THE FIRST FOUR YEARS: NEW ZEALAND'S PERSONAL PROPERTY SECURITIES ACT IN PRACTICE

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I. INTRODUCTION

New Zealand's Personal Property Securities Act 1999 (PPSA) came into force on 1 May 2002, and in the period leading up to that date it was recognized as being a development of considerable significance.[1] The PPSA repealed a number of statutes which previously regulated personal property securities, and has created a unitary notice system for these securities based on the notion of a 'security interest' – a term, in essence, for a charge over another person's assets or undertaking, and one of many key concepts introduced to New Zealand jurisprudence by the PPSA. Another fundamental concept in the PPSA is 'perfection'; a perfected security interest will take priority over an unperfected security interest. 'Perfection' is achieved by a combination of 'attachment' and registration. Registration is achieved by registering a 'financing statement' summarising the nature of the security interest on the Personal Property Securities Register established by the PPSA. In simple terms, 'attachment' occurs when a first party has given value to a second party, and the first party has rights in certain collateral (eg goods) – such that the collateral can be regarded as charged to the second party. But this is by way of background only. As we will see, considerable judicial effort has gone into understanding and interpreting these key concepts, which were, before the introduction of the PPSA, entirely unknown in New Zealand law.

This article begins by examining the PPSA 'in practice' through a review of the first five reported cases on the PPSA.[2] These cases show the kinds of issues that have come before the courts on PPSA matters, the kinds of arguments presented, and the ways in which the courts have applied the PPSA to specific factual and practical situations.

The second part of the article considers four phenomena from these cases which deserve particular attention. First, the shift from key conceptual issues to more operational points of PPSA law provides an indication of the kinds of matters which are likely to lead to PPSA disputes in future. Second, the relationship between the PPSA and other statutes shows how the PPSA has introduced some inconsistencies into New Zealand's statute book, and dealing with them is likely to require the opinion of the courts in future. Third, the kinds of precedent used in interpreting the

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1 See eg D W McLauchlan, 'Fundamentals of the PPSA: An Introduction' (2000) 6 NZBLQ 166; and D Webb, 'Commercial Law' [2000] NZ Law Review 175; M Gedye, R C C Cuming, R J Wood, *Personal Property Securities in New Zealand* (Wellington: Brookers Ltd, 2002) vii.

2 Unreported cases include *McTainsh v REM Holdings Ltd* (HC Tauranga, CIV 2005-470-000024, 27 January 2005, Harrison J) – see particularly para 7; and *Houston v ANZ National Bank Ltd* (HC Auckland, CIV 2004-404-6932, 9 December 2004, Heath J). However, the reported cases are likely to have greater precedent value than any unreported cases and so deserve greater attention. For other minor judicial reference to the PPSA, see *Otago Finance Ltd v District Court* [2003] 1 NZLR 336 and *Commissioner of Inland Revenue v Agnew* [2000] 1 NZLR 223.

PPSA illustrate an unusual discomfort on the part of some judges in dealing with useful Canadian judgments. Fourth, the cases provide a strong indication that the courts will interpret security agreements broadly and flexibly under the PPSA regime. Through this analysis, the article provides a guide to how the PPSA works in practice, how the courts have interpreted it so far, and how they might interpret it in the future.

II. Graham v Portacom New Zealand Ltd

A. Introduction and Facts

Graham v Portacom New Zealand Ltd[3] was the first case on the PPSA. Portacom New Zealand Ltd (Portacom) leased portable buildings to NDG Pine Ltd (NDG) between 1998 and 2002 under Portacom's standard terms of trade. These terms provided that NDG would not part with possession of the buildings or sell to attempt to alienate them, and also stated that Portacom obtained (or retained) a security interest in the buildings that was registrable in the Personal Property Securities Register. NDG was to do all things required to give NDG a perfected first priority security.

In addition to entering into this arrangement with Portacom, NDG also granted a debenture over its assets to the Hong Kong and Shanghai Banking Corporation Ltd (HSBC). Soon after the PPSA came into force on 1 May 2002, HSBC registered its interest under the debenture on the Register. Portacom however did not register its security interest, and had not done so when NDG went into receivership in June 2003. The receivers appointed by HSBC sought directions from the Court as to whether HSBC had priority over Portacom in respect of the buildings and whether the receivers therefore had the power to sell them.[4]

B. Perfection

The Court began by noting how the PPSA was intended to provide a comprehensive system for determining the enforceability and priority of security interests, and observed that the leases from Portacom to NDG were of more than one year, and so created a security interest under section 17 of the PPSA. The Court then went on to comment on the importance of 'perfection', which occurs when a security interest has both attached to collateral and a financing statement has been registered in respect of that security interest. Because a financing statement recording HSBC's security interest had been registered, the key issue was whether this security interest had also attached to the buildings leased to NDG.

C. Attachment

Section 40 of the PPSA broadly provides for attachment if value has been given, if the debtor has rights in the collateral, and the security agreement is enforceable against third parties. On this basis, HSBC's security had attached and so was perfected. Under section 66 of the PPSA, which determines priority between security interests in the same collateral, HSBC's perfected security interest would therefore have priority over Portacom's unperfected security interest.[5] Portacom

3 [2004] 2 NZLR 528. Hereinafter '*Portacom*'.

4 *Portacom*, paras 1-6.

5 *Portacom*, paras 7-16.

argued that HSBC's interest in the buildings could not have attached, as NDG had only a possessory interest in the buildings and could not by a debenture confer on HSBC a right to sell them. The Court disagreed. A lessee of goods could grant a security interest over its possessory interest in those goods, as section 40 provided for a debtor to have rights in goods leased to that debtor. As section 17 provided for the lease of the buildings (being of more than one year) to be deemed to be a security interest, NDG was to be treated as the owner of the goods for registration and priority purposes.[6] This approach was 'confirm[ed]' by Canadian authority and scholarship.[7] In the Court's view:

> The rights of a lessor is leased goods referred to in s 40(3) of the Act are not therefore confined to the lessee's possessory rights. As against the lessee's secured creditors, the lessee has rights of ownership in the goods sufficient to permit a secured creditor to acquire rights in priority to those of the lessor.[8]

NDG therefore had both a possessory and a proprietary interest in the buildings, the latter arising by virtue of section 40(3). NDG could as a result grant a security interest in the buildings themselves, not just its leasehold interest in them. Furthermore, the terms of HSBC's debenture gave HSBC a charge over both the leasehold and proprietary interests of NDG in the buildings.[9]

