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Chronicle – Monetary Claims

Indexation

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Summary

The author reviews the concept of the monetary claim introduced in the Civil Code of Québec in 2016 in light of court decisions. This review helps identify situations where this form of security may be appropriate and distinguishes it from the mechanism of compensation.

FOREWORD

Since January 1, 2016, the *Civil Code of Québec* (“CCQ”) has included provisions regarding monetary claims¹. The highlights of this concept introduced into Québec law are as follows: (i) the monetary claim is first and foremost a claim payable in money only, (ii) it is owed to the debtor by its creditor or by a third party, (iii) it confers on the secured creditor a first rank, regardless of the date of its security, and finally, (iv) it constitutes an undisclosed security which does not require publication in the Register of Personal and Movable Real Rights (“RPMRR”).

INTRODUCTION

Before the introduction of provisions concerning monetary claims, the amounts paid by a debtor to his creditor could not be simply retained by the creditor as security. The only way for the creditor to protect himself was to obtain from his debtor a movable hypothec without delivery, which charged the claim that the creditor owed the debtor based on the amounts that had been paid to him by the debtor. In other words, the creditor had to obtain a movable hypothec without delivery on the claim he himself owed his debtor. In all cases, the rank of this movable hypothec without delivery was determined by its publication date in the RPMRR and accordingly subject to all other movable hypothecs without delivery already granted by the debtor on this same claim.

Furthermore, it has always been possible to hypothecate a claim by way of a movable hypothec with delivery, but before January 1, 2016, the only claims likely to be hypothecated with delivery were those evidenced by a title whose physical delivery to the creditor was sufficient to constitute a pledge². Creation of the pledge by physical delivery of the title avoids the movable hypothec agreement in writing, as well as waiving the creditor from having to publish his hypothecary creditor rights in the RPMRR, the physical possession of the title being equivalent to the publication measures required by the CCQ. While pledging a claim evidenced by a negotiable instrument delivered to the creditor is a simple way to create a security, it has never been, however, a common practice in security matters.

Creditor problems in easily obtaining a security for the amounts that the creditor himself owes his debtor has occasioned changes in the CCQ by the introduction of a new concept that did not previously exist in Québec law, the monetary claim.

To view the French version of this chronicle, see Maxime B. RHÉAUME, “Chronique – Les créances pécuniaires”, in *Repères*, May 2023, *La référence*, [EYB2023REP3639](#).

I– THE AMERICAN SYSTEM

The reform of the CCQ with respect to monetary claims based on US law which provides a similar security but is generally limited to balances in bank accounts. The Québec reform is more innovative than the US system because most of the amounts of money owed by a creditor to his debtor can be considered a monetary claim that can be subject to a movable hypothec with delivery. Because of the definition given to the monetary claim, the situations in which a creditor may take advantage of this form of security are numerous under Québec law.

II– THE DEFINITION OF THE MONETARY CLAIM

A monetary claim is a claim requiring the debtor to reimburse, return or restore an amount of money or make any other payment in respect of an amount of money³.

A monetary claim can be defined the one which belongs to the debtor and is payable to him by way of a sum of money from:

a) his creditor; or

b) a third party:

(i) because of a credit balance in a financial account maintained by the debtor with this third party, or

(ii) because of a sum of money paid and delivered by the debtor to this third party to guarantee an obligation of the debtor to one of his creditors.

The concept of monetary claim implies either a two-party, either a three-party relationship. In the first case, there must be a debtor and a creditor in a bilateral relationship and in the second, there must be a debtor, his creditor and a third party in a tripartite relationship.

The legislator has not specified in article [2713.1](#) CCQ whether the sum of money which is the subject of the claim must necessarily be legal tender, therefore the monetary claim could be payable in Canadian dollars or in any other currency⁴. The reason for this is that the requirement to have a monetary threshold to the hypothec⁵ does not apply to a pledge or a movable hypothec with delivery since such a security can exist without a writing.

