

Bangsund on the Commercial Liens Act of Saskatchewan

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Chapter 2. History & Modernization

The wise man therefore must not only know the conclusions that follow from his first principles, but also have a true conception of those principles themselves.

- Aristotle, *The Nicomachean Ethics*¹

I. History

The first part of this chapter describes the traditional governance of liens on goods in common law jurisdictions, with a focus on Saskatchewan and Alberta. This discussion has ongoing significance in most Canadian provinces and territories including Alberta, but in Saskatchewan, where the *The Commercial Liens Act*² [“CLA” or “Act”] is presently in force, it is mainly of historical value. Throughout Part I, for purposes of clarity and accuracy, the reader is periodically reminded of Saskatchewan’s departure from the traditional approach to statutory lien governance.

A. Common Law Liens

To appreciate the nature of the statutory lien on goods governed by the CLA, one must first study the history and substance of common law liens. Common law liens have been abolished in Saskatchewan pursuant to the CLA,³ but in the ensuing narrative I discuss them in the present tense because they continue to be recognized, to various extents and degrees, in other provinces, territories and jurisdictions.

1. Definition & Classification

A “lien” is defined, at common law, as a right to retain property of another until a debt or other claim is satisfied.⁴ Common law courts have historically recognized liens that arise either by operation of law [“operational lien”] or pursuant to a contract via express terms or trade usage [“contractual lien”].

Table A – Common Law Liens

| common law liens | | | |
|------------------|------------------|-----------------------|------------------|
| contractual lien | operational lien | | |
| | artificer’s lien | common carrier’s lien | innkeeper’s lien |

¹ translated by Harris Rackham (Ware: Wordsworth, 1996) at 151.

² SS 2001, c C-15.1 [CLA or Act].

³ CLA, s 26.

⁴ See *Hammonds v Barclay* (1801), 102 ER 356; *Arnold Brothers Transport Ltd v Cawthorne Auction Services Ltd* (1978), 8 Alta LR (2d) 250 (Dist Ct) at 251.

2. Creation

a. Operational Lien

Common law courts recognize a variety of possessory liens that arise by operation of law. An artificer's lien (aka artisan's lien) is created in favour of a person who improves goods "through the expenditure of money, labour or skill,"⁵ but only if the owner of those goods authorizes the work in question ["artificer's lien"].⁶ Common law liens have also been recognized in favour of select commercial parties who render their services to members of the public without reserving a right of refusal. To secure occupancy charges, an innkeeper enjoys an innkeeper's lien on goods brought to the inn by its guest⁷ even if the goods do not belong to the guest ["innkeeper's lien"].⁸ In the same vein, a common carrier⁹ acquires a lien on the carried goods to secure freight charges for the goods and/or associated passengers ["common carrier's lien"].¹⁰ In Saskatchewan, all common law liens have been abolished pursuant to the CLA.¹¹

b. Contractual Lien

Common law courts have also recognized liens created under contract via express terms or trade usage.

i. Express Terms

Liens arising under contract were once governed by their contractual terms,¹² but this is no longer true. Presently, in all of Canada's common law provinces and territories, liens arising pursuant to express contractual terms are principally governed by the mandatory provisions of the *Personal Property Security Act* (in Saskatchewan, *The Personal Property Security Act, 1993*¹³ ["PPSA"]) since these transactions involve

⁵ Alberta Law Reform Institute [ALRI], "Report on Liens: Report for Discussion 13" (September 1992) [ALRI Liens Report] at 9.

⁶ *Alberta Drilling & Developing Co Ltd v Lethbridge Iron Works Co Ltd*, [1947] 1 WWR 983 (Alta Dist Ct).

⁷ *R & R Cunningham Enterprises Ltd v Vollmers*, [1973] 4 WWR 339 (Alta SC).

⁸ *Robins & Co v Gray*, [1895] 2 QB 50.

⁹ A private carrier reserves the right to refuse the provision of carriage services to members of the public. On the difference between a common carrier and a private carrier, see Alberta Law Reform Institute [ALRI], "Report on Liens: Report for Discussion 13" (September 1992) [ALRI Liens Report] at 8.

¹⁰ *Winchester v Bushby* (1889), 16 SCR 336.

¹¹ CLA, s 26(1).

¹² *Adamac Tire and Retreaders Ltd v Sheriff of the Judicial District of Edmonton* (1979), 9 Alta LR (2d) 66 (Dist Ct).

¹³ SS 1993, c P-6.2 [PPSA].

the creation of security interests in goods with the express assent of the debtor.¹⁴ Two federal statutes that govern liens created pursuant to express contractual terms are the *Bank Act*¹⁵ and the *Canada Shipping Act*¹⁶ [“CSA”].

ii. Trade Usage

“Trade usage” is defined as “a practice or method of dealing having such regularity and observance in a region, vocation, or trade that it justifies an expectation that it will be observed in a given transaction.”¹⁷ To establish a presumption that a lien on goods has been created via usage of trade, a lien claimant must furnish “numerous and important instances of its exercise.”¹⁸ To rebut this presumption, the debtor must demonstrate that the claimant expressly agreed to waive or disclaim the lien.

Outside of Canada, in common law jurisdictions that have not adopted modern personal property security legislation, a lien on goods arising via trade usage may still hold value. However, courts tend to require strict proof of usage because a lien detrimentally impacts the rights of competing creditors. In common law Canada, liens arising via trade usage have been displaced by security interests granted under the *Personal Property Security Act*.

3. Attributes

a. Operational Lien: Possessory & Particular

An operational lien exists only while the lien claimant has possession of the goods, hence it is characterized as a “possessory lien.” The operational lien is also characterized as a “particular lien” because it only attaches to particular goods in the actual possession of the lien claimant.¹⁹ If the lien claimant surrenders possession of the goods, the lien is extinguished²⁰ and even a “subsequent

¹⁴ PPSA, s 3.

¹⁵ SC 1991, c 46.

¹⁶ SC 2001, c 26 [CSA].

¹⁷ See Bryan A Garner, ed, *Black’s Law Dictionary*, 7th ed (St Paul: West Group, 1999) at 1539, “usage”.

¹⁸ *Rushforth v Hadfield* (1805), 102 ER 138.