D. Security Agreement

Portacom also sought to argue that HSBC's security agreement was not enforceable under section 36 of the PPSA, as the debenture did not contain a statement that it was over all 'present and after-acquired property' of NDG. The Court found that while the debenture did not use these precise words, the substance was the same, and the debenture was therefore enforceable against Portacom in respect of NDG's possessory and proprietary rights in the buildings. Ultimately, HSBC's perfected security had priority over Portacom's unperfected security, and the receivers were authorized to sell the buildings.[10]

III. New Zealand Bloodstock Ltd v Waller

A. Introduction and Facts

New Zealand Bloodstock Ltd v Waller[11] was the first Court of Appeal decision on the PPSA. On 17 November 1999, Glenmorgan Farm Ltd (GFL) granted a debenture to SH Lock (NZ) Ltd (Lock) over all 'present and future assets' of GFL. The charge was fixed and floating in respect of certain assets, and was registered under the Companies Act 1993 on 19 November 1999.[12] Some time afterwards, on 31 August 2001, GFL entered into a lease to purchase agreement with Bloodstock[13] under which GFL acquired a racehorse called Generous. Under this agreement, title

6 *Portacom*, paras 17-19.

7 *Portacom*, para 20.

8 *Portacom*, para 28.

9 *Portacom*, paras 29-33.

10 *Portacom*, paras 34-38

11 (2005) 9 NZCLC 263,944. Hereinafter *'Bloodstock'*.

12 *Bloodstock*, paras 1-3.

13 This term is used in this article as 'New Zealand Bloodstock' was used in the decision to refer to both New Zealand Bloodstock Ltd and New Zealand Bloodstock Finance Ltd.

to Generous remained with Bloodstock until 31 July 2004, at which time GFL would complete the purchase of Generous. In August 2003, the agreement was varied to extend the lease to 28 March 2005, but at no stage did Bloodstock register a financing statement. Lock registered a financing statement under the PPSA on 1 May 2002, while Generous came to be leased to a third party. However, GFL defaulted on its lease agreement and it was terminated by Bloodstock on 6 July 2004, with Bloodstock taking possession of Generous one day later. Lock gave notice to GFL of default under its debenture on 23 July 2004 and appointed receivers one day later.[14]

B. Title versus Perfected Security Interest

The parties' main arguments could be broken into two: Bloodstock had argued that Bloodstock retained title to Generous and GFL could therefore not confer on Lock a security interest in Generous; while the receivers had argued that the PPSA regime meant GFL could, through its deemed ownership of Generous, give Lock an interest in Generous that could have priority over Bloodstock's interest.[15]

The majority of the Court found that Lock's perfected security interest (through its debenture) took priority over Bloodstock's title to Generous. With GFL's lease being more than one year in duration, Bloodstock's title became a 'security interest' under section 17 of the PPSA. Section 40(3) gave GFL rights in Generous, and Lock's debenture was effective on its terms under section 35. GFL's rights in Generous were therefore part of Lock's security, had 'attached' for the purposes of section 40, and had been perfected by registration. As Bloodstock's security interest was not perfected, Lock's security interest took priority.[16] While Bloodstock had argued that this finding would go against the rule *nemo dat quod non habet*, that no one can give that which they do not have, the majority pointed out that there have always been exceptions to this principle.[17] By virtue of section 17 of the PPSA, Bloodstock's title became a 'security interest'. This was part of the policy behind the PPSA, as many lease to purchase arrangements are, in reality, similar to hire purchase agreements or conditional sale contracts.[18]

William Young J saw Bloodstock's argument as 'consistent with legal notions as they were prior to the PPSA'.[19] However, while there was no express provision in the PPSA that a chattel in the possession of a debtor and subject to a retained title security was to be treated as *owned* by the debtor and therefore potentially subject to other securities, the intention of the PPSA had been to equate 'true' security interests and arrangements that were security interests in substance. Priority was to be determined in accordance with the rules under the PPSA. Furthermore, the policy of the PPSA was to encourage registration, and finding for the receivers would create incentives for this.[20] In essence, William Young J agreed with the majority in giving priority to a perfected security interest.

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14 *Bloodstock*, paras 5-11.

15 *Bloodstock*, para 85, per William Young J. Though it is derived from the minority judgment, this description of the main issues is more useful than any summation in the majority's decision.

16 *Bloodstock*, para 51.

17 *Bloodstock*, paras 52-53.

18 *Bloodstock*, para 54.

19 *Bloodstock*, para 87.

20 *Bloodstock*, paras 87-89.

C. Security Agreement

Bloodstock further argued that under section 35 of the PPSA, a security agreement is effective according to its terms. Bloodstock's agreement with GFL provided that Bloodstock retained title to Generous and GFL therefore had no interest in Generous, proprietary or possessory, on which Lock could base a claim to Generous.[21] In the alternative, Bloodstock argued that the language of Lock's debenture was insufficiently explicit.[22] The receivers pointed out that section 35 actually states that a security agreement is effective according to its terms '[e]xcept as otherwise provided by this Act…'. The receivers relied on this in arguing that, when the PPSA came into force on 1 May 2002, Lock's registration of a financing statement perfected its interests over all GFL's assets, and that Bloodstock's failure to register its interest meant it lost priority in Generous to Lock.[23]

The majority held that while Lock's security agreement was not specifically expressed to be over 'all present and after-acquired property' of GFL, it did cover 'all present and future assets'. The difference between these phrases was not seen as material, particularly in light of section 17, which requires the form of the transaction to be disregarded as long as the transaction substantially secures payment for performance of an obligation.[24]

While he had agreed with the majority on the previous point, William Young J disagreed with the majority over the interpretation of the security agreement. Before the PPSA came into force, in his view, the debenture could not have conferred security over assets not owned by GFL. The charging clause was drafted with reference to the legal regime at the time of its execution and not the prospective regime of the PPSA.[25] Furthermore, the transitional provisions of the PPSA did not directly address whether a security agreement signed before the PPSA came into force, and which did not 'on its true interpretation' extend to assets not actually owned by GFL, could extend to assets owned by a third party.[26]

D. Future Applicability of the PPSA

There was also an argument as to the applicability of the PPSA. Bloodstock argued that Lock's debenture, being signed on 1 November 1999 before the PPSA came into force, was limited to GFL's present and future assets measured by the law in force as at November 1999, and could not create a security interest under future law.[27] To the receivers, section 40 was the key to the matter. In terms of this section, they argued that (i) Lock's security interest had attached to Generous when Lock gave value; (ii) GFL had rights in Generous through possession of it; and (iii) the security agreement was in writing and so enforceable against third parties. Registration of a financing statement on 1 May 2002 perfected Lock's security interest, and, the receivers argued, gave Lock priority over Bloodstock's unperfected security interest under section 66 of the PPSA.[28]

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21 *Bloodstock*, paras 31-32.
22 *Bloodstock*, para 45.
23 *Bloodstock*, paras 33-34.
24 *Bloodstock*, paras 61-63.
25 *Bloodstock*, para 102.
26 *Bloodstock*, para 104.
27 *Bloodstock*, para 35.
28 *Bloodstock*, paras 37-39.

