

# **Conflict of Laws:**

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

**Prepared for:** Legal Education Society of Alberta

**For Presentation In:** Edmonton, Alberta  
September 27, October 4, 11 & 18, 2006

**For Presentation by:** Professor Tamara M. Buckwold  
University of Alberta  
Faculty of Law  
Edmonton, Alberta

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

**CONTENTS**

**1. INTRODUCTION**

**2. THE PPSA CONFLICTS RULES**

- (a) *Location-of-the-debtor rule*
- (b) *Determining the location of the debtor*
- (c) *Location-of-the-goods rule*
- (d) *A note on securities*
- (e) *Inter partes enforcement*
- (f) *Security interests in minerals*

**3. CHOICE OF LAW UNDER ARTICLE 9**

- (a) *The default rule: Location-of-the-debtor*
- (b) *Determining the location of the debtor*
- (c) *Possessory security interests*
- (d) *Bifurcation of perfection & priority: Location-of-the-collateral rule for priority of security interests in goods, documentary collateral and money*

**4. THE PROBLEM OF *RENOI***

- (a) *Renvoi under the PPSA*
- (b) *Renvoi not permitted under Article 9*

**5. *INTER PARTES* ISSUES**

- (a) *Characterization: Does the contract create a security interest?*
- (b) *Validity: What law determines whether a security interest is valid?*
- (c) *Enforcement: What law governs the secured party's rights of enforcement?*

**6. PRIORITIES ISSUES**

- (a) *Characterization and validity*
- (b) *Perfection and priority: What law governs the perfection and priority of a security interest?*
  - (i) *Perfection when the governing law is the PPSA*
  - (ii) *Perfection when the governing law is Article 9*
    - Location-of-the-collateral rule (s.5(1)) points to a U.S. state*
    - Location-of-the-debtor rule (s. 7(2)) points to a U.S. state*

**7. CHANGE IN THE LOCATION OF COLLATERAL OR LOCATION OF THE DEBTOR**

- (a) *PPSA provisions addressing change in location of collateral*
- (b) *PPSA provisions addressing change in location of the debtor*
- (c) *Relocation of the debtor or the collateral under Article 9*

**8. SPECIALIZED RULES AFFECTING CANADA – U.S. TRANSACTIONS**

(a) *Perfection with respect to certificate-of-title goods*

(b) *Perfection with respect to deposit accounts*

**9. CHOICE OF LAW RULES APPLICABLE TO SECURITY INTERESTS IN INVESTMENT PROPERTY**

**10. CONCLUSION**

**APPENDIX A**

**APPENDIX B**

**APPENDIX C**

---

## 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].<sup>1</sup> 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.<sup>2</sup>

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 financier 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.<sup>3</sup> 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.

---

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.