¹⁹ A particular lien is to be distinguished from a general lien. See Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 7: “A general lien is wider in that it also secures charges that relate to goods which are no longer in the possession of the lien claimant. ... Suppose that a repairer enters into separate contracts for the repair of two items. The repairer later surrenders one of the items to the debtor. The lien only secures charges that relate to the item remaining in the possession of the repairer. The general lien of a stockbroker secures charges that relate to securities in the possession of the stockbroker as well as previous charges that relate to securities that have been surrendered or sold.” See also *Senft v Bank of Montreal* (1986), 69 AR 35 (QB).

²⁰ *Jones v Peale* (1736), 1 Str 557, 93 ER 698.

re-acquisition of possession by the lien claimant does not revive the lien.”²¹ The Alberta Law Reform Institute [“ALRI”] highlights two exceptions to this general rule respecting lost possession of goods subject to an operational lien. First, the “lien claimant does not lose the lien if the loss of possession results from fraud or theft.”²² Second, the lien is not lost “if the lien claimant surrenders the goods to the debtor under a bailment or agency agreement which the debtor agrees to hold the goods on behalf of the lien claimant.”²³

b. Contractual Lien

In relation to a contractual lien, the parties may structure their arrangement as they see fit. For example, the lien claimant may negotiate with the debtor for a general non-possessory lien on the serviced goods accompanied by a right of seizure and forced sale in the event of default. The PPSA term “security interest” captures within its meaning a common law contractual lien, effectively eliminating the contractual lien as a distinct common law concept.

4. Enforcement

a. Operational Lien: Passive Enforcement

Under an operational lien, the claimant does not enjoy a right to sell the subject goods in satisfaction of the obligation secured.²⁴ In this sense, an operational lien is a “passive lien” under which the claimant’s ability to enforce the services contract is limited to withholding possession until payment is tendered. The practical leverage enjoyed by an operational lien claimant is usually sufficient to ensure that payment is tendered for the provision of requested materials and services. In Alberta, the right to force sale of liened goods has been statutorily conferred to operational lien claimants of all classes.²⁵ The ALRI notes, with reference to the *Possessory Liens Act*²⁶ of Alberta [“PLA”], that “[t]he creation of a statutory right of sale does not create the lien or deprive the lien claimant of any of the rights enjoyed at common law. The statute merely gives the lien claimant additional rights that were not available at common law.”²⁷

²¹ Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 6. See *Re Lehner* (1985), 4 PPSAC 254 (Sask QB); *Pennington v Reliance Motor Works Ltd*, [1923] 1 KB 127.

²² Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 6. See *Coutts Machinery Co Ltd v Richards* (1986), 71 AR 232 (QB); *Albamarle Supply Co v Hind & Co*, [1928] 1 KB 307.

²³ Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 6. See *JH Early Motor Co Ltd v Siekawitch*, [1931] 3 WWR 521 (Sask CA).

²⁴ *Mulliner v Florence* (1878), 3 QBD 484 (CA).

²⁵ *Innkeepers Act*, RSA 1980, c I-4; *Possessory Liens Act*, RSA 1980, c P-13 [PLA].

²⁶ RSA 2000, c P-19 [PLA].

²⁷ Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 10. See *Alberta Drilling & Developing Co Ltd v Lethbridge Iron Works Co Ltd*, [1947] 1 WWR 983 (Alta Dist Ct).

b. Contractual Lien: Customized Enforcement

A lien claimant who acquires a lien pursuant to express contractual terms may bargain for enforcement mechanisms including a right to sell or retain the lien goods in the event of default. The details of these active enforcement rights will vary based on the specific contractual language adopted by the parties. In the case of trade usage, enforcement rights vary according to the standards and practices observed in the relevant industry context. In contemporary common law Canada, these types of enforcement mechanisms are overridden by the mandatory enforcement rules and mechanisms set out in the *Personal Property Security Act*.

5. Termination

A contractual lien is terminated according to the express terms of the governing contract. Meanwhile, an operational lien is terminated upon the occurrence of any of the following acts or events: (i) the lien claimant relinquishing possession of the particular goods subject to the lien;²⁸ (ii) the debtor tendering the secured amount;²⁹ (iii) the lien claimant waiving the lien including doing anything inconsistent with the existence of a lien, namely, taking security in the lien goods³⁰ or granting the debtor credit or time to pay for the materials or services;³¹ (iv) the lien claimant breaching its contractual obligations to the debtor;³² (v) the lien claimant wrongfully using the goods.³³ These events terminate an operational lien on goods, but the associated debt obligation survives for the benefit of the lien claimant until it is retired.

B. Equitable Liens

Courts of equity have also recognized liens in a variety of circumstances. These equitable liens operate to charge property to secure specified payment obligations. A guarantor who pays the debt of a principal debtor is subrogated to any security the creditor holds in relation thereto, including a lien on the goods [“subrogatory lien”].³⁴ An unpaid vendor of property other than goods [in this paragraph, “personalty”] has

²⁸ See Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 11.

²⁹ *Albemarle Supply Co v Hind & Co*, [1928] 1 KB 307.

³⁰ *Bank of Africa Ltd v Salisbury Gold Mining Co Ltd*, [1892] AC 281 (PC).

³¹ *Hewison v Guthrie* (1836), 2 Bing NC 755, 132 ER 290.

³² *Weeks v Goode* (1859), 6 CBNS 367, 141 ER 499; *Barker v Buck*, [1934] 1 WWR 223 (Man CA).

³³ *Gurr v Cuthbert* (1843), 12 LJ Ex 309 (CA).

³⁴ See Peter Birks and Charles Mitchell, “Unjust Enrichment”, in Peter Birks, ed, *Private Law*, (Oxford: Oxford University Press, 2000) Vol II at para 15.235.

a lien on the personalty to secure the purchase price [“unpaid vendor’s lien”].³⁵ A pre-paying buyer has a lien on personalty to secure the repayment of monies advanced in the event that the personalty is not conveyed [“pre-paying buyer’s lien”].³⁶ And a trustee enjoys a lien on trust property to secure reimbursement of any expenses incurred in carrying out the terms of the trust [“trustee’s lien”].³⁷ Equitable liens do not require the lien claimant to maintain possession of the subject property, and, unlike common law liens, permit enforcement via judicial sale.³⁸

Table B – Equitable Liens

| equitable liens | | | |
|------------------|----------------------|-------------------------|----------------|
| subrogatory lien | unpaid vendor’s lien | pre-paying buyer’s lien | trustee’s lien |

C. Maritime Liens

Governed by the unique rules which emanate from the law of admiralty,³⁹ a maritime lien is a lien on a ship, freight or cargo “that secures service done to it or injury caused to it.”⁴⁰ Maritime liens are not explored in any detail in this book because in Saskatchewan they are rare and inconsequential.