As to the 'future application' argument, while GFL had no proprietary rights in Generous before 1 May 2002, from that date section 40 created new rights to this effect. Generous was 'after-acquired property' and within the scope of Lock's debenture, and so attached to the debenture from that date.[29] As to giving value under section 40, the majority held that while the value Lock gave predated the PPSA coming into force, this did not effect the enforceability of Lock's charging clause: the PPSA regime was 'of general application' once the transitional period allowed by the PPSA had passed. This was reflected in the transitional provisions themselves.[30]

In its conclusion, the majority noted that 'with respect to priority of competing security interests under the PPSA the *nemo dat* rule is ousted'.[31] GFL had rights to Generous that came within the scope of Lock's debenture, even though Bloodstock had purported to retain title. Bloodstock therefore lost priority to GFL. This result followed the intention of Parliament, expressed in the PPSA, that Bloodstock's retention of title was merely a 'security interest' which required registration to be perfected.[32]

William Young J again disagreed with the majority, taking issue with the notion that the coming into force of the PPSA on 1 May 2002 gave Lock rights in Generous which it did not have before this date. This would give Lock greater rights against GFL, but prejudice GFL's position as against Bloodstock. There was 'nothing specific' in the PPSA supporting this 'statutory inflation of rights'.[33] GFL did not acquire greater rights in Generous from 1 May 2002, and section 40 could not apply as value was given prior to the passage of the PPSA. Lock did not obtain rights in Generous beyond the contractual rights of GFL, and the securities between Lock and Bloodstock were not in competition.[34] Overall, however, the majority's findings on these latter points were determinative, and Lock's perfected debenture had priority over Bloodstock's 'title'. As should be clear, while William Young J agreed with the majority on the priority to be granted to a perfected security interest, he disagreed on the latter two points, and would have reached a different outcome.

IV. Agnew v Pardington

A. Introduction and Facts

Agnew v Pardington[35] hinged less on the interpretation of the PPSA than on section 30A of the Receiverships Act 1993. Section 30A read as follows: '30A Extinguishment of subordinate security interests – If property has been disposed of by a receiver, all security interests in the property and its proceeds that are subordinate to the security interest of the person in whose interests the receiver was appointed are extinguished on the disposition of the property.'

Pardington and Jarrold were the receivers of The Building Depot Ltd (BDL), and were appointed by ANZ Banking Group (New Zealand) Ltd (ANZ), the first ranking general security holder, on 8 September 2004. Fletcher Distribution Ltd (Fletcher) held a second ranking general security

29 *Bloodstock*, para 64.

30 *Bloodstock*, paras 65-68.

31 *Bloodstock*, para 74.

32 *Bloodstock*, para 75.

33 *Bloodstock*, paras 106-107.

34 *Bloodstock*, paras 109-117.

35 [2006] 2 NZLR 520 (CA). Hereinafter, *'Agnew'*.

agreement, pursuant to a deed of subordination and priority, and appointed Agnew and Waller as receivers of BDL on 24 September 2004. BDL was placed in liquidation on 14 February 2005, with the Official Assignee as liquidator. After payment of the ANZ and those preferential creditors and secured parties with interests ranking ahead of the ANZ, there was around $2,800,000 remaining to pay Fletcher and the other secured creditors, with this amount being insufficient to cover all payments. Pardington and Jarrold applied to the Court for directions as to payment of the surplus, there being a dispute as to the effectiveness of Fletcher's security instrument.[36]

The High Court Judge had held that section 30A was clear in its wording: once the secured property had been disposed of (so as to allow realization of the relevant assets), all subordinate security interests were extinguished. This extinguishment meant Fletcher lost its priority in the surplus, and Pardington and Jarrold were therefore directed to pay the balance of the proceeds to Fletcher's receivers or the Official Assignee, without any subordinate security interests having any effect.[37]

B. The Arguments

On appeal by Fletcher's receivers, Fletcher argued that section 30A was intended to provide clear title, not eliminate the priority of subordinate security holders. The Official Assignee, however, thought section 30A could not be read any way other than to eliminate the priority of subordinate security holders, and that if this was an error in the legislation then Parliament, not the courts, should correct this.[38] In other words, did s 30A mean a first ranking general security interest was effective to extinguish all subsequent securities?

C. The Decision

The Court noted that section 30A had come into force at the same time as the PPSA, and must be read in the context of the PPSA. The Court paid particular attention to the enforcement provisions in Part 9 of the PPSA, and especially section 115, which mirrors section 30A, and section 106, which provides that Part 9 does not apply to receivers.[39]

While acknowledging that a bill to amend section 30A was (at the time of the proceedings) before Parliament, the Court observed that it was 'rarely permissible' to rely on subsequent legislation, even as an interpretive aid.[40] The language of section 30A was therefore key, and the Court favoured an interpretation which meant that upon the sale of property by a receiver, only subsequent security interests in the property and any future proceeds from that property were extinguished.[41] This reflected the words of the statute, and the intentions of Parliament. Parliament, the Court found, only intended that clear title be passed to a purchaser, not to entirely remove the security interest of subordinate security holders. This interpretation was a legitimate 'reading down' of the statute and fitted best with other provisions of the Receiverships Act (notably section 40D, which provides a special payment regime for local authorities), and the PPSA, Companies

36 *Agnew*, paras 1-9.

37 *Agnew*, paras 11-12. It appears the High Court's view was that payment to either of these would have been correct in law.

38 *Agnew*, paras 14-15.

39 *Agnew*, paras 17-23.

40 *Agnew*, para 28.

41 *Agnew*, paras 29-31.

