

The Concept of Secured Financing and the Resolution of Priority Competitions

Prepared For: Legal Education Society of Alberta

PPSA Basics

Presented by:

Prof. Rod Wood

University of Alberta

Edmonton, Alberta

For Presentation In:

Edmonton – March 5, 2014

Calgary – March 12, 2014

The Concept of Secured Financing and the Resolution of Priority Competitions

Roderick J Wood, F.R. (Dick) Matthews Q.C. Professor of Business Law
Faculty of Law University of Alberta

I. THE CONCEPT OF SECURED FINANCING

A. Legislative History

The *Personal Property Security Act*¹ (PPSA) is based upon Article 9 of the American Uniform Commercial Code. It has been enacted in every common law province and territory in Canada. Ontario in 1967 was the first province to enact such legislation. The Ontario Act was recently replaced in 1989 with a new revised version.

The migration of this idea has been westward - Manitoba in 1973, Saskatchewan in 1980, the Yukon in 1982, Alberta in 1988 and British Columbia in 1989. Saskatchewan and Manitoba passed new legislation in 1993 which brings their legislation closer to the Alberta and B.C. model. Both the Alberta PPSA and British Columbia PPSA came into force on October 1, 1990. New Brunswick, Nova Scotia, Newfoundland, P.E.I., the Northwest Territories and Nunavut have all passed PPSA based on the Alberta and B.C. model. Internationally, New Zealand has passed legislation based on the Canadian model. Australia adopted a PPSA, which came into force on January 2012.

There are two basic models of PPSA in Canada. The Ontario model is found only in that province. The CCPPSL model (formulated by the Canadian Conference on Personal Property Security Law) has been adopted by all the other common law provinces. There are some major differences between the Ontario model and the CCPPSL model. It is important that you appreciate these differences. Ontario case law is a rich resource of precedent, but their persuasive value can be significantly undermined by differences in the legislation.²

The lack of uniformity is unfortunate for other reasons. Often secured financings occur across provincial borders. Differences in provincial law simply add to the complexity (and therefore the cost) of these transactions. In other cases, secured parties may incorrectly assume that the documents or procedures that they have developed in one jurisdiction (often Ontario) will be suitable for use in other jurisdictions.

¹ RSA 2000, c P-7.

² See RCC Cuming, C Walsh & RJ Wood, *Personal Property Security Law* (Irwin Law 2012) at 64 to 70.

Some of these differences are beginning to disappear over time. For example, in 2006 Ontario introduced an amending bill that brought leases for a term of more than one year within the Ontario Act. This was a major difference in treatment between the Ontario PPSA and the Acts of other provinces and territories, and the change has brought harmonization of legislation on this point throughout Canada.

B. Major Areas of Reform

Like Article 9 of the Uniform Commercial Code, the PPSA introduced a comprehensive reformulation of secured transaction law. The major areas of reform may be summarized as follows:³

- The PPSA is designed to facilitate secured financing
- The PPSA adopts a single, unified concept of a security interest
- The Act creates a unified and rational priorities system
- The Act utilizes a unified registry system
- The Act adopts a single comprehensive enforcement system

Although the prior law permitted a creditor to take a security interest in the accounts or inventory of a business, there were a number of impediments which increased the transaction costs of such transactions. The PPSA has attempted to reduce or eliminate these impediments. In the past, priority competitions were resolved through the application of a complex mixture of property concepts and statutory rules. The former law was complicated since there were a variety of different security devices (the chattel mortgage, the floating charge, the assignment of book debts, and the conditional sales agreement) and each of these devices was governed by its own set of rules and principles. The PPSA sweeps away these old devices and replaces them with the concept of a single, unified concept of a security interest.

The resolution of priority competitions is simplified by the adoption of an internal set of priority rules contained in the PPSA. Under prior law, there were several different registry systems, and different sets of registration principles that applied depending upon the type of security device that was used. The PPSA creates a single registry system and a single set of registration principles that governs all security interests. Under prior law, the rules governing the enforcement of the security interest on default differed depending upon the type of security device that was employed. The PPSA adopts a single system of enforcement rules.

³ For a more detailed discussion of the objectives of the PPSA, see Cuming, Walsh & Wood, *ibid.* at 6-12.