D. Statutory Liens

Prior to the coming into force of the CLA, statutory liens on goods in Saskatchewan could be subdivided into two general categories: Crown liens and specialized liens.

³⁵ See Lionel Smith, “Security”, in Peter Birks, ed, *Private Law*, (Oxford: Oxford University Press, 2000) Vol I at para 5.84.

³⁶ See Ewan McKendrick, ed, *Goode and McKendrick on Commercial Law*, 6th ed (Dublin: Penguin Books, 2020) at para 22.67.

³⁷ See Lionel Smith, “Security”, in Peter Birks, ed, *Private Law*, Vol I at para 5.84. See *Stott v Milne* (1884) 25 ChD 710 (CA); *X v A*, [2000] 1 ALL ER 490.

³⁸ See Ewan McKendrick, ed, *Goode and McKendrick on Commercial Law*, 6th ed (Dublin: Penguin Books, 2020) at para 22.67.

³⁹ See Ewan McKendrick, ed, *Goode and McKendrick on Commercial Law*, 6th ed (Dublin: Penguin Books, 2020) at para 22.68.

⁴⁰ Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 39.

Table C – Saskatchewan Liens Statutes (2000)

| statutory liens | |
|--|---|
| Crown liens Specimen Statute (non-exhaustive): - <i>The Municipalities Act</i> | specialized liens - <i>The Animal Products Act</i> - <i>The Factors Act</i> - <i>The Sale of Goods Act</i> - <i>The Threshers' Lien Act</i> - <i>The Woodmen's Lien Act</i> - <i>The Garage Keepers Act (repealed in 2001)</i> - <i>The Hotel Keepers Act (lien provisions repealed in 2001)</i> - <i>The Mechanics' Lien Act (repealed in 2001)</i> - <i>The Warehousemen's Lien Act (repealed in 2001)</i> |

1. Crown Liens

In Saskatchewan, *The Municipalities Act*⁴¹ [*“Municipalities Act”*] confers to the Crown a lien on the land and goods of a person to whom a public utility service is supplied.⁴² The *Municipalities Act* adopts the terminology of “liens”, but the property right it confers is more analogous to other legal mechanisms for the protection of Crown claims such as statutory charges or deemed security interests.⁴³

2. Specialized Liens

a. Traditional Specialized Liens

On September 1, 1905, Saskatchewan and Alberta became Provinces of Canada. A variety of lien ordinances were already in force when these geographic regions formed part of the Northwest Territories.⁴⁴ In both fledging provinces, additional lien statutes were adopted in *ad hoc*⁴⁵ fashion during the early twentieth century. Legislators in

⁴¹ SS 2005, c M-36.1 [*Municipalities Act*].

⁴² *Municipalities Act*, s 31.

⁴³ See Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 39. See, generally, Roderick J Wood and Michael I Wylie, “Non-Consensual Interests in Personal Property” (1992) 30 *Alta L Rev* 1055.

⁴⁴ See, for several examples: *An Ordinance respecting the Receipts and Conditional Sales of Goods*, CO 1898, c 44; *Horse Breeders' Ordinance*, CO 1903 (1st), c 23; *Hotelkeepers' Ordinance*, CO 1898, c 56; *Livery Stable Keepers' Ordinance*, CO 1898, c 57; *Mechanics' Lien Ordinance*, CO 1898, c 59; *An Ordinance Respecting Thresher's Liens*, CO 1898, c 60.

⁴⁵ Translation: “formed for a particular purpose.” See Bryan A Garner, ed, *Black's Law Dictionary*, 7th ed (St Paul: West Group, 1999) at 41.

Saskatchewan amended the *Mechanics' Lien Ordinance*⁴⁶ in 1906,⁴⁷ then re-enacted it as *The Mechanic' Lien Act*⁴⁸ in 1907. In 1908, two new specialized liens statutes were enacted – *An Act respecting Seed Grain*⁴⁹ and *The Woodmen's Lien for Services Act*⁵⁰ – and another federal ordinance – *An Ordinance Respecting Thresher's Liens*⁵¹ – was amended.⁵² By 1909, the Revised Statutes of Saskatchewan contained many specialized lien statutes: *An Act respecting Seed Grain*,⁵³ *An Act respecting Lien Notes and Conditional Sale of Goods*,⁵⁴ *The Factors Act*,⁵⁵ *The Horse Breeders' Act*,⁵⁶ *The Hotelkeepers' Act*,⁵⁷ *The Livery Stable Keepers' Act*,⁵⁸ *The Mechanics' Liens Act*,⁵⁹ *The Sale of Goods Act*,⁶⁰ *The Threshers' Liens Act*,⁶¹ and *The Woodmen's Lien for Services Act*.⁶² *The Warehousemen's Liens Act*,⁶³ 1922, was enacted by Saskatchewan legislators in 1922, followed by *The Garage Keepers Act*, 1931⁶⁴ in 1931.

Lien claimants under the specialized lien statutes enjoyed flexibility that operational lien claimants did not. The specialized lien statutes recognized liens that did not become extinguished through the lien claimant's relinquishment of possession or control of the goods. They also broadened eligibility criteria for those seeking to assert a lien, and in some cases expanded the range of goods against which a lien could be claimed. Finally, the specialized lien statutes granted lien claimants enhanced enforcement methods. Under the common law, a lien claimant had no right to sell goods subject to a

⁴⁶ CO 1898, c 59.

⁴⁷ SS 1906, c 26.

⁴⁸ SS 1907, c 21.

⁴⁹ SS 1908, c 8.

⁵⁰ SS 1908, c 21.

⁵¹ CO 1898, c 60.

⁵² SS 1908, c 30.

⁵³ RSS 1909, c 35.

⁵⁴ RSS 1909, c 145.

⁵⁵ RSS 1909, c 148.

⁵⁶ RSS 1909, s 115.

⁵⁷ RSS 1909, c 140.

⁵⁸ RSS 1909, c 141.

⁵⁹ RSS 1909, c 150.