III– THE EXCLUSIONS FROM THE DEFINITION OF THE MONETARY CLAIM

The very broad definition of monetary claims in the CCQ nevertheless lists (3) types of claims that are expressly excluded

from the regime applicable to monetary claims⁶. The following are not monetary claims:

- a) amounts in a certain and determinate currency delivered by the debtor to the creditor, when the agreement between the parties provides that its repayment by the creditor to the debtor must be in the same currency;
- b) a claim that is a security or an security entitlement according to the provisions of the *Act respecting the transfer of securities and the establishment of security entitlements*⁷; and
- c) A claim represented by a negotiable instrument is not a monetary claim. For example, a promissory note governed by the *Bills of Exchange Act*⁸ is an instrument that is not a security⁹ nor is it a monetary claim pursuant to the CCQ. A claim created by a promissory note can be hypothecated without delivery like any other claim. It can also be hypothecated with delivery or pledged because it qualifies for the purposes of articles 2702 and 2709 CCQ. The fundamental difference between the pledge of a claim established by a negotiable instrument and the pledge of a monetary claim is the rank of the creditor's security. The pledge of a claim established by a negotiable instrument like a promissory note ranks from the time the note is delivered to the creditor¹⁰ and it remains subject to all the other movable hypothecs without delivery published at that date in the RPMMR and charging the same claim. On the contrary, the pledge of a monetary claim gives the holder of the security a preferential ranking as a secured creditor, regardless of when the security was created.

Without having been specifically excluded from monetary claims, a claim for rent payable pursuant to a property lease is disqualified as a monetary claim. The CCQ provides that the rent generated by an immovable property can be hypothecated only by way of an immovable hypothec¹¹. Accordingly, if the CCQ requires an immovable hypothec with or without delivery, a movable hypothec cannot be considered for the rent generated by an immovable property.

The CCQ provides that a monetary claim may be pledged by an individual who does not operate an enterprise but only to the extent that this individual may create a movable hypothec without delivery on that claim¹². It is necessary to refer to the *Regulation respecting the register of personal and movable real rights*¹³ to identify which claims that an individual cannot hypothecate without delivery, and therefore can also not be hypothecated with delivery.

IV– THE MONETARY CLAIM: BILATERAL RELATIONSHIP / DISTINCTION WITH THE COMPENSATION

In cases involving only a debtor and creditor, the monetary claim is the sum of money that the creditor owes its debtor.

In this context, as in the case of a banker and his borrower, each party is simultaneously both debtor and creditor to each other. As an example, the borrower owes its bank \$10,000 and maintains a credit balance of \$5,000 in its bank account with the same bank which is therefore a debtor in this amount of \$5,000. For the bank, the \$5,000 is a debt that it owes to its borrower and it is at the same time a monetary claim held by the borrower against the bank. The situation varies depending on the perspective used. Thus, for the borrower, the \$10,000 he owes the bank is the monetary claim held by the bank against the borrower. To illustrate article 2713.2, the grantor of a pledge of a monetary claim hypothecates in its favor the claim that the grantor owes to its creditor as guarantee for the payment of what that creditor may otherwise owe the grantor.

In a bilateral relationship between a creditor and its debtor, it is not conceptually problematic for each of them to obtain a hypothec with delivery on its respective monetary claim, but only if their respective claims are not extinguished by the effect of the compensation to the extent of the lesser of the two claims.

The situations allowing monetary claims between two parties, i.e. the debtor and the creditor, are also those eligible for compensation. However, monetary claims are more flexible than compensation and it can be applied in cases where offsetting is not necessarily available. Therefore, legal compensation can be used only if the debts are reciprocal, liquid and exigible¹⁴. Monetary claims allow the creditor to obtain a security on an amount he does not yet owe his debtor or if the amount has not yet been determined. In such cases, compensation is of no use.

With respect to compensation, a distinction must be made between the type of compensation referred to. In the case of a compensation of the "guarantee or security" type, the debtor must consent that the claim owed to him by his creditor be used and dedicated to guaranteeing his obligations to his creditor. Legal or contractual compensation cannot have the effect of a pledge of a monetary claim¹⁵.

Subject to the exclusions provided by the CCQ, any type of claim payable by the creditor to its debtor can be considered a monetary claim. The only requirements are that it be a claim payable in cash, to the exclusion of any other form of payment and that it can be hypothecated without delivery in the case of an individual who does not operate an enterprise. Accordingly, there are very many kinds of claims that can be considered monetary claims.

