Comment on *Shaver-Kudell Manufacturing Inc. v Knight Manufacturing Inc.*

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I. INTRODUCTION

A key conceptual distinction between bankruptcy and ordinary debtor-creditor law is that bankruptcy relieves the bankrupt from those liabilities that cannot be satisfied – debts that cannot be paid, are not paid.[1] In Canada, most consumer bankruptcies end by way of an automatic discharge after a prescribed period of time has elapsed pursuant to Section 168.1 of the *Bankruptcy and Insolvency Act*[2] ("BIA"). Importantly, however, the bankruptcy discharge is a privilege and not a right.[3] Where an automatic discharge is opposed, the Court is entitled either to grant it, refuse it, or grant it conditionally, as may be appropriate.[4] In addition, although the discharge relieves the bankrupt from most types of pre-bankruptcy liabilities, there are some exceptions. Section 178 of the BIA lists several categories of liabilities that are not released by the discharge, including, for example, those related to alimony, student debt, or damages arising from bodily harm intentionally inflicted.

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1 Elizabeth Warren, "Bankruptcy Policy" (1987) 54 U. Chi. L. Rev. 775 at 782.

2 R.S.C. 1985, c. B-3.

3 *Industrial Acceptance Corp. v Lalonde*, [1952] 2 SCR 109 at p. 120: "The purpose and object of the *Bankruptcy Act* is to equitably distribute the assets of the debtor and to permit his rehabilitation as a citizen, unfettered by past debts. The discharge, however, is not a matter of right."

4 See Section 172(1)(a).

In *Shaver-Kudell Manufacturing Inc. v Knight Manufacturing Inc.*,[5] the Court of Appeal for Ontario set aside a lower court declaration that certain liabilities of the bankrupt would survive discharge because those liabilities related to property that the bankrupt had obtained by false pretences or fraudulent misrepresentation within the meaning of Section 178(1)(e). The Court of Appeal's decision is helpful for clarifying the scope of the exception contained in Section 178(1)(e) as well the scope of a bankruptcy court's equitable discretion more generally.

II. BACKGROUND

A. *Facts and Breach of Confidence Action*

Shaver-Kudell ("SK") develops and manufactures motor parts and related products. One such product, a metal motor sleeve (also known as a bushing), along with the process for manufacturing it, are "unique", involving "a new method... unknown to the public", and constitute trade secrets.[6]

Lucy Shaver and her spouse Dusko Ballmer were employees of SK. In this capacity, they acquired information about SK's customers and manufacturing processes which was communicated to them in confidence.[7] Using this confidential information, Shaver and Ballmer, together with their associate Alexander Knecht, established a manufacturing facility for Knight Manufacturing ("KM") to produce bushings that competed with SK.[8]

At trial, Shaver, Ballmer, Knecht and KM were found to have committed a breach of confidence and misappropriated SK's trade secrets relating to its manufacturing process for bushings.[9] In addition, Shaver was

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5 2021 ONCA 925 (Ont. C.A.).

6 *Shaver-Kudell Manufacturing Inc. v Knight Manufacturing Inc. et al.*, 2018 ONSC 5206 (Ont. Sup. Ct.) at para. 61.

7 *Ibid.*, at paras. 67-70.

8 *Ibid.*, at paras. 74-80.

9 *Ibid.*, at para. 86.

found to have breached her duty of confidence and good faith to SK by using her knowledge of SK's customers, which was confidential to SK, in order to improperly solicit those customers on behalf of KM.[10] The trial judge awarded costs against the defendants amounting to nearly $400,000 for the trial and an earlier summary judgment, and scheduled another trial to be held in April 2020 to determine entitlement to damages.[11] However, Knecht filed a notice of intention to make a proposal to his creditors in March 2020, which automatically stayed the action against Knecht.[12]

B. *Bankruptcy Proceedings – Ontario Superior Court of Justice*

SK brought a motion asking the Court to lift the stay in respect of the breach of confidence action, as well as for a declaration that Knecht's liabilities arising from his breach of confidence would not be released by any bankruptcy discharge. SK argued that Knecht's liabilities fell within the scope of Section 178(1)(e) of the BIA, which provides that the discharge does not apply to liabilities that arose "from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim". Specifically, SK argued that the misappropriation of its trade secrets by Knecht constituted obtaining property by false pretences, and that relieving Knecht of his liabilities in these regards "would offend Canadian society's concept of morality".[13] SK further argued that it would be highly prejudicial to SK if it were not able to obtain its judgment award from Knecht, and that the stay should be lifted so that the trial to determine damages could proceed.