⁶⁰ RSS 1909, c 147.

⁶¹ RSS 1909, c 152.

⁶² RSS 1909, c 151.

⁶³ SS 1921-22, c 83.

⁶⁴ SS 1931, c 63.

lien, but under the specialized lien statutes a lien could be enforced through liquidation of the subject goods. The early history of statutory lien governance in Saskatchewan is similar to that of Alberta, recounted by the ALRI as follows:

The growth of the law of liens in Alberta is closely connected with the economic development of the province. The early rural economy of the province is reflected in the first lien statutes which created liens in favour of livery stable keepers and threshers of grain. *The Woodmen's Lien Act* was enacted in 1913 upon the emergence of a logging industry. *The Beet Lien Act* was enacted in 1926 as part of a provincial effort to establish a beet industry in the south of the province. As transportation systems and commerce grew, a statutory lien was enacted in favour of professional warehouse keepers. With the widespread popularity of the automobile and the increased availability of sophisticated farm machinery, a non-possessory statutory lien was enacted in 1937 in favour of mechanics who repaired these machines.⁶⁵

Early legislative initiatives in Alberta and Saskatchewan were driven by the specific economic needs of the day. Lawmakers were focused, not on revolutionizing the law of liens, but on offering practical solutions to critical service providers. The specialized liens statutes may have served their purpose at the outset, but they became obsolete over time due to lack of legislative upkeep. The ALRI furnishes two examples of this phenomenon:

Section 7 of the *Livery Stable Keepers Act* provides that a stable keeper must clean the stable with a solution of bichloride of mercury. Although this substance was once widely used, it was later found to be unsafe and has since been banned. The lien created under the *Beet Lien Act* is subject to a monetary limit of \$4 per acre. This monetary limit has not been altered since its enactment in 1926. Inflation has made the statute a dead letter.⁶⁶

⁶⁵ Alberta Law Reform Institute [ALRI], "Report on Liens: Report for Discussion 13" (September 1992) [ALRI Liens Report] at 56.

⁶⁶ Alberta Law Reform Institute [ALRI], "Report on Liens: Report for Discussion 13" (September 1992) [ALRI Liens Report] at 56.

Without periodic updating, a commercial statute falls into a state of disrepair that in some cases renders it unhelpful to those it is designed to protect. Alberta's specialized lien statutes fit it into this category. In the words of the ALRI (written over thirty years ago), they are "badly in need of a major overhaul."⁶⁷

b. Analogous Specialized Interests

i. Production-Money Security Interests

Some statutorily conferred property interests closely resemble liens but are given different labels. The PPSA confers a special prioritized security interest in crops and their proceeds [a "production-money security interest"] to a person who gives value to enable the debtor to produce the crops.⁶⁸ Consequently, suppliers of fuel, seed, fertilizer, pesticide, herbicide and other crop inputs all acquire production-money security interests in the crops they enhance. The PPSA similarly provides that a person who gives value that enables a farmer or fisher to acquire food, drugs or hormones to be fed to or placed in an animal (whether fowl, cattle or fish) has a prioritized production-money security interest in the animal.

ii. Pre-Paying Buyer's Equitable Interest

In Saskatchewan, both the PPSA and *The Sale of Goods Act*⁷⁰ ["SGA"] were recently amended to confer, in favour of an ordinary course buyer who pays all or substantially all of the contract price for goods, an "equitable interest" in goods acquired by the seller that meet the contract description even though legal title has not yet passed from seller to buyer under the strict rules of title transmission.⁷¹ The equitable interest conferred by these statutes is conceptually similar to the pre-paying buyer's lien. Indeed, British Columbia expressly adopted lien terminology in its equivalent legislative scheme for the protection of pre-paying buyers. Part 9 of British Columbia's *Sale of Goods Act*⁷² ["BCSGA"] confers to a pre-paying buyer a lien on goods.⁷³

⁶⁷ Alberta Law Reform Institute [ALRI], "Report on Liens: Report for Discussion 13" (September 1992) [ALRI Liens Report] at 6.

⁶⁸ PPSA, s 34(11). See Clayton Bangsund, *Bangsund on the Personal Property Security Act: The CCPSL Model* (Toronto: Thomson Reuters, 2021) at 231.

⁶⁹ PPSA, s 34(12). See Clayton Bangsund, *Bangsund on the Personal Property Security Act: The CCPSL Model* (Toronto: Thomson Reuters, 2021) at 232.

⁷⁰ RSS 1978, c S-1 [SGA].

⁷¹ PPSA, ss 30(2.1)-(2.2); SGA, s 20(1.2). See Clayton Bangsund, *Bangsund on the Personal Property Security Act: The CCPSL Model* (Toronto: Thomson Reuters, 2021) at 273.

⁷² RSBC 1996, c 410 [BCSGA].

II. Modernization

In Part II of this chapter, I recount the history of legislative modernization in common law Canada. In doing so, I examine the philosophical underpinnings of the CLA and explore the foundational documents that have guided legislative reform. I also update the reader on the present state of legislative modernization in all Canadian common law provinces and territories.

A. Philosophy

1. Object & Inspiration

The CLA represents a major overhaul of the specialized liens statutes of Saskatchewan. Chief Justice Martel Popescul of the Court of King’s Bench for Saskatchewan concisely outlines the history and object of the Act.

The Act is relatively recent legislation. It came into force in 2002. The Act collapsed several older legislative schemes into one to create a legislative form of security for “services”. This Act replaced generic and common law liens with a new statutory lien. The clear intent of the Act is to provide a system for the creation and registration of liens and for their enforcement, and to establish rules to resolve priority disputes.⁷⁴

The practical and philosophical foundations underlying the CLA are reminiscent of those underlying the PPSA. Just as the PPSA supplants an uncoordinated patchwork of statutes and common law rules governing secured transactions in personal property, the CLA replaces an uncoordinated and inconsistent patchwork of statutes and common law rules governing liens on goods. Both modern statutes establish a unitary interest – a security interest, in the case of the PPSA; a lien, in the case of the CLA – and set out standardized rules for attachment, perfection, priority and enforcement of such interest. In both contexts, disparate sets of *ad hoc*⁷⁵ rules and statutes have been eliminated by Saskatchewan legislators and brought under the umbrella of a single statute governing a unitary property right.

