The New Zealand Personal Property Securities Act: A Comparison with the North American Model for Personal Property Security

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I. Introduction

Secured credit is a powerful tool for economic growth, and an efficient and economical system for credit based on personal property security greatly enhances the ability and willingness of creditors to extend secured credit. To encourage this there is a worldwide movement to develop and modernize the law of personal property security.[1] The recent adoption in New Zealand of the Personal Property Securities Act of 1999[2] is part of this movement.

Prior to this recent legislation, the law governing security in personal property in New Zealand was found piecemeal in a variety of statutes, particularly in the Chattels Transfer Act 1924, Part V of the Companies Act 1955, and the Motor Vehicle Securities Act 1939. Under the new legislation, all of these Acts will be merged into a single personal property security system.[3] The purpose of the new Act is to create a common set of rules to establish priority of security interests in personal property; to create a single procedure for the creation and registration of security interest in personal property; to set out default provisions for the enforcement of security interests in personal property other than in consumer goods; and to create a centralized electronic personal property securities register.

The development of this legislation took over a decade. For several years the legal profession in New Zealand had expressed concern about the lack of certainty in the law of personal property securities because of the lack of an integrated law in this area.[4] In 1989, in response to a request from the Minister of Justice, the New Zealand Law Commission

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1. For an overview of the major projects occurring worldwide, see Neil B. Cohen, *Harmonizing the Law Governing Secured Credit: The Next Frontier*, 33 TEX. INT'L L.J. 173 (1998); and Neil B. Cohen, *Internationalizing the Law of Secured Credit: Perspectives from the U.S. Experience*, 20 U. PA. J. INT'L ECON. L. 423 (1999).

2. Personal Property Securities Act, 1999 (N.Z.).

3. This changes prior New Zealand law to the extent that some transactions not traditionally considered to be security interests under the prior law, but which served the same function, are included within the legislation, such as hire-purchase agreements, retention of title agreements, and some leases.

4. Prior to the new bill, the law governing security in personal property in New Zealand was found piecemeal in a variety of statutes, particularly the Chattels Transfer Act, 1924 (N.Z.), Companies Act, 1955 (N.Z.) pt. V, and the Motor Vehicle Securities Act, 1939 (N.Z.).

published a report on personal property securities.[5] Included in the report was a draft Personal Property Securities Act that was drafted by an advisory committee with the mandate to draft legislation based on contemporary North American models with appropriate adaptations for New Zealand conditions. The draft Act, to a large extent, followed British Columbia legislation, the most recent of the North American models at that time. The central core of the proposal was a unified personal property security device. For many years after the publication of the report no real progress was made toward the adoption of the proposed Personal Property Securities Act. In 1995, though, the Ministry of Commerce obtained primary responsibility for the law relating to personal property securities, and the Ministry began to show considerable interest in pursuing enactment of the Personal Property Securities Act. The final draft culminated in the New Zealand Personal Property Securities (PPS) Bill that was given its final reading on October 6, 1999.[6]

The Act draws primarily from the Saskatchewan Personal Property Security Act of 1993[7] and the New Brunswick Personal Property Security Act of 1993.[8] Given New Zealand's common law background, it is no surprise that the Act follows the North American model that presupposes a common law system of contract and property rights. Many civil law countries have significantly different personal property security systems.[9] This difference, of course, is exacerbated by the fact that much of the civil law of obligations, as well as the civil law of property, do not translate into equivalent common law concepts.[10]

As for the adoption of a common law model,[11] the North American model presents the

5. NEW ZEALAND LAW COMMISSION, REPORT NO. 8: A PERSONAL PROPERTY SECURITIES ACT FOR NEW ZEALAND (1989). In this paper, the Ministry set out the five major objectives for reform:

i. to reduce the costs associated with unregistrable security interests;
ii. to make it easier and less costly for persons to acquire knowledge of a prior registered security interest;
iii. to reduce the risk associated with transactions involving personal property;
iv. to reduce the arbitrary distinctions between security interests; and
v. to simplify the law.

6. The exact date that the law will come into effect is unclear, and there are still a number of final details to be worked out, such as further technical amendments, final funding for the PPS Register, and the completion of the PPS Regulations. The current status can be found on the New Zealand government's Website at http://www.moc.govt.nz.

7. Saskatchewan Personal Property Act, 1993 (Can.), *available at* http://www.qp.justice.gov.sk.ca/orphan/legislation/P6-2.htm.