The Examples of Monetary Claims Between the Debtor and Creditor (Bilateral Relationship)

With respect to financing by financial institutions, some cases are more common than others, for example:

- a) the sums owed by a financial institution in connection with the positive bank balance payable to a borrower in its capacity as holder of the bank account;
- b) the sums owed by a financial institution to its borrower based on amounts entrusted by the borrower as provisions for future property taxes as part of an immovable hypothecary loan;
- c) the sums owed by a financial institution that collects deposits from its borrowers that may be remitted to the borrowers under certain conditions.

The CCQ is not limiting and the courts will be asked to decide about other situations applicable to monetary claims although since the introduction of this concept in the *Civil Code of Québec* and apart from the decisions of the Superior Court and the Court of Appeal in *Montreal c'est Électrique*, few significant court decisions have been rendered on this subject. As examples, we can also mention other situations giving rise to a pledge of monetary claims:

- a) joint-stock corporation and shareholder: the shareholder is the debtor of the corporation because of a loan he has contracted with it and he can also become the creditor of the corporation because of dividends that the corporation may eventually owe him;
- b) buyer and vendor: the buyer is the debtor of the vendor for the balance of the sale price unpaid and can also become the creditor of the vendor for the payment of adjustments or for damages incurred by the buyer further to inaccurate or erroneous representations by the vendor;
- c) supplier and client: the client is the debtor of its supplier for purchases made in the normal course of business and can also become the creditor of the supplier for reimbursements associated with defective merchandise returned or the payment of rebates or other volume discounts¹⁶;
- d) builder and building owner: the owner is the debtor of his builder and he can also become the creditor of his builder because of deficient or incomplete work¹⁷.

Each of these situations allows a security to be obtained on monetary claims to the extent that there is a clearly expressed wish on the part of the parties that such monetary claims owed by one party to the other be considered as security for the guarantee of the performance of an obligation of the other party.

V– THE MONETARY CLAIMS: TRIPARTITE RELATIONSHIP

The CCQ also allows situations in which a third party is involved, in addition to the debtor and his creditor. In all cases of tripartite relationship, the third party is also the debtor of the creditor's debtor.

The CCQ restricts to only two situations¹⁸ the cases of monetary claims that can be owed by a third party to the debtor, to wit:

- a) a claim on the positive balance of a financial account held by the third party on behalf of the debtor; and
- b) a claim that is payable by a third party because of an amount of money remitted, paid or entrusted by the debtor to the third party in order to secure the performance of an obligation towards his creditor.

A. The Positive Balance of a Financial Account

The CCQ provides a definition of a financial account. It is an account to which sums of money owed to the debtor are credited¹⁹.

The CCQ already provides that banks and financial services cooperatives may hold financial accounts. However, the CCQ also provides that a financial account may be held by any person who, in the normal course of his activities, holds a financial account for others, i.e. for the benefit of the debtor²⁰. This definition is broad and allows for numerous situations involving financial accounts held not by financial institutions but by other types of parties, such as brokers, trust companies and even by individuals²¹.

As an example, law firms are regularly required to hold sums of money for the benefit of their clients in their trust accounts. It is probable that this type of claim due by legal counsel can be treated as the positive balances of financial accounts held by law firms on behalf of others.

B. The Sums of Money Paid, Remitted or Entrusted to a Third Party by the Debtor

The CCQ provides for the case of a debtor who entrusts a sum of money to a third party in order to guarantee the performance of an obligation to his creditor. The sums entrusted by a debtor to his legal counsel may also be considered by the debtor and his creditor to be a monetary claim. The CCQ imposes no requirement with respect to the third party, and anyone that can hold sums of money to guarantee the performance of an obligation to the creditor of the person who has remitted the funds to the third party.

Such a pledge arises on the date on which the control agreement is concluded rather than the date on which the sum is paid²². According to the author Louis Payette, a reading of article 2713.4 CCQ suggests that this article is also intended to cover a situation where a sum of money is already in the hands of a third party, having been paid by the grantor for some reason, and which is subsequently the subject of an explicit purpose to serve as guarantee.