Knecht conceded that there were grounds to lift the stay of proceedings pursuant to Section 69.4,[14] which permits a court to lift the stay where "a creditor or person is likely to be materially prejudiced by the

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10 *Ibid.*, at para. 102.

11 *Shaver-Kudell Manufacturing Inc. v Knight Manufacturing Inc. et al.*, 2020 ONSC 7635 (Ont. Sup. Ct.) at para. 5

12 *Ibid.*, at para. 7.

13 *Ibid.*, at para. 12.

14 *Ibid.*, at para. 19.

continued operation [of the stay]" or where "it is equitable on other grounds" to do so. However, Knecht asserted that his behaviour did not fall within the meaning of Section 178(1)(e) of the BIA. He argued that since the BIA does not define "false pretences", the definition set out in the *Criminal Code* should be adopted,[15] which requires evidence of fraud or deceit. As there was no evidence of fraud or deceit in this case, Knecht argued that Section 178(1)(e) did not apply.

The motions judge stated that the exceptions contained in Section 178(1)(e) were "morality concepts that look at conduct"[16], declined to adopt the *Criminal Code* definition of "false pretences",[17] and held that "a dishonest bankrupt who has unlawfully obtained property by lying satisfies the requirements of "false pretences" in section 178(1)(e)".[18] More specifically, the motions judge held that Knecht had lied under oath during his examination for discovery and was a "deceitful wrongdoer", which constituted false pretences within the meaning of Section 178(1)(e).[19] Consequently, the motions judge declared that Knecht's liabilities arising from his breach of confidence would survive the discharge,[20] and lifted the stay in respect of SK's action against Knecht to determine entitlement to damages.[21]

C. *Bankruptcy Proceedings – Court of Appeal for Ontario*

In a unanimous decision, the Court of Appeal reversed the lower Court's decision, set aside the declaration that Section 178(1)(e) applied, and varied the declaration regarding the stay. The Court of Appeal's reasons were straightforward: the concept of false pretences requires, at its core, the making of a statement that the maker knows is false, and Section 178(1)(e) can only apply where the bankrupt obtains property by making

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15 R.S.C. 1985, c. C-46.

16 *Shaver-Kudell*, *supra* note 11 at para. 23.

17 *Ibid.*, at para. 30.

18 *Ibid.*, at para. 35.

19 *Ibid.*, at paras. 40-44.

20 *Ibid.*, at para. 45.

21 *Ibid.*, at para. 50.

such a statement.[22] While Knecht's conduct was immoral, the liabilities arising from that conduct were not connected to the false statements that he later made in his examination for discovery. Indeed, as the motions judge noted, there was no plea of fraud in the statement of claim,[23] nor was there any specific evidence of deceit aside from Knecht's false statements during his examination for discovery, which false statements were made only after the breach of confidence and misappropriation of trade secrets that gave rise to the liabilities in question.[24] The Court of Appeal held, therefore, that the motions judge had erred in law by treating Knecht's lying during discovery as equivalent to false pretences within the meaning of Section 178(1)(e).[25]

In addition, the Court of Appeal held that the motions judge erred by focusing on Knecht's morally objectionable conduct in misappropriating SK's trade secrets and confidential information, "elevating that to a kind of implied deceit… but without relating that conduct to the specific requirements of s. 178(1)(e)."[26] Turning to the definition of "false pretences" in Section 178(1)(e), the Court of Appeal held that although the provision does not require the debtor to have been convicted of the offence of false pretences, the *Criminal Code* definition was still useful in interpreting the meaning of the term under the BIA.[27] On this basis, in order for Section 178(1)(e) to apply, the debtor would need to make a representation that the debtor knows to be false "with a fraudulent intent to induce the person to whom it is made to act on it".[28] Based on this definition, the Court of Appeal concluded that Section 178(1)(e) does not apply to all kinds of lying or wrongdoing, "no matter how morally objectionable", unless the debtor obtained property or services by means of

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22 *Shaver-Kudell*, *supra* note 5 at para. 5.

23 *Ibid.*, at para. 16.

24 *Ibid.*, at para. 22.

25 *Ibid.*: "No matter how reprehensible telling falsehoods on examination for discovery may be, it does not turn a debt or liability into one resulting from obtaining property or services by deceitful statements."