⁷³ See Clayton Bangsund, *Bangsund on the Personal Property Security Act: The CCPSL Model* (Toronto: Thomson Reuters, 2021) at 273.

⁷⁴ *Harmony Builders Ltd v Progressive Automotive Service Ltd*, 2020 SKQB 238. See also *Paccar Financial Services Ltd v TGW Holdings Ltd (cob Winacott Spring Western Star Truck Centre)*, 2002 SKQB 467 at para 14, per Klebuc J: “The overall objective of the CLA is to simplify the law pertaining to liens by: (1) repealing *The Garage Keepers Act*, *The Mechanics’ Lien Act* and *The Warehousemen’s Lien Act*; (2) radically amending the provisions of *The Hotel Keepers Act*; (3) abolishing “[a]ny lien arising under the common law of the kind that secures an obligation secured by a lien pursuant to this Act”; and (4) replacing the aforesaid with a generic form of statutory lien for the “services” enumerated therein.”; *Able Automotive Ltd v Cameron – Okolita Inc*, 2009 SKQB 476 at para 28.

2. Values

During my doctoral research on personal property security law, I identified thirteen core values that, taken together, “inform the design of a legal framework aimed generally at the promotion of commercial development.”⁷⁶ These so-called values are derivative of a general policy of facilitation. In the following account, Professor Nozick captures my intended meaning of the term “value” in its verb form.

To value something is to stand in a particular close, positive psychological and attitudinal relation to it, a relation itself marked by high organic unity.⁷⁷

If *facility* is the prime commercial value, then the supporting values, in no particular order of importance, are *transparency*, *flexibility*, *simplicity*, *efficiency*, *predictability*, *certainty*, *clarity*, *equality*, *balance*, *comprehensiveness*, *uniformity* and *coherency*. These same values, which I labeled “PPSL values” in the personal property security context, are restyled “commercial values” in the present context of liens. Next, I briefly explain my intended meaning of these shorthand terms. Collectively, they animate and explicate the structure and substance of the CLA, and serve as a shorthand allusion to the substantive ideals they embody.⁷⁸ To be clear, the values are aspirational in nature, and the CLA does not fully embody or embrace them in every respect.

facility – means the facilitation of (i) contracts for the provision of services for the enhancement or preservation of goods, (ii) the establishment of a statutory lien on such goods, and (iii) streamlined enforcement and dispute resolution mechanisms in relation to such transactions.

transparency – means the accommodation of due diligence, risk assessment and transaction effectuation through publicly accessible PPR registration and search functions.

⁷⁵ Translation: “formed for a particular purpose.” See Bryan A Garner, ed, *Black’s Law Dictionary*, 7th ed (St Paul: West Group, 1999) at 41.

⁷⁶ Clayton Bangsund, “PPSL Values” (2015) 57 CBLJ 184 at 185.

⁷⁷ Robert Nozick, *The Examined Life* (New York: Simon and Schuster, 1989) at 166.

⁷⁸ See Clayton Bangsund, “PPSL Values” (2015) 57 CBLJ 184 at 191.

flexibility – means the enablement of debtors and lien claimants to tailor arrangements to their specific needs. The CLA’s flexibility is embodied in its easily and inexpensively accessed PPR infrastructure, its recognition of possession and registration as effective perfection methods, and its priority rules predominantly linked to or synchronized with time of possession and/or registration.

simplicity – means the fostering of a commercial environment in which claimants can acquire and perfect liens on goods and discover competing interests with relative ease and convenience.

efficiency – means the minimization of time, effort and expense required to (i) conduct due diligence inquiries necessary to inform credit-granting decisions, (ii) create and perfect liens, (iii) take enforcement steps against goods in the event of debtor default, and (iv) resolve priority disputes when they arise.

predictability – refers to a service provider’s ability to advance credit for its services with relative confidence, from the outset, in a favourable (or at least foreseeable) outcome in relation to the goods should a priority dispute arise.

*certainty*⁷⁹ – it is common for this term to be used both interchangeably and in conjunction with predictability, but the term “certainty” arguably carries broader connotations.⁸⁰ Business parties crave certainty throughout all phases and aspects of their commercial dealings.

clarity – this term is inextricably linked to the previous two “definiteness values” – predictability and certainty – yet it conveys a unique sense of simplicity and ease that the others lack.

balance – means the law’s attentiveness to innate human notions of justice and fairness.

⁷⁹ See Karl N Llewellyn, “Why We Need the Uniform Commercial Code?” (1957) 10 U Fla L Rev 367; William Twining, *Karl Llewellyn and the Realist Movement* (Birkenhead: Willmer Brothers Limited, 1973) at 208: “In discussing prediction, Llewellyn preferred the less elegant term ‘reckonability’ to the more conventional ‘certainty’ for two reasons: First, ‘certainty’ suggests an absolute, whereas the best that could be hoped for is a reasonable prospect of predicting correctly in about seven or eight cases out of ten. Secondly, ‘certainty’ in law is often associated with the idea of ‘certain rules’, a phrase which is at best ambiguous in that it is not clear what exactly is being predicted – the outcome of a particular case, the justification for the outcome, or something else. Sometimes discussion of legal certainty is based on the assumption that if a general rule can be stated with confidence then the results of cases subsumed under that rule can be predicted with equal confidence.”

⁸⁰ See Clayton Bangsund, “PPSL Values” (2015) 57 CBLJ 184 at 197-198.

equality – means, in a narrow sense, the level commercial playing field of a competitive marketplace – a “system of legal rules that places all participants, regardless of class or character, on an equal footing.”⁸¹ The focus is on equality of opportunity, not equality of outcome.

comprehensiveness – means the establishment and maintenance of a statutory and regulatory framework governing the creation, perfection, enforcement and priority ordering of commercial liens on goods.

coherency – means that like-property should be treated alike, in a consistent manner. Similar forms of personal property should, as a general matter, be subject to harmonious legal directives and procedures. Compelling reasons should be given if they are not.

uniformity – means that commercial participants are better served when there is substantial uniformity and standardization in commercial law and procedure across provincial and state lines.