VI– THE CREATION OF THE HYPOTHEC WITH DELIVERY ON A MONETARY CLAIM

The fact that it is a hypothec with delivery implies remittance of the monetary claim held by the creditor, i.e. a delivery to the creditor. This delivery is entirely conceptual since there is no physical delivery by one or physical possession by the other, except in cases of physical delivery of money to a third party with the intent that the money be returned to the debtor²³. The CCQ regime replaces this material delivery with the concept of the "control" of the claim obtained by the creditor²⁴.

As it is a pledge, this hypothec with delivery is waived publication in the RPMMR, which makes it an undisclosed security that can remain unknown to other creditors, even though it can be set up against them.

It is conceivable that the monetary claim that is the subject of a movable hypothec with delivery has not yet been born. Indeed, the consent to a future claim being used as a guarantee is provided for in article 2670 CCQ and applies to articles 2713.1 and following, whether the relationship is bipartite or tripartite²⁵. The claim could also be uncertain, unliquidated and not due²⁶.

A. The Creation of the Movable Hypothec with Delivery in the Context of a Bilateral Debtor/Creditor Relationship

The CCQ provides a very simple method of creation, with no formal requirements. It suffices for the debtor to consent that the monetary claim owed to him by his creditor guarantee what the debtor owes the creditor. This consent may be written but may also be inferred from the facts and circumstances. This consent is, however, indispensable, since the legislator did not wish to create a hypothec by the mere effect of the law²⁷. For these purposes, lenders generally integrate in their offers to finance or their loan agreements or even in their security documents a section recording the debtor's consent to the monetary claims payable to him by the lender being hypothecated in favor of the latter and this, in the guarantee of what is due from the debtor. Where this is not the case, the Court will have to interpret the credit agreement or related documents to determine whether or not there was an intention to create a movable hypothec with delivery or a pledge. The intention to create such a hypothec must be probative²⁸. For example, a compensation clause would not be sufficient on its own since the account holder must consent to the balance of the account being used to guarantee the performance of his obligation²⁹, which is not the case for a legal or contractual compensation.

B. The Creation of the Movable Hypothec with Delivery in a Context of a Tripartite Relationship – Debtor/Creditor/Third Party

When the monetary claim is payable by a third party, the CCQ provides two different ways of creating a movable hypothec with delivery:

a) *a control agreement*: this agreement between the debtor, the creditor and the third party enables the creditor to obtain from a third party a commitment to dispose of the monetary claim only in accordance with the instructions of the creditor; and

b) *by becoming the holder of the financial account*: in the case of a positive balance in a financial account, a creditor can, pursuant to an agreement between the debtor, the creditor and the third party, become the holder of the financial account in place of the debtor.

A third party is never required to become a party to a control agreement and may refuse to do so. But even if the third party refuses to participate in a control agreement, he may not refuse to disclose whether he is already a party to such an agreement when the debtor so requests³⁰.

C. The Conflict of Laws Rules

The movable hypothec of a monetary claim is subject to the provisions of the CCQ that determine whose laws are applicable to the creation of a movable hypothec its validity, publication and effects. In general, the securities that charge an intangible asset, such as a claim, are determined pursuant to the domicile of the grantor³¹.

With respect to the monetary claims involving a debtor, a creditor and a third party, the CCQ provides, however, the following exceptional rules³²:

a) the law applicable to the pledge is that specifically designated in the juridical act governing the monetary claim; or

b) if the deed governing the monetary claim is silent, the law applicable to the pledge is that of the State in which the third party holds the financial account or, in the case of a sum remitted to a third party to secure the performance of an obligation, the law applicable to the third party³³.

The rules stated above are those applicable to a tripartite relationship. In the simpler case of a bilateral relationship between a debtor and his creditor, the general rule associated with the domicile of the grantor continues to apply³⁴. This rule is not, however, definitive for the entire duration of the security, since article 3105, para 2 provides that, with respect to publication and its effects, the rules of the grantor's current domicile apply³⁵. As a result, the enforceability of the rights of a pledgee creditor of monetary claims will depend on a move outside Québec of the grantor's domicile subsequent to the creation of the movable hypothec with delivery.