8. New Brunswick Personal Property Security Act, 1993 (Can.), *available at* http://www.gov.nb.ca/acts/acts/p-07-1.htm.

9. *See* Carl S. Bjerre, *International Project Finance Transactions: Selected Issues Under Revised Article 9*, 73 AM. BANKR. L.J. 261, 268 & n.26 (1999). It is interesting, though, that the European Bank for Reconstruction and Development, in its drafting of a model law, drew upon the structure of the American Article 9 of the Uniform Commercial Code. *See* EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, MODEL LAW ON SECURED TRANSACTIONS (1994).

10. I do not mean to overstate this point. The State of Louisiana, which still retains the civil law of obligations and property, adopted Article 9 in 1990. In 1994, the new Québec Civil Code came into effect with a chapter regulating security interests in personal property that is compatible with the rest of common law North America. Québec Code Civil, book 6, title 3. Although accommodation to the civil law was made in both of these pieces of legislation, it certainly was not an insurmountable obstacle. My only point is that given the choice between a common law and a civil law approach, the ease of a transition to a common law approach is much easier in a common law jurisdiction such as New Zealand.

11. There is, of course, no reason why New Zealand, or any other jurisdiction, is compelled to follow another jurisdiction's law. However, to do so is quite common, and when the other jurisdiction has a similar legal and economic structure, to do so is quite sensible.

most logical choice.[12] Article 9 of the Uniform Commercial Code (U.C.C.) was the first personal property security act that successfully based personal property security law on a unified concept of a generic security interest. Article 9 has been tremendously successful as a means of secured financing and it has been adopted by all U.S. states.[13] In Canada, most provinces have adopted Personal Property Security Acts (PPSA),[14] which are largely based on Article 9. In addition, it has been strongly argued as the basis for a personal property security rights regime in a number of other jurisdictions.[15]

Outside North America, other common law jurisdictions have not been as quick to adopt unified PPSAs. For example, Australia does not have an integrated personal property securities legislation. The Australian Law Reform Commission published an Interim Report in 1993 on personal property securities.[16] In the report, the Commission recommended that a single legal regime be introduced for all jurisdictions based on Article 9 and the Canadian PPSAs.[17] Since then, there has been no consensus among the various states on the reform proposals. There has also been some expressed interest in the United Kingdom toward an integrated personal property securities law along the lines of the North American model; however, such a proposal has yet to be adopted.[18]

II. Comparison of Basic Principles

The New Zealand legislation contains the basic principles that are the central features of both Article 9 and the Canadian PPSAs.[19]

12. By North American Model, I am referring to Article 9 and the PPSAs of the common law provinces of Canada. Although Québec has adopted a system that takes many of the aspects of the American and common law Canadian systems, the accommodation to the civil law tradition makes the Québec law unique. The Québec Civil Code, which went into effect on January 1, 1994, incorporates into Québec law the concept of chattel mortgages. The Québec legislation refers to a security interest as a hypothec, which is derived from the French word *hypothèque*, which in many jurisdictions is "mortgage." As with the scope of PPSAs covering personal property, the Québec Code covers "moveables." Québec has a central registry of all personal property security interests (*hypothecs*). For a discussion of the personal property security rights law in Québec, see Ronald C.C. Cuming, *Harmonization of the Secured Financing Laws of the NAFTA Partners*, 39 ST. LOUIS U. L.J. 809 (1995). For a discussion on why Québec did not see fit to adopt Article 9, see Martin Boodman & Roderick A. Macdonald, *How Far Is Article 9 of the Uniform Commercial Code Exportable? A Return to Sources*, 27 CAN. BUS. L.J. 249 (1996).

13. Article 9 has been recently revised. Revised Article 9 is set for a uniform effective date of July 1, 2001, and it is likely that the vast majority of the states will have adopted it by then. Although much longer than the original, Revised Article 9 contains the basic structure and concepts of the original. In this article, citation will be made both to the original as well as Revised Article 9.

14. Ontario was the first province to enact a PPSA, doing so in 1967, but then taking nine years before bringing it into force. A Canadian uniform act was published in 1969, followed by Manitoba legislation in 1973, and then other provinces including British Columbia and Alberta in 1990, and Saskatchewan and New Brunswick in 1993.

15. *See, e.g.*, Cuming, *supra* note 12; Alejandro Garro, *Security Interests in Personal Property in Latin America: A Comparison with Article 9 and a Model for Reform*, 9 HOUS. J. INT'L L. 157 (1987); and Boris Kozolchyk, *What to Do About Mexico's Antiquated Secured Financing Law*, 12 ARIZ. J. INT'L & COMP. L. 523 (1995).