I add to this list a fourteenth commercial value: *unitarity*. Like uniformity, unitary is concerned with standardization. However, the focus of uniformity is *interjurisdictional* standardization (i.e., standardized commercial liens statutes across numerous jurisdictions), whereas the focus of unitarity is *intra-jurisdictional* standardization (i.e., standardized treatment of commercial liens within one jurisdiction).

unitarity – means that the various aspects of commercial liens governance including attachment, perfection, priority, enforcement, and conflict of laws, should be standardized irrespective of the identity or class of the service provider or the nature of the goods involved. As a general matter, the law ought to impose a standardized set of rules and procedures on all lienable services and goods.

Coherency and unitarity are closely connected values. Indeed, the latter may be a subspecies of the former. Still, unitarity deserves special mention in this book because it emphasizes the type of statutory standardization achieved under the CLA of Saskatchewan. The CLA has created a high degree of intraprovincial unitarity in relation to lien governance, yet it has not created pan-Canadian uniformity. The Act was introduced in Saskatchewan with hopes that other Canadian common law provinces and territories would similarly adopt the *Uniform Liens Act, 2000*⁸² [“ULA”]

⁸¹ Clayton Bangsund, “PPSL Values” (2015) 57 CBLJ 184 at 199.

⁸² *Uniform Liens Act, 2000* [ULA] promulgated by the Uniform Law Conference of Canada [ULCC].

promulgated by the Uniform Law Conference of Canada [“ULCC”]. Over two decades later, those hopes (while not entirely dashed) remain unfulfilled. The CLA has been successful across one dimension of standardization (i.e., unitarity) but unsuccessful across another (i.e., uniformity).

I reiterate that the foundational commercial values are aspirational in nature, and the CLA does not embody them in every respect. The values offer interpretive guidance to any reader who wrestles with the meaning of the CLA’s operative language.

B. Foundations & Reform

In this Part II.B, I identify and summarize key foundational documents and draft statutes that have guided the commercial lien modernization reform movement in Canada. While doing so, I describe the present state of commercial lien governance in Canadian common law provinces and territories.

1. Ontario Discussion Paper

a. Background & Recommendations

In 1972, the Ontario Law Reform Commission [“OLRC”] released a “Report on the Non-Possessory Repairman’s Lien”⁸³ [“OLRC Report”] which identified failure to facilitate non-possessory repairer’s liens on goods as a serious deficiency in the law. No legislative action was taken in relation to the OLRC Report. However, in 1985, the Ministry of the Attorney-General for Ontario released the “Discussion Paper on Repair and Storage Liens”⁸⁴ [“Ontario Discussion Paper”], which laid out concrete proposals for reform. The Ontario Discussion Paper centered around a draft *Repair and Storage Liens Act, 1984* [“Draft RSLA”]. Among other things, the Draft RSLA merged governance of repairers’ and storer’s liens, facilitated non-possessory liens through registration-based protection, and articulated a reverse chronological priority rule for the resolution of disputes between competing lien claimants. The Ontario Discussion Paper was positively received, but some commenters believed it could have better

⁸³ Ontario Law Reform Commission [OLRC], “Report on the Non-Possessory Repairman’s Lien” (1972) [OLRC Report].

⁸⁴ Ministry of the Attorney-General for Ontario, “Discussion Paper on Repair and Storage Liens” (1985) [Ontario Discussion Paper].

integrated lien governance into Ontario's *Personal Property Security Act*⁸⁵ ["Original OPPSA"]. Arthur Close, who would later sit on the ULCC Committee (described below), commented as follows:

It is 13 years since the OLRC submitted its report. If there is to be a similar delay in action on the *Discussion Paper*, an opportunity may still exist to develop a scheme for repair and storage security within the framework of the PPSA which is in harmony with other types of secured financing in Ontario.⁸⁶

ii. Reform in Ontario: RSLA

In 1989, Ontario became the first province to modernize its legislative framework for commercial liens governance through its enactment of the *Repair and Storage Liens Act*⁸⁷ ["RSLA"], a modified version of the Draft RSLA. The RSLA replaced three of Ontario's specialized lien statutes: the *Mechanics' Liens Act*⁸⁸, the *Warehousemen's Liens Act*⁸⁹, and the *Unclaimed Articles Act*.⁹⁰

2. ALRI Liens Report

a. Survey & Recommendations

In Alberta, several major commercial legislative reform initiatives were afoot by the late 1980s. The *Personal Property Security Act*⁹¹ ["APPSA"] was enacted in 1988 and came into force in October 1990. Soon thereafter, in March 1991, the ALRI released its "Final Report on the Enforcement of Money Judgments"⁹² ["ALRI EMJ Report"] which called for sweeping reform to judgment enforcement law. In September 1992, the ALRI released another report⁹³ ["ALRI Liens Report"] calling for major reform to the legislative governance of commercial liens. The commercial liens reform initiative was inspired and driven by the same values and aims that guided personal property security legislative reform. The ALRI recommended the adoption of a unitary lien on goods with standardized rules for creation, attachment, perfection, priority and enforcement. A modern system integrated with Alberta's personal property registry would offer commercial parties a more transparent environment in which to carry

⁸⁵ SO 1967, c 73 [Original OPPSA].

⁸⁶ Arthur L Close, "Ontario Ministry of the Attorney-General: Discussion Paper on Repair and Storage Liens" (1985) 10 CBLJ 359 at 373.

⁸⁷ SO 1989, c 17 [RSLA].

⁸⁸ RSO 1980, c 261.

⁸⁹ RSO 1980, c 513.

⁹⁰ RSO 1980, c 529.

⁹¹ See *Personal Property Security Act*, SA 1988, c P-4.05, now RSA 2000, c P-7 [APPSA].

⁹² Alberta Law Reform Institute [ALRI], "Final Report on the Enforcement of Money Judgments" (March 1991) [ALRI EMJ Report].

⁹³ Alberta Law Reform Institute [ALRI], "Report on Liens: Report for Discussion 13" (September 1992) [ALRI Liens Report].

on business. To promote efficiency, predictability and clarity in the law, the ALRI advocated for standardized statutory governance of liens on goods of all types:

There are several important efficiencies that can be gained through uniformity. A system of law that provides a single set of rules produces a more predictable commercial environment. The cost of determining the validity, priority and method of enforcement is reduced. A common set of forms and procedures can be developed for use by all lien claimants. Decisional law which resolves ambiguities in the scope and operation of the legislation gains a wider applicability. This reduces the need for costly litigation to resolve issues of law.⁹⁴

The ALRI cited the additional benefits of utilizing existing provincial personal property registry infrastructure to publicize the non-possessory liens of service providers. By adopting a registration-based system, Alberta could facilitate non-possessory liens:

There may, however, be good practical reasons for wishing to give up possession while maintaining the lien. The surrender of possession of the goods to the debtor allows a lien claimant to avoid incurring the costs of storage. Storage costs can be considerable when the lien covers larger items such as automobiles. The debtor gets the use of the item, which may increase the likelihood of payment if the item is necessary to the debtor's business or employment.⁹⁵

The ALRI believed that commercial parties would benefit from standardized enforcement procedures. Introducing standardized lien enforcement protocols, and establishing consistency and compatibility with the APPSA, would achieve numerous key goals of reform.