Act, and Land Transfer Act as well.[42] The parties' substantive matter was remitted to the High Court – a victory for Fletcher's in interpretation.

V. Service Foods Manawatu Ltd v NZ Associated Refrigerated Food Distributors Ltd

A. Introduction and Facts

The issue in *Service Foods Manawatu Ltd (in rec & liq) v NZ Associated Refrigerated Food Distributors Ltd*[43] was whether NZ Associated Refrigerated Food Distributors Ltd ('Distributors') had a perfected purchase money security interest (PMSI) in respect of goods supplied by Distributors to collateral held by the receivers of Service Foods Manawatu Ltd ('Service Foods'). The receivers of Service Foods had asked the Court whether Distributors had a security interest in goods supplied by Distributors to Service Foods, whether this was perfected by registration of a financing statement, and whether this financing statement was invalid on the basis of being 'seriously misleading'.[44] The financing statement in question had been registered against 'all present and after-acquired property' of Distributors in December 2003. Westpac had registered a similar financing statement in October 2003. The critical question was whether Distributors' financing statement contained an adequate description of the property it secured; if not, its security interest would be unperfected.[45]

B. Security Agreement: Arguments and Findings

Section 36 of the PPSA provides that a security agreement must be signed or assented to in writing to be enforceable against third parties, and the written terms of trade between Distributors and Service Foods provided that Distributors retained a security interest in all goods supplied to Service Foods. The receivers for Service Foods argued that these terms did not accurately reflect the contractual arrangements between the parties as to payment, which was often delayed. However, indulgences given by Distributors in obtaining payment from Service Foods were found not to be a waiver of the terms or to automatically make them void. The fact that the terms expressly granted Distributors a security interest over the goods supplied and their proceeds, as well as the provision for Distributors' retention of title, meant that the terms of trade gave Distributors a Purchase Money Security Interest (PMSI) in goods supplied to Service Foods and their proceeds.[46]

C. Financing Statement

The critical issue was of course whether the description of the collateral in Distributors' registered financing statement was 'seriously misleading'. Under section 149 of the PPSA, a defect or error in a financing statement does not affect the financing statement's validity unless it is 'seriously misleading'. Section 150 provides that, without limitation, a seriously misleading defect or irregu-

42 *Agnew*, paras 32-43.

43 (2006) 9 NZCLC 263,979. Hereinafter, *'Service Foods'*.

44 *Service Foods*, paras 1-2.

45 *Service Foods*, paras 3-7.

46 *Service Foods*, paras 8-22.

larity or omission in the name of any debtor or the serial number of the collateral will invalidate the registration.[47]

In interpreting these sections, the Court turned to the purpose of the Register established by the PPSA. The Register was used by those registering financing statements and those searching for prior interests, and the Court agreed with academic commentary that '[t]he PPSA does not penalise overly broad collateral descriptions in financing statements. The security agreement, not the financing statement, governs the terms of the security.'[48] Distributors' description of its collateral type was acceptable, as anyone searching the register would be able to see there was a security in place. The description of collateral was broad, but the actual security interest was restricted to goods supplied under the terms of trade and their proceeds. In conclusion, the defect in the financing statement was not 'seriously misleading', and Distributors was entitled to enforce its security interest.[49]

VI. Re King Robb Ltd

A. *Introduction*

Re King Robb Ltd (in liq); Sleepyhead Manufacturing Co Ltd v Dunphy50 examined two matters relating to insolvency law: the first related to section 36 of the PPSA and the nature of the relationship between a liquidator, a company, and its creditors; and the second, the relationship between a security interest under the Personal Property Securities Act 1999 (PPSA) and a charge under the Companies Act 1993.

B. *Facts*

Sleepyhead supplied King Robb with beds and other goods under its standard terms and conditions. From 2002, Sleepyhead's invoices provided for it to retain a security interest over the goods which was registrable on the Register. King Robb never signed these invoices, and over 12 years of trading, there was no signed agreement between the parties. In 2004, King Robb was placed in liquidation, and the liquidators refused to return certain goods supplied by Sleepyhead to King Robb but not paid for. After sale of the goods and payment of the first ranking security holder (BNZ) and the liquidator's fees, only around $2,500 remained for distribution among all remaining creditors, including Sleepyhead.[51]

C. *Issue One: Liquidators a Third Party?*

The first key issue was whether the liquidators were a 'third party' for the purposes of section 36 of the PPSA – if so, the security agreement would be unenforceable against them as it was not signed or assented to in writing as required by that section. Relying on the Companies Act and

47 *Service Foods*, paras 23-31.

48 *Service Foods*, paras 32-36, quote from para 36, citing L Widdup, and L Mayne, *Personal Property Securities Act: A Conceptual Approach* (2nd ed, 2002) para 20.19.

49 *Service Foods*, paras 37-43.

50 (2006) 9 NZCLC 264,000. Hereinafter, *'King Robb'*. This section draws on an earlier note by the author on this case, published in (2006) *Waikato Bay of Plenty District Law Society Newsletter* No 8, 7.

51 *King Robb*, paras 4-8.

English and Australian authority, the Court held that a liquidator acts as an agent of a company: '[t]he express juxtaposition of the liquidator's appointment and cessation of the director's powers confirms … [t]here could be no rational basis for the law treating the relationships of a director and a liquidator with the company differently'.[52] As the liquidators were agents of the company and not 'third parties', they were therefore bound by the security agreement, and in breach of it when they sold the goods supplied subject to Sleepyhead's security interest.[53]

D. Issue Two: 'Security Interest' also a 'Charge'?

The consequential argument for Sleepyhead was that Sleepyhead's goods were subject to a PMSI under sections 16-17 of the PPSA, and that Sleepyhead therefore retained rights in that collateral that survived liquidation, including the right to reclaim the goods. King Robb argued that the security interest did not constitute a charge binding on the company or its liquidators under the Companies Act. In this view, a security interest must confer priority in the subject goods over preferential and unsecured creditors to qualify in a charge – in other words, a charge under the Companies Act will always be a security interest under the PPSA, but a security interest may not always be a charge. It was argued that Sleepyhead's security interest conferred no preferential payment rights and so was not a charge.[54]

The Court did not agree with King Robb's argument. Sleepyhead's security interest had been 'perfected' by attachment to the goods and registration of a financing statement on the Register. While a signed security interest would have been better in that it would have been enforceable against third parties, third party enforceability was not at issue here. In the Court's view, there could be no 'halfway' security, whether under the PPSA or the Companies Act. An interest was either secured, and therefore a charge, or not. Sleepyhead's security interest gave it the right to claim payment for goods from the proceeds of sale of those goods in priority to unsecured creditors. As such, its security interest was a charge within the meaning of the Companies Act.[55]

E. Concluding Comments

The Court concluded that Sleepyhead had a right to immediate possession of its goods supplied but not paid for both at the time of demand, and when sold by the liquidators. These rights were enforceable against King Robb (through its agents the liquidators), and not any third party. Its security interest further constituted a charge under the Companies Act and gave Sleepyhead the right to preferential payment from the net proceeds of sale. The Court therefore found for Sleepyhead.