16. AUSTRALIAN LAW REFORM COMMISSION, REPORT 64 (1993).

17. *See id.* at 6.

18. For a discussion on the suggestions in England to adopt Article 9, see Michael G. Bridge, *How Far Is Article 9 Exportable? The English Experience*, 27 CAN. BUS. L.J. 196 (1996).

19. In this article, I limit the comparative discussion to the common law Canadian PPSAs. For a comparison of the common law acts with the law of Québec, see Cuming, *supra* note 12.

A. Unified Concept of Security Interest

Article 9 was the first personal property security act that successfully based personal property security law on a unified concept of a generic security interest. In Canada, the PPSAs, largely based on Article 9, also embody the concept of a unified security interest. Consistent with the North American model,[20] the New Zealand Act provides for a unified concept of a security interest.[21] All transactions that are designed to secure debt are considered a "security interest"[22] and all security interests in personal property are subject to the same governing principles. Express in the North American statutes,[23] as well as in the New Zealand Act,[24] is the notion that what constitutes a security interest is based on the purpose of the transaction and not on the form in which the transaction is made. All transactions that function to secure debt by an interest in personal property are treated in the same way. Unlike prior common law security rights regimes, the form of the transaction is irrelevant.

For American lawyers who have had Article 9 for fifty years, it may be difficult to appreciate what a radical idea is embodied in a unified security interest based on the functionality of the transaction. Take, for example, the traditional common law security device of a conditional sales contract. Within what was unquestionably a sale of goods, the common law recognized that parties to the contract could agree that the seller would retain the "title" in the goods until the purchase price was paid by the buyer. Of course, the whole purpose of the conditional sales contract was to secure payment of the buyer's obligation to pay the purchase price of the goods and, thus, was precisely the type of transaction that comes under the definition of a security interest. Thus, under Article 9[25] and PPSAs,[26] this would still be a sale of goods; the attempt, however, to retain title would be ineffective, and

20. *See* U.C.C. § 1-201(37) (1972); Saskatchewan Personal Property Security Act § 2.

21. The Act provides:

> (1) In this Act, unless the context otherwise requires, the term security interest
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> (a) Means an interest in personal property created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to—
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> (i) The form of the transaction; and
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> (ii) The identity of the person who has title to the collateral; and
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> (b) Includes an interest created or provided for by a transfer of an account receivable or chattel paper, a lease for a term of more than 1 year, and a commercial consignment (whether or not the transfer, lease, or consignment secures payment or performance of an obligation).
>
> (2) A person who is obligated under an account receivable may take a security interest in the account receivable under which that person is obligated.
>
> (3) Without limiting subsection (1), and to avoid doubt, this Act applies to a fixed charge, floating charge, chattel mortgage, conditional sale agreement (including an agreement to sell subject to retention of title), hire purchase agreement, pledge, security trust deed, trust receipt, consignment, lease, an assignment, or a flawed asset arrangement, that secures payment or performance of an obligation.

Personal Property Securities Act, § 18.

22. As a PPSA, by definition and intention, security interests in land are not provided for under the Act. *Id.* § 23(e)(i). This is consistent with the North American personal property security laws. U.C.C. § 9-104(j); Revised U.C.C. § 9-109 (2001); and New Brunswick Personal Property Security Act § 4(f).

23. U.C.C. § 9-102(1)(a); Revised U.C.C. § 9-109; and New Brunswick Personal Property Security Act § 3(1)(a).

24. Personal Property Securities Act § 17.

25. U.C.C. § 9-102(2); and Revised U.C.C. § 9-109.

26. Saskatchewan Personal Property Security Act § 3(1)(b).

the aspect of the transaction attempting to retain title would be treated as a security interest. In one fell swoop the concept of title in a sale of goods is diminished by the functional approach to security interests in Article 9 and PPSAs.

Likewise, if the transaction purports to be a lease, but the transaction meets the functionality test of PPSAs or Article 9, the transaction will be considered a sale with a retained security interest. Again, we see the reordering of the transaction and the dissolution of the concept of title based on the purpose of the transaction.