The first goal of reform is the creation of a rational and uniform set of rules which would apply to the different classes of liens. Features of the existing law that have become archaic or obsolete should be identified and removed. The same set of rules should apply to all classes of liens unless there is some special reason that justifies a difference in treatment. These rules should set up a single source of law that would govern the validity, priority and enforcement of liens. The system should contain an expanded registration option which would permit a lien claimant to protect the lien through registration instead of maintaining possession of the lien. It should also contain a streamlined system for enforcement which reduces the costs of disposal of the goods in order to ensure an increased recovery on default.

⁹⁴ Alberta Law Reform Institute [ALRI], "Report on Liens: Report for Discussion 13" (September 1992) [ALRI Liens Report] at 58.

⁹⁵ Alberta Law Reform Institute [ALRI], "Report on Liens: Report for Discussion 13" (September 1992) [ALRI Liens Report] at 58.

A second goal of reform is the co-ordination of the law of liens with the concepts and approach of the PPSA. The reform measures should seek to enhance the integrity of the registry system by providing a means through which third parties can determine if personal property is subject to a lien. The reform measures should also seek to adopt common approaches and terminology on such matters as perfection, registration procedures and enforcement remedies.⁹⁶

In meeting its goals for reform, the ALRI considered but ultimately dismissed (i) the outright abolition of liens, and (ii) the full integration of liens into the APPSA.⁹⁷ Regarding the latter, the concern was that service providers would find a full integration approach too complex. It was additionally observed that many provisions of the APPSA simply did not apply in relation to liens.

A variation of this approach is to enact a separate statute which deems a lien to be a security interest for the purposes of the PPSA. The statute would incorporate by reference the priority rules and the enforcement remedies of the PPSA. One advantage of this approach is that the reform could be accomplished in a short statute. The disadvantage of this approach is that it would create added complexity for the lien claimant. The lien claimant would have to sift through two statutes in order to determine the applicable law. In addition, there are many provisions of the PPSA which would not be applicable to liens. We think that the statute should precisely identify which provisions of the PPSA are intended to apply. We think that this is best accomplished by a statute provides a single source for the relevant rules and procedure.⁹⁸

In a series of recommendations, the ALRI advocated for the adoption of a commercial liens statute that would better enable service providers to protect their interests as trade creditors.⁹⁹

⁹⁶ Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 62.

⁹⁷ Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 63-64.

⁹⁸ Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 65.

⁹⁹ Alberta Law Reform Institute [ALRI], “Report on Liens: Report for Discussion 13” (September 1992) [ALRI Liens Report] at 109.

b. ALRI Model CLA

In Part IV of the ALRI Liens Report, the ALRI furnished a draft *Commercial Liens Act* [“ALRI Model CLA”] embodying the various recommendations for reform. The ALRI Model CLA is a standalone statute that contains provisions and rules governing lien attachment, perfection, registration, priority, and enforcement.

c. No Reform in Alberta

Both the personal property security legislative modernization and judgment enforcement legislative modernization initiatives were successful in Alberta with the enactment and coming into force of the APPSA and the *Civil Enforcement Act*¹⁰⁰ [“CEA”]. However, the ALRI Model CLA was never adopted in Alberta¹⁰¹, and the reform movement stalled.

3. ULCC Report

a. Review of the ALRI Liens Report & Recommendations

In 1992, the Uniform Law Section of the ULCC passed a resolution establishing a committee [“ULCC Committee”]¹⁰² to study the issues arising out of the ALRI Liens Report. In its 1994 “Report on Commercial Liens”¹⁰³ [“ULCC Report”], the ULCC Committee mostly agreed with the ALRI’s recommendations, but diverged on several key points.¹⁰⁴ The ULCC Committee was initially attracted to the possibility of deeming a lien to be a security interest, thereby bringing it fully within the purview

¹⁰⁰ SA 1994, c C-10.5, now RSA 2000, c C-15 [CEA].

¹⁰¹ The specialized lien statutes of Alberta include: *Garage Keepers’ Lien Act*, RSA 2000, c G-2; *Possessory Liens Act*, RSA 2000, c P-19 [PLA]; *Warehousemen’s Liens Act*, RSA 2000, c W-2; *Woodmen’s Lien Act*, RSA 2000, c W-14.

¹⁰² Members of the ULCC Committee included Justice Georgina R Jackson (Chairperson), Arthur Close, Professor RCC Cuming and Gerald Tremblay.

¹⁰³ Uniform Law Conference of Canada [ULCC], “Report on Commercial Liens” (1994) [ULCC Report].

¹⁰⁴ Uniform Law Conference of Canada [ULCC], “Report on Commercial Liens” (1994) [ULCC Report] at 3: “There was no significant debate on many issues canvassed by the Alberta Report. It contemplates a modernization of repairers’, storsers’, common carriers’, woodworkers’, threshers’, agisters’ and hotelkeepers’ liens based, in large measure, on modern PPSA principles. In that respect, the Alberta Report cannot be challenged. All the above liens need to be modernized and rationalized. Thus, if an issue has not been raised in this report it can be taken that the Alberta Report’s treatment of the issue has been accepted by the Committee.”

of the PPSA. However, as explained in the following excerpt, the ULCC Committee ultimately decided against this approach:

As previously indicated, this was clearly the most difficult issue facing the Committee. The attraction to deem a lien to be a security interest or a purchase-money security interest cannot be denied. To do so also would resolve other issues like the selection of the appropriate priority and conflict of laws rules. On the other hand, the only way the lien is like a true security interest is that each secures payment of an obligation, but the similarity ends there. A true security interest represents an agreement of the parties reached before or at the time value is given. The secured party protects its interest in collateral usually before value is given or shortly thereafter.