VII. THE SHIFT

Sections II to VI of this article have traced the first five reported cases on the PPSA. Sections VII to X now tease out four threads of analysis illustrated by the cases reviewed above. In summary, these are: first, the shift from key conceptual issues to more operational points of PPSA law; second, the relationship between the PPSA and other statutes and the difficulties of inconsistency; third, the use of precedent used in interpreting the PPSA; and fourth, the flexibility with which

52 *King Robb*, para 19.

53 *King Robb*, paras 13-29.

54 *King Robb*, paras 30-33.

55 *King Robb*, paras 34-39.

the courts have interpreted security agreements. *Portacom* and *Bloodstock* were cases about the underlying application of the PPSA. In both cases, the key issue was whether good title or a perfected security interest was more important. In both cases, the decision was the same; the Court took the view that the PPSA had largely done away with traditional notions of title, and a perfected security interest was essential in determining priority. As the majority in *Bloodstock* expressed it: 'with respect to priority of competing security interests under the PPSA the nemo dat principle is ousted',[56] and as one commentator on this decision expressed it: 'the concept of a title-based security over goods has for all practical purposes been removed from New Zealand law'.[57] In addition, the majority judgment in *Bloodstock* made the important point that the PPSA applies to *all* personal property security arrangements from 1 May 2002, not simply those arrangements and agreements that envisaged its application.[58] In both cases, section 40 of the PPSA, which covers the attachment of security interests, and section 41, which covers perfection, are given considerable attention. Much less attention is given to these key concepts in latter cases.

The importance of various concepts – such as 'attachment', 'perfection',[59] and 'security interest' – is illustrated first by the fact that the first New Zealand book on the PPSA was called *The PPSA: A Conceptual Approach*[60] which analysed the PPSA not on how the statute is set out, but on the basis of the new concepts it introduced to New Zealand's personal property securities law; and second by the stress placed on these concepts by other pre-PPSA commentators.[61] Under the PPSA, it is concepts, and not the common law, which come to the forefront of analysis. The decisions in *Portacom* and *Bloodstock* show the courts embracing these concepts and giving effect to the significant reforms contemplated by the PPSA.

This is not to say that more 'mechanical' or operational matters were not important in *Portacom* and *Bloodstock*. As we will see below, *Bloodstock* is also important for its analysis of issues relating to the wording of security agreements and other terms of trade.[62] It is however significant that none of the cases following *Bloodstock* have considered the fundamental title versus perfection issue. This fundamental title/perfection issue was of course not before the court in the latter cases: but it is reasonable to surmise that this is because the parties and their lawyers viewed these issues as resolved and no longer worth arguing. And while *Bloodstock* is a Court of Appeal decision and its decision on this issue could potentially be overturned by the Supreme Court in a future case, this possibility seems scarcely conceivable. The reasoning in *Bloodstock* is sound, and it is worth noting that the entire Court agreed that the PPSA makes title subservient to a perfected security interest.

The latter three cases, on the other hand, focus on issues that, while important to the PPSA and in some respects fundamental, are decided against a background in which the title versus perfection issue is taken as settled. *Agnew* focuses on subordinate security and the relationship between the Receiverships Act and the PPSA. *Service Foods* focuses on security agreement and registration issues. *King Robb* focuses on the role of a liquidator and the relationship between a security interest under the PPSA and a charge under the Companies Act. This shift from conceptual to

56 *Bloodstock*, para 74.

57 D Webb, 'Commercial Law' [2006] NZ Law Review 337, 348.

58 See section II above.

59 Webb, above n 1 at 179 described attachment and perfection as the 'central concepts' of the PPSA.

60 L Widdup and L Mayne, *Personal Property Securities Act: A Conceptual Approach* (2000).

61 Se eg McLauchlan, above n 1 at 171-173.

62 See section X below.

operational issues is likely to continue in future: while many provisions of the PPSA still remain to be interpreted in the light of particular factual situations, the courts may well never hear another argument on whether title can override a perfected security interest. From the first five cases, all decided over the last two years or so, we see a shift from cases on fundamental conceptual issues to cases on more specific points of law – a shift, one might say, from cases on constitutional matters to administrative law, or from decisions on what the PPSA is *about* to decisions on what it *means* in practice.

VIII. The PPSA and Other Statutes

No law is an island, and the PPSA does not exist in a vacuum. As noted above, it establishes certain concepts – such as attachment, perfection, and the priority of a perfected security interest. But perhaps the key reason why these concepts are important is because they are essential to determining priority between competing security interests. A perfected security interest is only important inasmuch as it has priority over an unperfected interest, and this issue will really only become a matter of litigation in the event of insolvency. As such, the relationship between the PPSA and other statutes dealing with insolvency – such as the Companies Act and the Receiverships Act – is of some significance.

As noted above, *Agnew* focused on the interpretation of section 30A of the Receiverships Act. Another significant issue, however, was the relationship between the PPSA and the Receiverships Act. In interpreting section 30A, the Court found it significant that section 30A had come into force at the same time as the PPSA, and must be read in the context of the PPSA. The Court paid particular attention to the enforcement provisions in Part 9 of the PPSA, particularly section 106, which provides that Part 9 does not limit the rights, powers and obligations of a receiver, and that the Receiverships Act is to prevail over Part 9 of the PPSA in the event of any inconsistency.[63]

In turn, *King Robb* focused on the relationship between the PPSA and the Companies Act and, in particular, whether a 'security interest' under the PPSA was a 'charge' for the purposes of the Companies Act. The Court found that a security interest and a charge are, in this context, one and the same, and noted in its judgment that:

> [N]either the PPSA nor the Companies Act allows for gradations of quality. An interest is either secured, and is thus a charge, or it is not … [t]he PPSA introduced a new concept into securities law … In my judgment Sleepyhead's interest was a right or interest relating to property owned by King Robb by virtue of which the company is entitled to claim payment of the proceeds of sale in priority to unsecured creditors. Accordingly, it is a charge within the statutory definition.[64]

The Court in *King Robb* also held that a liquidator is not a 'third party' for the purposes of section 36 of the PPSA. Section 36(1) reads as follows:

> (1) A security agreement is enforceable against a third party in respect of particular collateral only if—
> (a) The collateral is in the possession of the secured party; or
> (b) The debtor has signed, or has assented to by letter, telegram, cable, telex message, facsimile, electronic mail, or other similar means of communication, a security agreement that contains—
> (i) An adequate description of the collateral by item or kind that enables the collateral to be identified; or

63 *Agnew*, paras 17-23. For commentary on receiverships and the PPSA written before *Agnew*, see TGW Telfer, 'Enforcement of Security Interests under the Personal Property Securities Act 1999' (2000) 6 NZBLQ 192, para 2.3.

64 *King Robb*, paras 37 and 39.

> (ii) A statement that a security interest is taken in all of the debtor's present and after-acquired property; or
> (iii) A statement that a security interest is taken in all of the debtor's present and after-acquired property except for specified items or kinds of personal property.

The key part of this provision is that a security agreement must be signed to be effective against a third party; the secured party cannot simply rely on a course of conduct to establish an effective security agreement against parties other than the debtor. It was therefore of some significance whether an unsigned security agreement was binding on a liquidator.

Academic commentary had been divided on this point. The first New Zealand text on the PPSA argued that a liquidator was a third party for the purposes of the PPSA,[65] while a later commentator argued that the liquidator was merely an agent of the relevant company rather than a third party for the purposes of section 36.[66] (In turn, subsequent commentary has taken issue with the Court's position and has argued that a liquidator cannot be seen as a company's agent.[67]) While a liquidator is a statutory position under the Companies Act, the issue of whether a liquidator is a third party is largely irrelevant to that legislation. It was only when it came to interpreting the PPSA that this matter had to be determined. There are probably any number of provisions in other statutes which, while uncontentious in the context of the statutes of which they are part, will create difficulties and disputes when they must be interpreted in the light of the PPSA.

Fortunately, the relationship between the PPSA and *some* other statutes has been covered in the PPSA itself. Section 53(2) of the PPSA, for example, provides that the PPSA prevails over section 3 of the Mercantile Law Act 1908 and section 27 of the Sale of Goods Act 1908. However, even where it is clear which statute should prevail, there can still be disputes about how a particular statutory provision should be interpreted, as *Agnew* shows. The relationship between the Sale of Goods Act (which puts particular emphasis on notions of title) and the PPSA (which subordinates title to a perfected security interest) may well lead to disputes in future, particularly in relation to Part 9 of the PPSA, which relates to the enforcement of security issues. Indeed, Part 9 deserves special attention, as one commentary has noted:

> [D]espite the objective of creating a single, conceptually-unified enforcement regime, Part 9 is not a code regulating all types of enforcement procedure in all types of security interest. Enforcement of security interests in 'consumer goods' is regulated by the Credit (Repossession) Act 1997 … enforcement of security interests through the appointment of a receiver remains regulated by the Receiverships Act 1993 … [and] Part 1 of the Credit Contracts Act 1981 [now superseded by the Credit Contracts and Consumer Finance Act 2003 in relation to credit contracts entered into after 1 April 2005], relating to oppressive conduct, also remains relevant.[68]

To give some further examples of where future disputes may arise, it has been observed that in drafting the PPSA '[o]nly a token attempt was made to reconcile relevant provisions of the Property Law Act with the concepts introduced by the PPSA',[69] and a number of commentators have also identified issues with the PPSA and the provisions of the Distress and Replevin Act 1908 (DRA). It has been noted that 'the concept of distress [under the Distress and Replevin Act 1908] falls within the substantive definition of "security interest" in the PPSA but remains outside the

65 See Widdup and Mayne, above n 61 paras 30.6 – 30.11.

66 See Gedye et al, above n 1 at 149.

67 Webb, above n 58 at 344.

68 Gedye et al, above n 1 at 380.

69 Ibid, 381.

scope of the rules in that Act',[70] and that landlords may lose priority to other secured parties where they attempt distraint.[71] In short, the relationship between the PPSA and a number of other statutes remains unclear, and these issues are more than likely to attract the attention of the courts again in future.[72]

IX. Precedent? What Precedent?

A. Canadian Case Law

The New Zealand PPSA had drawn heavily on North American models, particularly Article 9 of the United States Uniform Commercial Code and the Personal Property Securities Acts of the Canadian provinces of British Columbia and Saskatchewan. As we have seen, there are relatively few cases on the New Zealand PPSA. Quite reasonably, therefore, it was argued before the PPSA came into force that there was considerable benefit in using '25 years of Canadian case law' in interpreting the New Zealand legislation.[73]

Perhaps most notably, *Portacom* was decided at a time when there was no New Zealand precedent. As such, the only precedents that could be relied on were from overseas. And fortuitously for the Court, there was a Canadian case almost precisely on point. In *Re Giffen,*[74] a decision of the Supreme Court of Canada, an automobile had been leased to Giffen for a term of more than one year, which under the relevant legislation meant the lessor's interest was a security interest. This security had not been perfected when Giffen went bankrupt. The Court held that the British Columbian Personal Property Securities Act had in large part set aside traditional concepts of title and ownership. In the Canadian Court's words: '[T]he property rights of persons subject to provincial legislation are what the legislature determines them to be … [t]he rights of the parties to a transaction that creates a security interest are explicitly not dependent upon either the form of the transaction or upon traditional concepts of title'.[75] In *Portacom*, as in *Giffen*, the Court took the view that the matter could not be resolved by reference to title, because the dispute related to priority and not ownership.[76] Under the British Columbia legislation, the lessee of the goods obtained both a possessory and a proprietary interest in the goods, and both interests could pass to a secured third party.[77] A decision of the Court of Appeal of Alberta that had interpreted similar legislation

70 J Gordon, 'Personal Property Securities Act 1999' in NZLS Seminar, *Rural Transactions – Getting it Right* (2005) 6. See also Gordon's article at 8 on the relationship between the PPSA and resource consents under the Resource Management Act 1991.