VII– THE RANK OF A HYPOTHEC WITH DELIVERY CHARGING A MONETARY CLAIM

The marked advantage of the movable hypothec with delivery of a monetary claim is the rank it confers on the creditor. To determine the rank, it is necessary to distinguish the case of a bilateral relationship from a tripartite relationship.

A. The Rank of a Movable Hypothec with Delivery as Part of a Bilateral (Debtor/Creditor) Context

A movable hypothec with delivery of a monetary claim confers on the creditor a first rank, ahead of all movable hypothecs without delivery published in the RPMMR, regardless of its date of creation³⁶.

B. The Rank of the Movable Hypothec with Delivery as Part of a Tripartite Debtor/Creditor/Third Party Relationship

In cases where a third party is involved, it is necessary to determine if the monetary claim is the positive balance of the financial account owned by the third party or the sums of money are instead in the hands of the third party because they were remitted and entrusted to him by the debtor to secure the performance of his obligations toward one of his creditors.

a) If the third party has received the sums of money from the debtor to secure the performance of his obligations toward one of these creditors, the control agreement between the three parties will confer on the creditor first-rank movable hypothec on the monetary claim, ahead of all other movable hypothecs without delivery published in the RPMMR.

b) If the monetary claim is the positive balance of a financial account, the rank of the movable hypothecs that can charge this monetary claim in favour of several hypothecary creditors is determined in the following order:

(i) first rank, to the creditor who becomes the holder of the financial account³⁷;

(ii) second rank, to the creditor who has signed a control agreement with the debtor and the third party who maintains the financial account³⁸; and

(iii) third rank, between the various other creditors who hold a movable hypothec without delivery and, among them, according to their respective date of publication in the RPMMR³⁹.

C. Concurrence Between Creditors Holding a Hypothec with Delivery on the Same Monetary Claim Due from a Third Party

As between pledgee creditors who have obtained control of a monetary claim under a control agreement, excluding the one who becomes the holder of the financial account, priority is given to the pledgee creditor who first obtains the consent of the third party to comply with that creditor's instructions⁴⁰. With respect to obtaining control of a monetary claim, it should be noted that if the control agreement contains provisions whereby the creditor agrees not to exercise or suspend the exercise of its rights until an event of default by the debtor has occurred, this may affect the date on which it obtains effective control of the monetary claim⁴¹.

VIII– SOME EXAMPLES OF SITUATIONS INVOLVING MONETARY CLAIMS

A. Hypothecary Representative

The CCQ has allowed a hypothec in favour of a hypothecary representative as holder of the hypothec granted by the debtor for the benefit of all his creditors, present and future⁴². This hypothec must, subject to be null, be in notarial form, except for movable hypothecs with delivery⁴³.

A movable hypothec on a monetary claim is a pledge of claims and accordingly, notarial form is not required for a movable hypothec of a monetary claim in favour of a hypothecary representative.

The hypothec in favour of a hypothecary representative is a bilateral act between the debtor and the hypothecary representative. As part of a syndicated loan that involves several lenders, there is generally one lender who acts as the bank of the borrower and with whom the operating bank accounts are maintained allowing the debtor to deposit and withdraw funds. The positive balances of these bank accounts held by this lender are, with respect to all the other lenders, monetary claims owed to the debtor by a third party, this third party being the lender with whom the funds are maintained in a financial account held by this lender.

In situations involving a hypothecary representative, it is possible that movable hypothecs with delivery on monetary claims are created by means of a control agreement under private writing, which avoids not only the notarial form but also the publication in the RPMMR. Moreover, it is not incompatible with the general rules of pledge, in particular those of article [2705](#) CCQ, for the representative to be considered as the third party holder for the purposes of holding monetary claims⁴⁴.

B. The Situations Linked to Dividends and Other Sums Owed by a Joint Stock Corporation to its Shareholder

The sums of money payable by a joint stock corporation to its shareholder are, for the corporation, monetary claims on which it may obtain a movable hypothec with delivery. This possibility can only be contemplated if the shareholder is himself indebted to the corporation. This situation occurs specifically if the corporation has granted a loan to its shareholder or if it has secured its obligations toward a third party.

