in favour of .....  
(first transferee)

have been subrogated in favour of .....

.....  
(new transferee)

.....  
(address)

This notice is given to you under section 48 of the Act respect- ing bills of lading, receipts and transfers of property in stock (R.S.Q.,

chapter C-53), so that it may be entered in the register contemplated in section 45 of the Act.

Made at....., on.....19.....

\_\_\_\_\_  
(signature)

Effect.           **3.** Section 10 of the said Act, enacted by section 2, has effect only as regards security given after (*insert here the date of the coming into force of section 2*).

Required sums.   **4.** The sums required for the carrying out of this Act during the fiscal years 1982-83 and 1983-84 shall be taken out of the consolidated revenue fund.

Exception.       **5.** This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

Coming in-  
to force.       **6.** This Act will come into force on the date to be fixed by proclamation of the Government, except the provisions excluded by the proclamation, which will come into force, in whole or in part, on any later date that may be fixed by proclamation of the Government.