Conflict of Laws:

Inter-jurisdictional Transactions under the *Personal Property Security Act* and the *Uniform Commercial Code Article 9*

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1. INTRODUCTION

Conflict of laws issues have become highly relevant with the increasingly national and international scope of commercial transactions. This paper surveys the conflicts rules applicable to secured financing transactions involving personal property collateral where dimensions of the transaction fall outside Alberta’s borders, either in another Canadian province or territory or in the United States. The law applicable to purely domestic transactions (i.e., those involving only Canadian jurisdictions) is determined primarily by application of the conflicts rules of the Personal Property Security Act [hereafter the PPSA].\(^1\) Where a transaction extends to a U.S. state, the conflicts rules of Revised Article 9 of the Uniform Commercial Code [hereafter Article 9] must also be considered.\(^2\)

Although the presence of a choice of law issue is obvious to the trained legal eye, it may pass unnoticed by the less experienced. It is therefore worth noting at the outset that if any of the primary geographic dimensions of a secured transaction falls within a jurisdiction different from the others, it will be necessary to determine which jurisdiction’s law applies to the resolution of any given issue arising from the transaction. Those dimensions are the location of the secured party, the location of the debtor and the location of the collateral. An Alberta financer lending or extending credit to a debtor located in another jurisdiction or taking a security interest in collateral located outside the province should be aware that Alberta law may not determine the parties’ legal rights. However, we will soon see that while the creditor’s location relative to that of the debtor or the collateral may give rise to the need to consider conflicts rules, location of the creditor is not a factor upon which the determination of the governing law is based.\(^3\) The choice of law rules of both the PPSA and Article 9 are based on either the location of the debtor or the location of the collateral.

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1 This paper does not address transactions involving a security interest governed by the Bank Act, or transactions giving rise to conflicts issues requiring consideration of the law of Quebec. Generic references to the PPSAs of the provinces are intended to include those of the territories.
2 The primary conflicts rules of Article 9 will be considered. However, the limits of space and the author’s expertise preclude a comprehensive discussion of either the detailed provisions of those rules or the special rules relating to certain limited types of collateral.
3 This assertion is subject to minor qualification insofar as the location of the creditor may play a role in determination of the proper law of the contract under general conflict of laws principles. However, the law of the contract has very limited relevance in relation to issues arising from secured financing transactions.