If there is an interest in the corporation obtaining a movable hypothec with delivery in its favour on sums of money it owes its shareholder, it will be likewise of interest for the creditor of the corporation, its banker for example, to require that the corporation obtain a hypothec on such monetary claims. Generally, institutional lenders are always interested in having the sums due to their debtors, themselves secured by hypothecs, especially if they are first-ranking.

However, for sums of money payable by a corporation to its shareholder, it is necessary to distinguish whether they are dividends or sums of money payable because of a share buyback. It is also important to verify whether the shareholder who is the creditor of these sums has himself hypothecated the shares he owns and, if he has, whether the movable hypothec on the shares is with or without delivery.

First of all, it should be remembered that an individual can hypothecate his shares with delivery. This is an exception to the general rule regarding movable hypothecs, which provides that an individual can only hypothecate the movable assets of his own company, but this rule is not applicable to hypothecs of shares or claims⁴⁵.

1. The Situation in which the Shareholder is Indebted to the Corporation but Has not Hypothecated his Shares

In this case, the corporation may easily obtain a hypothec on the monetary claim owed to the shareholder, i.e. on the amounts of money payable or to become payable by the corporation to its shareholder whatever the origin.

2. Situation in which the Shareholder is Indebted to the Corporation and has Hypothecated his Shares

a) By Way of a Movable Hypothec without Delivery of the Shares

A movable hypothec without delivery takes its rank from its RPMMR publication. Moreover, it is known that a hypothec without delivery on shares does not confer on the creditor a right to dividends nor on the proceeds of a buyback of the shares⁴⁶. Accordingly, in this case, the amount of the dividends and proceeds of a buyback of shares payable in money constitute a monetary claim belonging to the shareholder. These sums are not hypothecated in favor of the creditor, who is only the holder of a movable hypothec without delivery on the shares⁴⁷.

b) By Way of a Movable Hypothec with Delivery of Shares

If the shares have been pledged to a creditor of the shareholder, the CCQ provides that such a creditor with security on the shares has, by law, hypothecary rights that extend not only to the shares but also to the dividends and the proceeds of a buyback of the shares payable in cash⁴⁸. This movable hypothec with delivery of the shares takes precedence over all other movable hypothecs without delivery, regardless of when they are published⁴⁹. In the event of competition between a creditor pledging shares and a creditor holding a movable hypothec without delivery on the universality of the claims, the creditor pledging shares should be given preference since the law gives him the right to receive the fruits (dividends) and the income (cash redemption of shares).

CONCLUSION

Hypothecs of monetary claims are frequent, and the challenge facing lenders and counsel will be to identify the situations that allow monetary claims and verify whether they have been hypothecated, given the undisclosed nature of this security, which exists without publication in the RPMMR.

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1. Art. [2713.1](#) to [2713.9](#) CCQ.

2. Art. [2702](#) and [2709](#) CCQ. These articles are limited to claims evidenced by negotiable instruments by endorsement and delivery.

3. Only claims payable by an amount of money are considered. A claim that is not payable by a sum of money cannot be a monetary claim.

4. Louis PAYETTE, *Les sûretés réelles dans le Code civil du Québec*, Éditions Yvon-Blais, 6th ed. 2022, n^o 610, [EYB2022SUR45](#) and 945, [EYB2022SUR93](#) [Payette].

5. Art. [2689](#) CCQ.

6. Art. [2713.1](#) CCQ.

7. *Act respecting the transfer of securities and the establishment of security entitlements*, CQLR, c. T-11.002 (“ATS”).

8. *Bills of Exchange Act*, L.R.C. (1985), c. B-4.

9. Section [15](#) ATS provides that while a promissory note is not a security, it may nevertheless be a financial asset.

10. The CCQ however provides a “phantom pledge” for a period of ten days under the conditions provided in article [2708](#) CCQ.