The New Zealand Act is also consistent with the North American acts in that the value of the transactions does not affect the question of whether a security interest can be granted. Thus, as with the North American acts, the New Zealand Act covers both large-scale commercial financing as well as small consumer financing.[27]

B. After-Acquired Property and the Floating Lien

If we intend to allow for businesses to raise working capital by granting security interests in inventory, we must provide for security rights on property acquired by the debtor after the agreement is executed. A security interest on inventory existing only at the time the security interest attaches will be of little interest to secured creditors as the secured inventory will be replaced with new unsecured inventory in the normal course of business.

Having adopted the North American model of personal property security rights, the New Zealand Act dispenses with the floating charge.[28] Instead, expressly providing for after-acquired property,[29] it adopts the concept of the "floating lien," a concept inherent in both Article 9,[30] as well as the Canadian PPSAs.[31]

This is a fundamental change from the existing law in New Zealand. Under the old Chattels Transfer Act, a security interest may be given in after-acquired property; however, the security interest was not effective against third parties. Although a security interest could not be given over after-acquired property under the Companies Act, debtors could give a floating charge[32] that secures a defined class of assets and allows for changes in the individual items making up the class. The creditor is protected by the process known as crystallization, on the occurrence of which the charge attaches as a fixed security to the class of items

27. There are, of course, costs imposed by secured financing, for example, the costs of compliance and filing. For this reason, under all of the acts, parties will deem some small credit sales as not warranting secured financing.

28. It is interesting to note that the report by the Australian Law Review Commission, which provides generally for a North American model of personal property security, retained in its proposal the floating charge. Report 64, *supra* note 16, § 8.33. Because the priority of a floating charge generally dates from the time of crystallization, and not the time of registration, the retention of the floating charge substantially changes the priority scheme for creditors.

29. Personal Property Securities Act §§ 43–44.

30. U.C.C. § 9–204; and Revised U.C.C. § 9–204.

31. Saskatchewan Personal Property Security Act § 33.

32. Common to most common law security rights systems, and part of the pre-1999 law in New Zealand, the ability to secure after-acquired property is achieved by the use of the English floating charge. The floating charge was never accepted by the courts in the United States. *See* Ronald C.C. Cuming, *Article Nine North of 49°: The Canadian PPS Acts and the Quebec Civil Code*, 29 Loy L.A. L. Rev. 971, 972 (1996). The floating charge is a nonspecific, suspended equitable charge that crystallizes upon default by the debtor or upon the happening of some other specified event. Evan v. Rival Granite Quarries, Ltd., 2 K.B. 979 (C.A. 1910). As long as the charge remains uncrystallized, the debtor is substantially free to deal with the charged assets as if the assets were unencumbered.

secured. Crystallization occurs on the liquidation of a company, on the appointment of a receiver and manager, on the company ceasing to carry on business, or on the occurrence of another event stipulated in the floating charge.

Under the revised law, security interests in after-acquired property now come under the single, unified umbrella of the security interest, and creditors will no longer have to rely on several different statutory schemes to achieve rights in after-acquired property. Moreover, the question of priority is clear from the time the security interest is created thereby imposing less risk on creditors. This should result in greater willingness to extend credit.

C. Proceeds

Proceeds are whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds.[33] Consistent with the North American acts, the New Zealand Act provides for the continuation of security interests in proceeds.[34] This includes cash proceeds as long as they are in an identifiable account or traceable under common law rules.[35]

The tracing of proceeds is quite important under the U.C.C. Upon disposition, proceeds are, of course, initially identifiable. However, this quickly ceases to be the case. For instance, when a seller/debtor places money from proceeds from the sale of collateral in a cash register or bank account and the monies become co-mingled, the identification of the proceeds becomes quite difficult. This has always been handled in the United States by the common law rules of tracing, and it is clear that the new Act presupposes the tracing of proceeds as a means of protecting security interests.[36]

D. Purchase Money Security Interests

Both PPSAs and Article 9 recognize that a security interest can be given on both property presently owned by the debtor as well as after-acquired property.[37] While the secured lender's priority over the debtor's after-acquired property and proceeds enhances the position of secured creditors, it can seriously limit the ability of debtors to obtain financing of new assets unless the debtor is able to give to the new creditor a priority position superior to that of the holder of the prior security interest. Both the drafters of PPSAs and Article 9 recognize this, and the issue is resolved by giving the new financing creditors a "super

33. Unless the disposition is authorized by the creditor, the U.C.C. provides that a security interest continues in collateral and proceeds of collateral despite a sale. Where a secured creditor has a security interest in collateral, the U.C.C. provides that the security interest automatically continues for ten days after the sale. U.C.C. § 9-306(3). Revised U.C.C. § 9-315(d) extends the time period to twenty-one days. Under the U.C.C., where collateral has been disposed of without authorization from the secured party, a security interest continues both in the collateral and in identifiable proceeds, including collections, received by the debtor. U.C.C. § 9-306(2); and Revised U.C.C. § 9-315(a). Proceeds can arise from the disposition of any collateral.