71 N Moynagh and G Towers, 'Commercial Leasing – Practical Tips of Key Procedures' in (2004) *NZLS Property Law Conference: Maintaining the Momentum* 329, 333. For comment on attempts to resolve these difficulties by the Distress and Replevin Amendment Act 2004, see D Webb, 'Commercial Law' [2004] NZ Law Review 367, 369.

72 The relationship between personal property securities legislation and other statutes has also been an issue overseas – see for example *Royal Bank of Canada v Sparrow Electric Corp* (1997) 143 DLR (4th) 385, noted in B Allan, 'PPSA showdown: Owners 0, Lenders 1' [2004] NZLJ 316, 317.

73 Gedye, above n 1 at 19.

74 (1998) 155 DLR (4th) 332 (SCC). Hereinafter *'Giffen'*.

75 *Giffen*, para 26, cited in *Portacom* at para 22. The second part of the quotation comes from *Re International Harvester Credit Corp of Canada Ltd and Touche Ross Ltd* (1986) 30 DLR (4th) 387, 398, cited in *Giffen* at para 36.

76 *Giffen* para 28, cited in *Portacom* at para 22.

77 *Giffen*, para 36 cited in *Portacom* at para 23.

to mean that the lessee could not give an enforceable security interest was examined but largely ignored.[78]

Bloodstock also relied on *Giffen*, but to a much lesser extent. The Court in *Bloodstock* was instead focused on the *concepts* underlying the PPSA. The majority referred to *Giffen*, but was careful to note that: 'the present decision must turn on the effect of the New Zealand legislation, which is not wholly identical to that of the various Canadian jurisdictions',[79] and that '[o]ur decision turns on the legislation adopted by the Parliament of New Zealand'.[80]

While these comments are undoubtedly true, they also represent a needless rejection of much of the rich Canadian jurisprudence on PPSA issues. Many sections of the New Zealand PPSA contain reference to similar Canadian statutes, and as we will see below, the majority in *Bloodstock* made reference to the concepts underpinning the New Zealand PPSA on many occasions. It could almost be argued that the Court took this approach at least partly to avoid engaging with the Canadian jurisprudence, which, as the judge in *Portacom* identified, is in some respects contradictory. This view is supported by the majority's statement that while the policy choices shown in the PPSA are important, comment on *Giffen* and other Canadian authorities is 'unnecessary' in light of the New Zealand PPSA.[81] However, a better approach would have been for the Court to accept the importance of the Canadian cases as *reflecting* the policy choices on which the PPSA is based. That said, later courts have been more relaxed than the majority in *Bloodstock* about Canadian authority,[82] and notwithstanding the Court of Appeal's comments, reliance on Canadian jurisprudence is likely to continue in future.

B. North American Legislation and Concepts

But if the court in *Bloodstock* largely avoided Canadian precedent, then what did it rely on? The answer is – nearly everything else! The Court begins with reference to a North American article also cited in *Portacom*.[83] Interestingly, in the writer's view this article is less an explanation of the policies undergirding PPSA legislation than a deconstruction of them; the writers of the relevant article are critical of what they see as a number of inconsistencies in the supposedly 'unitary' registration system of PPSA systems, and come to the defence of English law (which has so far rejected PPSA legislation) and the Canadian province of Quebec, which has taken an entirely differ-

78 *Portacom*, paras 24 – 28. The rejected decision was *Sprung Instant Structures Ltd v Ernst & Young Inc* [1999] ABCA 15; (1999), 74 Alta. L.R. (3d) 30. This had earlier been criticized in eg Gedye et al, above n 1 at 156.

79 *Bloodstock*, para 16.

80 *Bloodstock*, para 76.

81 *Bloodstock*, paras 75-76.

82 See eg *Service Foods*, para 39, citing *Kelin (Trustee of) v Strasbourg Credit Union Ltd* (1992) 89 DLR (4th) 427 (Sask CA).

83 M G Bridge, R A Macdonald, R L Simmonds, and C Walsh, 'Formalism, Functionalism and Understanding the Law of Secured Transactions' (1999) 44 McGill LJ 567, cited in *Portacom* at para 28 and *Bloodstock* at paras 12 (by the majority) and 90 (by William Young J). William Young J cites a range of New Zealand scholarship at para 92.

ent path to PPSA-style legislation in regulating personal property securities.[84] Reference is made to New Zealand law reform projects,[85] and – at some length – to those of England and Wales.[86] Quite why English law reform proposals (which are, after all, proposals and not law) are given more attention than Canadian case law almost directly on point is never satisfactorily answered. Perhaps it is to introduce the beneficial economic incentives created by placing emphasis on registration of security interests without explicitly entering into a law and economics analysis.[87] Or perhaps it is because the Court considers the policies underlying the PPSA as more important than any other court's views on the subject. The only real indication is given in the majority's comment that '[the] argument that we prefer … squares with the English Law Commission's perception of the common approach underlying the US, Canadian and New Zealand legislation',[88] but this does not answer the question as to why this English 'perception' of our legislation is more important than good Canadian precedent.

The latter three cases – *Agnew*, *Service Foods* and *King Robb* – rely on various precedents on various points, but not on useful PPSA jurisprudence to any great extent. *Agnew* and *King Robb*, of course, were cases about the relationship between New Zealand statutes, so were always less likely to have useful overseas precedent to rely on. So if we are to look into the New Zealand courts' approach to a lack of PPSA precedent, the majority decision in *Bloodstock* contains the only clear statements on this point: the New Zealand statute is everything. But it remains difficult not to feel that the majority in *Bloodstock* went too far. We do not have to ignore Canadian precedent (and focus on English law reform proposals!) to take the view that ultimately the wording of the New Zealand PPSA must be determinative. Furthermore, the New Zealand legislation differs from the Canadian PPSAs in some important respects. But this is not something the courts should be too precious about. As has been noted in one commentary:

> The drafters of the New Zealand Act valued New Zealand drafting conventions more highly than uniformity with the Canadian legislation. This has resulted in many of the New Zealand provisions being worded differently to the Canadian equivalent when there was no intention of departing from the accepted interpretation of the Canadian provision. It raises the possibility that a New Zealand court called on to interpret a section of the New Zealand Act worded differently to the Canadian equivalent will be tempted to assume that Parliament intended to depart from the Canadian law. It is hoped that the courts will resist this temptation.[89]

In the future, we will undoubtedly see the courts rely on a mixture of sources – Canadian and United States precedent, law reform proposals and reports, academic writing, and whatever else is available. However, *Bloodstock* is a Court of Appeal decision which will probably be of considerable importance to future courts interpreting the PPSA, and what we must hope is that fu-

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84 See generally Bridge et al, ibid. It is acknowledged that Quebec operates under a system of civil law rather than common law, and therefore under different legal principles in the first place. However, an article which states (at 663) that 'the decision of the National Assembly of Quebec to organize the province's formal categories [of security] so as to give the best functional coherence with the aims and ambitions of contracting parties suggests the conclusion that Article 9 [on which the Canadian PPSAs and, by extension, the New Zealand PPSA are based] may be addressing the wrong problem' can hardly be seen as a strong defence of the conceptual framework on which the New Zealand PPSA is based. It is therefore unclear why the New Zealand courts have been eager to refer to it in some detail.