11. Art. [2695](#) CCQ.

12. Art. [2713.9](#) CCQ.

13. Article [15.02](#) of the *Regulation respecting the register of personal and movable real rights*, CQLR, c. CCQ, r. 8 provides that the assets constituting a registered retirement savings plan, a registered retirement income fund, a registered education savings or a registered disability savings plan cannot be hypothecated without delivery by an individual, accordingly, any claims that result from them cannot be monetary claims that can be subject to movable hypothecs with delivery. The assets to which article [15.02](#) refers are assets against which an individual cannot create any security.

14. Art. [1673](#) CCQ.

15. *Syndic de Montréal c'est électrique*, 2020 QCCA 1609, [EYB 2020-367526](#), para 40-44, 69 and 70. [Montréal c'est électrique]. The judgments rendered at first instance (2019 QCCS 455, [EYB 2019-307405](#)) and on appeal explain the distinctions between legal compensation and contractual compensation. Moreover, only contractual compensation that expressly provides that the monetary claim is a sum dedicated to the performance of an obligation can constitute a movable hypothec with delivery. See para 54 of the trial judgment in relation to “guaranteed compensation”.

16. These situations are common between a franchisor and its franchisee.

17. If the builder benefits from the protection of the construction hypothec but a monetary claims hypothec could, as for it, offer interesting protection for the owner of the building.

18. Art. [2713.4](#), para 1 CCQ.

19. Article [2713.6](#) CCQ excludes a securities account within the meaning of the AST. from the definition of the financial account.

20. Art. [2713.6](#) CCQ.

21. Aurore BENADIBA, “L'examen critique des gages spéciaux : révélations autour de ces techniques d'appropriation directe de la valeur”, *Les Cahiers de droit*, 59 (2), p. 365.

22. Payette, *supra* note 4, para 944.

23. Art. [2713](#), para 3 CCQ.

24. *Montréal c'est électrique*, *supra* note 15, para 49.

25. Payette, *supra* note 4, n^o 946.

26. *Ibid.*, para 947.

27. *Montréal c'est électrique*, *supra* note 15, para 63-64.

28. Payette, *supra* note 4, n^o 790, 936.

29. *Montréal c'est électrique*, *supra* note 15, para 73-79.

[30.](#) Art. [2713.5](#) CCQ

[31.](#) Art. [3105](#) CCQ; articles [75](#) and [307](#) CCQ list the criteria for identifying the domicile of a person and a legal entity. For the domicile of a partnership created under the CCQ, see Payette, *supra* note 4, No. 330.

[32.](#) Art. [3106.1](#) CCQ.

[33.](#) *Montréal c'est électrique*, *supra* note 15, para 58.

[34.](#) Art. [3105](#) CCQ.

[35.](#) Payette, *supra* note 4, No. 923. Validity is governed by the law of the grantor's domicile at the time of creation of the pledge, but publication and its effects depend on the grantor's domicile at the time the creditor wishes to avail himself of his security.

[36.](#) Art. [2713.8](#) para 1 CCQ. It must necessarily be concluded that the first paragraph of this article refers to publication in the RPMRR since publication by way of detention can only be made in respect of a negotiable instrument, which cannot represent a monetary claim.

[37.](#) Art. [2713.8](#) CCQ.

[38.](#) Art. [2713.8](#) CCQ.

[39.](#) Art. [2713.8](#) CCQ.

[40.](#) Art. [2713.8](#) para 2 CCQ.

[41.](#) Payette, *supra* note 4, para 955.

[42.](#) Art. [2692](#) CCQ.

[43.](#) Art. [2692](#) CCQ *in fine*.

[44.](#) Payette, *supra* note 4, para 936.

[45.](#) Art. [15.02](#) of the *Regulation respecting the register of personal and movable real rights*.

[46.](#) Payette, *supra* note 4, para 1065.

[47.](#) The shares of corporations, whether or not evidenced by a certificate, are securities according to section [10](#) of the ATS. Moreover, it may be useful to point out that the CCQ mentions certificated or non-certificated shares. Under our laws governing corporations, only certificated shares are possible. Bearer shares disappeared in Québec with the reform of the *Business Corporations Act actions*, CQLR, c S-31.1.

[48.](#) Art. [2737](#) and [2738](#) CCQ.

[49.](#) Art. [2714.4](#) CCQ.

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