26 *Shaver-Kudell*, *supra* note 5 at para. 23.

27 *Ibid.*, at paras. 28-29.

28 *Criminal Code*, *supra* note 15, Section 361(1), cited in ONCA at para. 26.

his deceitful statements.[29] This interpretation is supported by the fact that Section 178 lists specific types of wrongdoing:[30]

> In other words, rather than legislating a catchall of debts arising from morally objectionable conduct, the *BIA* identifies categories of specific wrongful conduct that give rise to debts that are not released, and specifies the criteria to be applied. In doing so, Parliament must be taken to have intended that only these specific categories, on the specific terms identified, will be given this effect, even though other forms of morally objectionable conduct giving rise to debts can easily be imagined.

III. DISCUSSION

Historically, the discharge in English bankruptcy law was a response to the problem of non-compliant and fraudulent bankrupts:[31]

> Whereas today the debtor who turns over his assets may walk away with a discharge, prior to 1706, the debtor had to participate in his complete financial and personal degradation without having the right to expect anything, except almost certain incarceration in debtors' prison, in return.
>
> This need for debtor cooperation in the face of solely negative incentives created a compliance problem that helped make early bankruptcy unpopular and ineffective... The idea behind creating a greater equilibrium between debtors and creditors has long been that if debtors see an advantage in disclosing their assets to their creditors, they will be less inclined to try to cheat, and if debtors cheat less, creditors will be repaid more.

Thus, the roots of the bankruptcy discharge in Anglo-American jurisdictions are to be found in the incentive that discharge gave bankrupts to cooperate with their creditors in the orderly administration of the bankruptcy estate. As such, the introduction of the discharge in English

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29 *Shaver-Kudell*, *supra* note 5 at para. 36.

30 *Ibid.*, at para. 39.

31 Emily Kadens, "The Last Bankrupt Hanged: Balancing Incentives in the Development of Bankruptcy Law" (2010) 59:7 Duke L.J. 1229 at 1233-1234. There were similar motivations behind Canada's Bankruptcy Act of 1919, see Thomas G.W. Telfer, Ruin and Redemption: The Struggle for a Canadian Bankruptcy Law, 1867-1919.

bankruptcy law can be understood as an innovation intended to improve the law's main function as a debt collection mechanism.[32] Over time, the positive incentive of discharge has proven to be more effective than negative incentives such as imprisonment or hanging for bankrupts, but this outcome was not an obvious one a few hundred years ago. On the contrary, consumer bankruptcy has a rather grisly history, with laws typically aimed at dismembering debtors financially, and sometimes personally:[33]

> One of the more eye-catching provisions of the Twelve Tables related to debtors. If, after performance of various legal rites and the passage of a certain amount of time – all very carefully defined – a debtor was still in default on his debts, his creditors could, literally, divide his body among them. Unfortunately for Portia, the Twelve Tables expressly stated that the creditors would be free from liability if they cut too much or too little.

In addition to encouraging debtors to cooperate with their creditors, in a modern economy the bankruptcy discharge also encourages risk-taking and entrepreneurship:[34]

> [D]ischarge encourages debtors to take risks and fuel market activity... by offering a form of consumption insurance – if a debtor has a financial reversal, they lose their non-exempt assets and income but the rest of their personal wealth, including their human capital, is protected. The discharge shifts the risk of bad spending decisions from the debtor to their creditors. This shift is justified by the fact that creditors are more likely to be repeat players in the market for credit and, accordingly, in a better position to assess the debtor's risk. Further, creditors are better able to limit their risk by diversifying – that is, by lending to numerous debtors.

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32 *Ibid.*, at 1239: "[T]he first English bankruptcy act... was intended to help creditors recover their money from those debtors who were attempting to defraud them, either through fraudulent or reckless expenditure of the borrowed money or by the willful refusal to repay their debts."

33 Andrew J. Duncan, "From Dismemberment to Discharge: The Origins of Modern American Bankruptcy Law" (1995) 100 Commercial L.J. 191.

34 Stephanie Ben-Ishai & Thomas G.W. Telfer (eds.), *Bankruptcy and Insolvency Law in Canada: Cases, Materials and Problems* (Toronto: Irwin Law, 2019) at p. 463, citing Thomas Jackson, *The Logic and Limits of Bankruptcy Law* (Washington, D.C.: Beard Books, 2001).