85 *Bloodstock*, para 15.

86 *Bloodstock*, paras 60 and 72

87 See particularly *Bloodstock* para 60.

88 *Bloodstock*, para 72.

89 Gedye et al, above n 1 at 19.

ture courts will feel more comfortable with Canadian precedent than the Court in *Bloodstock* did – though of course the New Zealand PPSA must be interpreted in congruence with New Zealand methods of statutory interpretation and in line with the remainder of the statute book.

X. Security Agreements

As the cases reviewed above make clear, there are two elements to a perfected security interest. The first is attachment. The second is registration. A combination of the two leads to perfection. For attachment to occur in terms of section 40 of the PPSA, there must be a security agreement – enforceable between the parties and, in some if not most circumstances, enforceable against third parties under section 36. As important as the concepts of attachment and perfection are to understanding the PPSA, the role of the security agreement in PPSA law deserves close attention – particularly when we consider that issues relating to the interpretation of security agreements have been important both before and after *Bloodstock* and the 'conceptual shift' described in part 7 above.

In *Portacom*, an argument was made that HSBC's debenture did not attach to *Portacom's* buildings because it did not satisfy the requirements of section 36(1)(b)(ii) in that it did not contain a statement that a security interest was taken over all of the debtor's present and after-acquired property. The debenture was over all the debtor's 'right, title and interest (present and future, legal and equitable) in, to, under or derived from the secured assets', while the secured assets covered 'all assets of the [debtor] of whatever kind and wherever situated'. The Court, without relying on any precedent, found that this wording was 'clearly apt to cover all of [the debtor's] present and after-acquired property'.[90] The relevant security agreement was also at issue in *Bloodstock*. In this case, the debtor charged to the debenture holder 'all its present and future assets as continuing security'. The majority held that '"future assets" clearly captures "after-acquired property"', and went on to observe that the case did not turn on 'the fine nuances of how the charging clause was drafted'. Rather, what mattered was that the transaction in substance secured payment for the performance of an obligation.[91] William Young J took a different view, arguing that references in the debenture to assets that were the property of the debtor could not fairly extend to assets which were the property of third parties, as in the pre-PPSA environment, a security of this kind could not be created.[92] Furthermore, in interpreting a security agreement:

> [T]he governing consideration should be the terms of the security agreement. If the terms of such a security agreement (when properly construed) do not confer a security interest in particular property, that should be the end of the case.[93]

The decision of the majority has of course prevailed, but *Bloodstock* is not the last word on security agreements. In *Service Foods*, the terms of trade between the parties contained a retention of title clause in all goods supplied by Distributors to Service Foods and a provision that Service Foods granted a security interest under the PPSA to all goods supplied and their proceeds.[94] These terms were found to be effective even though there were certain indulgences as to payment.[95] The

90 *Portacom*, paras 30, 34-37.

91 *Bloodstock*, paras 62-63.

92 *Bloodstock*, para 102.

93 *Bloodstock*, para 110.

94 *Service Foods*, para 10.

95 *Service Foods*, paras 12-13.

registered charge of Distributors was however registered against 'all present and after-acquired property' of Service Foods. This financing statement, which was broader than the security agreement, was found not to be 'seriously misleading' in terms of section 149 of the PPSA.[96] A security agreement was also formed by the parties' terms of trade in *King Robb*, though these terms were not signed (or otherwise assented to) for the purposes of section 36 and so were not binding on third parties.[97]

So a security agreement is crucial to determining attachment under section 40 of the PPSA. Read together, however, these cases show there is some flexibility in the New Zealand courts' interpretations of security agreements. A charge over all a debtor's 'present and after-acquired personal property' need not use those precise words, as *Portacom* and *Bloodstock* show. Indulgences as to payment – and possibly even the variation of particular terms – will not invalidate the security agreement, as shown in *Service Foods*. And a security agreement that is not in writing will still bind the parties and, by extension, the debtor's liquidator, as shown by *King Robb*. Furthermore, *Service Foods* shows that registration of a financing statement on terms which are broader than the security agreement will not invalidate or 'imperfect' the security. That is, a security agreement can be read beyond its terms, and a financing statement can be read within them.

XI. Final Comments

This article began by identifying the significance of the PPSA as a commercial law reform. The manner in which the PPSA has required a departure from earlier law, both conceptually and in practice, is a consistent theme of the first cases on the PPSA. It has been argued that (i) the key issue of the priority of a perfected security interest over title has been settled, probably for good; (ii) the relationship between the PPSA and other statutes is far from settled, and is likely to be a source of further litigation in future; (iii) the courts have relied on odd sources of precedent, being prepared to ignore a rich Canadian jurisprudence and instead rely on law reform proposals from jurisdictions with very different personal property security regimes; and (iv) a security agreement is essential to achieving a perfected security interest, though the courts will allow some flexibility in this. In short, the courts have much to add to our understanding of the PPSA and how it works in practice.

Though all the matters examined are significant, the last perhaps deserves special attention as a legacy of the first four years of the PPSA. The discussion on security agreements illustrates that it is almost as if the first five reported cases on the PPSA have brought the statute full circle. If the lessons of *Portacom* and *Bloodstock* are that an attached and registered (ie, perfected) security interest will override traditional notions of title, these same cases, when read alongside *Service Foods* and *King Robb*, show that the courts will allow some flexibility in attachment via a security agreement and in registration. In other words, you must have attachment and registration to have a perfected security interest, but both attachment and registration may be imperfect! It is with this paradox in mind that we draw the curtain on the first four years of PPSA jurisprudence and look ahead to the future of the Act.

96 *Service Foods*, para 42.

97 *King Robb*, para 6.