The deemed security interests, i.e., true leases, non-security assignments of accounts and commercial consignments, share the need to register to protect a property interest in priority over others. There is a separation of ownership and possession which fits easily into the PPSA registration regime, but again, like the true security interest, enforcement of the deemed security interest is not the main goal as it is with a lien. The holder of the lien has no agreement with the owner of the collateral to grant a lien. Rather the agreement between the depositor of the goods and the repairer, storer or common carrier, is to provide services in exchange for payment. Only after services are provided and the bill not paid does the lienholder consider the lien as a means of collecting the unpaid debt.¹⁰⁵

The ULCC Committee believed that the CLA should track the PPSA as closely as possible, and posited that restating PPSA provisions in the CLA “would create a risk that at some future date its provisions would cease to parallel those of the PPSA as the latter is amended.”¹⁰⁶ Accordingly, the ULCC Committee recommended an “incorporation by reference” drafting approach that would ensure perpetual consistency between the statutes:

The Alberta Report considered the option of incorporating the relevant PPSA provisions by reference at p. 64. It rejected this approach in favour of one which repeats the various provisions of the PPSA which would be applicable (other than the rule determining priority between secured creditors and lienholders). The reason given is that to incorporate by reference only would require the lien claimant to “sift through two statutes in order to determine the applicable law” and there are many provisions of the PPSA which are not applicable to liens. Accordingly, the Alberta Report opted for a mechanism that would precisely identify which provisions of the PPSA are intended to apply.

¹⁰⁵ Uniform Law Conference of Canada [ULCC], “Report on Commercial Liens” (1994) [ULCC Report] at 11.

¹⁰⁶ ULA, s 23, Commentary.

On balance, the Committee disagreed with the Alberta approach. Actual incorporation of the PPSA provisions will make the statute lengthy and when the PPSA is amended, failure to amend the Uniform Liens Act may result in a discrepancy between the two statutes. The primary matter with which a lienholder is concerned is registration and enforcement. The former would be governed by the PPSA in any event.

The Committee proposed that all provisions of the PPSA should be incorporated by reference by means of a schedule appended to the Uniform Lien Act. The schedule will identify the applicable provisions of the Uniform PPSA. Enacting jurisdictions will be invited to substitute the corresponding provisions of the local PPSA, but to maintain the concept of a schedule.¹⁰⁷

The ULCC Committee considered standardization, and synchronization of the CLA with the PPSA, as key legislative objects. The Committee thus concluded that the proposed ULA “should incorporate the appropriate provisions of the PPSA by reference only and not repeat them.”¹⁰⁸

b. ULA

Development of a model commercial liens statute continued after issuance of the ULCC Report in 1994. Six years later, the ULCC promulgated a model statute, *The Uniform Liens Act, 2000* (i.e., the ULA). Unlike the ALRI Model CLA (a standalone statute), the ULA incorporates by reference sections and entire parts of the *Uniform Personal Property Security Act*¹⁰⁹ [“UPPSA”].

¹⁰⁷ Uniform Law Conference of Canada [ULCC], “Report on Commercial Liens” (1994) [ULCC Report] at 12.

¹⁰⁸ Uniform Law Conference of Canada [ULCC], “Report on Commercial Liens” (1994) [ULCC Report] at 12.

¹⁰⁹ *Uniform Personal Property Security Act* [UPPSA], promulgated by the Uniform Law Conference of Canada [ULCC].

c. Reform

i. Saskatchewan

In 2001, Saskatchewan became the first province to enact a statute based on the ULA. The CLA received Royal Assent on June 28, 2001, and came into force by proclamation on March 1, 2002.

Table D – Saskatchewan Liens Statutes (2023)

| statutory liens | | |
|---------------------------------|---|-----------------------------------|
| Crown liens | specialized liens | standardized liens |
| - <i>The Municipalities Act</i> | - <i>The Animal Products Act</i> - <i>The Factors Act</i> - <i>The Sale of Goods Act</i> - <i>The Threshers' Lien Act</i> - <i>The Woodmen's Lien Act</i> | - <i>The Commercial Liens Act</i> |

ii. Nova Scotia

In 2001, the Province of Nova Scotia also enacted the model ULA under the simple name, the *Liens Act*.¹¹⁰ The *Liens Act* is not yet in force. It appears that its implementation was delayed so as to facilitate lockstep coordination with the other Atlantic provinces as part of a regional uniformity effort. That uniformity effort never gained momentum, and liens in the Province of Nova Scotia continue to be governed by the common law, equity and a traditional set of specialized lien statutes.¹¹¹

iii. British Columbia

British Columbia is the only other Canadian common law province to modernize its commercial lien governance. In response to the ULCC Report, the British Columbia Law Institute [“BCLI”] undertook an independent study and in 2003 released the “Report on the Uniform Liens Act”¹¹² [“BCLI Report”]. The BCLI Report took time to gain traction, but based on the recommendations set out therein, a modernized

¹¹⁰ SNS 2001, c 33.

¹¹¹ See *Builders' Lien Act*, RSNS 1989, c 277; *Storage Warehouse Keepers Act*, RSNS 1989, c 447; *Warehousemen's Lien Act*, RSNS 1989, c 499; *Woodmen's Lien Act*, RSNS 1989, c 507.

¹¹² British Columbia Law Institute [BCLI], “Report on the Uniform Liens Act” (January 2003) [BCLI Report].

*Commercial Liens Act*¹¹³ [“BCCLA”] was enacted in the Province of British Columbia in 2022. For the most part, the BCCLA is a standalone statute with the substantive content of the ULA. However, in comparison with the ULA, the BCCLA does not extensively incorporate sections and parts of the *Personal Property Security Act*¹¹⁴ [“BCPPSA”] by reference. The only provisions of the BCPPSA that are incorporated into the BCCLA by reference pertain to registration of a financing statement in the PPR. The BCCLA is not yet the law of British Columbia, but it is expected to take force in 2024.

iv. Other Canadian Provinces & Territories

None of Canada’s other common law provinces and territories have modernized their commercial liens legislation. In these jurisdictions, the specialized lien statutes, along with common law and equity, supply the legal framework for the governance of liens on goods.

¹¹³ SBC 2022, c 9 [BCCLA].

¹¹⁴ RSBC 1996, c 359 [BCPPSA].