34. Personal Property Securities Act § 46.

35. *Id.* § 2(1)(hh).

36. *Id.* This changes the existing law in New Zealand. For example, neither the Chattels Transfer Act nor the Companies Act specifically recognize rights of tracing, and whether tracing is possible under those acts is dependent on the agreement between the parties as opposed to the automatic presumption under the new Act.

37. U.C.C. § 9-204; Revised U.C.C. § 9-204; and Saskatchewan Personal Property Security Act § 33.

38. U.C.C. § 9-312(3)-(4); and Saskatchewan Personal Property Security Act § 34. A purchase money security interest includes the security interest held by either a credit seller of the property acquired or a lender who has provided loan credit to the debtor to acquire the collateral.

priority" over the prior secured creditor.[38] This credit-enhancing priority scheme is likewise adopted in the New Zealand Act.[39]

E. Protection of Buyers in the Ordinary Course of Business

Although the North American model of secured credit is quite broad in its application and provides wide latitude and discretion in the ability of debtors to grant security interests in collateral, it has always been recognized that certain buyers of goods, particularly goods from a seller/debtor's inventory, should be transferred free of the security interests.[40] This principle is also adopted in the New Zealand Act.[41] A buyer qualifies for the protection so long as the buyer is unaware that the sales transaction is not in violation of a security agreement between the seller and a secured party.[42] Consistent with most of the Canadian Acts, the New Zealand Act also provides additional protection against any prior security interest where the collateral is low-value consumer goods bought without knowledge of the security interest.[43]

F. The General Priority Structure

Among secured creditors, under Article 9, the first secured creditor that files a financing statement, has possession of the collateral, or has otherwise perfected the security interest acquires priority over subsequent secured creditors in the same collateral.[44] The date that the security interest is created (attached) or the knowledge that other secured parties exist is irrelevant to this priority scheme. This priority structure is also followed in the Canadian PPSAs,[45] and consistent with the overall uniformity of the New Zealand Act with the Canadian PPSAs. The New Zealand Act also provides for a "first to file or perfect" rule.[46]

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39. Personal Property Securities Act §§ 73–77.

40. U.C.C. § 9-307; Revised U.C.C. § 9-320; Saskatchewan Personal Property Security Act § 30(2); and New Brunswick Personal Property Security Act § 30(2).

41. Personal Property Securities Act § 53.

42. The protection is not a statutory equivalent of the common law market overt. The buyer is protected only from a security interest given by the seller and not from a security interest created by a prior owner. Under the common law doctrine of market overt, the buyer was protected from any claim against the goods as long as the buyer bought the goods from a recognized market of goods of that kind in good faith without notice of any defect in title. The principle was designed to protect commerce by allowing buyers to buy in the ordinary course of business without having to assume the risk and cost of insuring the seller's right to sell. The doctrine of market overt, which was for many years codified in the English Sale of Goods Act, was abolished in the 1994 Amendments to the Act.

43. *See, e.g.*, Saskatchewan Personal Property Security Act § 35; and New Brunswick Personal Property Security Act § 35.

44. U.C.C. § 9-312(5); and Revised U.C.C. § 9-322. The purpose of this rule is twofold. First, it provides a simple bright line rule. Second, it provides creditors a simple method of determining priority. The creditor can check the records before approving the financing, and then file before completing the transaction with the knowledge that during the pendency of the financing the creditor will have and retain priority. This priority rule, of course, is the general rule, and is subject to certain exceptions. See, for example, U.C.C. § 9-312(3)–(4) regarding the special priority rules for purchase money secured creditors.

45. *See, e.g.*, Saskatchewan Personal Property Security Act § 35; and New Brunswick Personal Property Security Act § 35.

46. Personal Property Securities Act § 66. This is the general priority rule, and as noted above, this rule is subject to exceptions such as special priority rules for purchase money security interests. Personal Property Securities Act §§ 73–77.

G. Enforcement

A unique feature of North American personal property security rights law is the provision for the creditor to implement a self-help remedy of possession of the collateral upon the debtor's default,[47] as well as the option for the secured creditor itself to dispose of the collateral in satisfaction of the debt.[48] This has long been a controversial aspect of North American security rights law because of concerns of extra-judicial enforcement procedures as well as the potential for abuse by creditors. The justification for the system stems from the speed and efficiency with which the collateral can be possessed and disposed.

Consistent with the North American model, the New Zealand Act adopts self-help provisions that provide both for self-help repossession as well as private disposition of the collateral.[49] It is clear, though, that this raised some level of concern because the Act, unlike its North American counterparts, also provides an affirmative duty on the part of the secured creditor to obtain the best price reasonably obtainable in the disposition of the collateral.[50]

III. Differences Between the New Zealand Act and the North American Model

The similarities among the acts are substantial. There is a general common language and structure. For example, all of the acts provide for a two-step process of attachment and perfection for security interests, and use the same terms for these concepts. All of the acts provide for the filing of financing statements with a government office. Because the New Zealand Act is patterned on the common law Canadian PPSAs,[51] the New Zealand Act is much more similar to the Canadian acts[52] than to Article 9. Thus, many of the differences among the acts will be more pronounced between the American and New Zealand legislation than between the New Zealand and Canadian legislation. For example, although the New Zealand Act has much more detailed rules regulating the enforcement of security interests than does Article 9, the New Zealand rules are very similar to the Canadian rules on which they are based. In addition, the conflicts of law rules are modeled on the Canadian rules[53] and, therefore, will be wholly familiar to a Canadian lawyer, but substantially different from the American rules.

Conversely, under the Canadian PPSAs, the security agreement may provide for a privately appointed receiver in the event of default.[54] Generally, the receiver has the power to take control of the business, and receivership is used principally in cases where the secured

47. *See, e.g.*, U.C.C. § 9–503; Revised U.C.C. § 9–609; Saskatchewan Personal Property Security Act § 58; and New Brunswick Personal Property Security Act § 58.

48. *See, e.g.*, U.C.C. § 9–504; Revised U.C.C. § 9–610; Saskatchewan Personal Property Security Act § 59; and New Brunswick Personal Property Security Act § 59.

49. Personal Property Securities Act § 109.

50. *Id.* § 110.

51. All but a handful of sections in the Act specifically reference a corresponding section in one of the Canadian PPSAs.

52. There is some variation in the Canadian acts just as there is some nonuniformity in the various enactments of Article 9.

53. *Compare* Personal Property Securities Act § 26–33 *with* Saskatchewan Personal Property Security Act §§ 5 & 7.

54. *See, e.g.*, Saskatchewan Personal Property Security Act § 64; and New Brunswick Personal Property Security Act § 64.

party has a significant security interest that would make it reasonable for the receiver to run the business or liquidate it. There is no equivalent to the receivership in Article 9, and this is one aspect of the Canadian acts that New Zealand decided not to adopt.[55]

Unique in the New Zealand Act are special carve-out provisions for good faith purchasers of cars.[56] To an extent these provisions are simply a particularized version of the rule that provides that a buyer in the ordinary course of business takes free of a security interest and, therefore, is a common rule to that in the North American security rights rules.[57] However, these special provisions are tied to the Motor Vehicle Dealers Act[58] and provide not only that the buyer may take free of the security interest,[59] but also that if the dealer does not have the money to reimburse the secured creditor, the secured creditor may seek reimbursement from a special fund set up under the Motor Vehicle Dealers Act.[60]

IV. Conclusion

With the widespread realization that an efficient law governing secured transactions is good for the economy, New Zealand's recent adoption of the Personal Property Securities Act of 1999 is consistent with the trend internationally to move toward a more efficient unified security rights system. Given the common legal background of New Zealand, the United States, and common law Canada, the choice of adopting the North America model would appear to be sensible. We can only hope that New Zealand's experience with its new law will be as favorable as has been the case in the United States and Canada.

55. However, the New Zealand Act fully acknowledges that the debtor might be in receivership, and the Act provides that the law regarding receivership be given priority over the PPSA. Personal Property Securities Act § 106.

56. *Id.* §§ 57–65.

57. U.C.C. § 9-307; Revised U.C.C. § 9-320; Saskatchewan Personal Property Security Act § 30(2); and New Brunswick Personal Property Security Act § 30(2).

58. New Zealand Motor Vehicle Dealers Act, 1975 (N.Z.).

59. Personal Property Securities Act § 58.

60. *Id.* § 60.