In Canada and other jurisdictions, the discharge has taken on new meaning as policymakers and the courts have identified debtor rehabilitation as one of the central purposes of the consumer bankruptcy regime. The debtor is given a "fresh start... freed from the burdens of pre-existing indebtedness", which benefits not only the debtor but also society as a whole, as it permits the debtor to "reintegrate into economic life so he or she can become a productive member of society".[35] The Canadian approach is consistent with global best practices regarding the insolvency of natural persons as articulated by the World Bank: "The most effective form of relief from debt is a fresh start, which in historical usage refers to a straight discharge; that is, to the possibility to be freed from debt without a payment plan."[36] The exceptions to this policy in the BIA are relatively narrow and do not necessarily reflect clear and coherent principles. Rather, the exceptions reflect policy choices that Parliament has made over time, choices that may well have resulted from compromises among different political interest groups, a common theme in modern bankruptcy systems around the world.[37] So, for example, student debts survive the discharge pursuant to Section 178(1)(g), but various types of debts owed to vulnerable, involuntary creditors receive no special protection at all.

In the context of the *Shaver-Kudell* decision, it is noteworthy that Section 178(1)(d) provides that liabilities arising from fraud, embezzlement or misappropriation by a fiduciary will survive the discharge, but liabilities arising from other types of fraud or embezzlement do not survive – they simply become claims provable in the bankruptcy and can be relieved by the discharge like any other ordinary claim. To be sure, Knecht's conduct was unlawful and morally objectionable, and SK became his creditor only involuntarily. However, SK was not the only type of involuntary creditor

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35 *Alberta (Attorney General) v Moloney*, 2015 SCC 51 (S.C.C.) at para. 36, citing Roderick J. Wood, *Bankruptcy and Insolvency Law* (Toronto: Irwin Law, 2009) at pp. 273-275.

36 World Bank, Insolvency and Debtor/Creditor Regimes Task Force, *Report on the Treatment of the Insolvency of Natural Persons* (World Bank, 2013) at p. 115. See also Ben-Ishai & Telfer, *supra* note 34 at p. 464.

37 See Jose Garrido, "The Distributional Question in Insolvency: Comparative Aspects" (1995) 4:1 Int. Insol. Rev. 25 at 34: "As priorities are granted by legislation, every pressure group tries to influence parliaments in order to reach a better treatment for their credits. The development of legislation is the consequence of the political struggle among social groups, leading to a race for the top in the creditors' graduation."

that receives no special protection under Section 178(1). Despite its historical origins, modern bankruptcy law is not designed to punish the bankrupt or to enforce morality. Accordingly, the exceptions in Section 178 are to be read narrowly.

An alternative view, expressed most recently by the British Columbia Supreme Court in *Re Poonian*, is that Section 178 was designed to "prevent a bankrupt from using the statutorily-bestowed shield of bankruptcy to avoid the payment of debts arising from intentionally bad conduct."[38] In Poonian, the British Columbia Securities Commission found that the bankrupts had engaged in market manipulation, artificially inflating the share price of a corporation on the TSX Venture Exchange, while paying commissions to another entity to market the shares to unsuspecting investors. The Commission ordered administrative penalties against the Poonians and sought an order from the bankruptcy judge exempting those penalties from discharge pursuant to Section 178(1)(e). The bankruptcy judge granted the order, which was upheld on appeal. The British Columbia Court of Appeal held that the penalties fell within Section 178(1)(e):[39]

> In my opinion, the chambers judge did not err either in his description of the principles, or in finding that both the fines and the disgorgement orders in this case fell within the exemption defined by s. 178(1)(e). The debts arise from obtaining property or services by false pretenses or fraudulent misrepresentation. The evidence supported the conclusion that the judgment against the Poonians was founded upon the fact they had engaged in fraudulent misrepresentation and had obtained property as a result. The judge considered the allegations upon which the Commission based its decision. There was a direct relationship between the fraudulent conduct and the fines and disgorgement order. Finally, in my view, the fact that the misrepresentation was not made to the Commission does not preclude it from relying on the exemption.

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38 *Poonian (Re)*, 2021 BCSC 555, aff'd *Poonian v British Columbia (Securities Commission)*, 2022 BCCA 274, at para. 66, citing *Martin v Martin*, 2005 NBCA 32 at para. 11. See also *Cruise Connections Canada v Szeto*, 2015 BCCA 363 at para. 15: "An order pursuant to s. 178(1)(e) is therefore a moral sanction against the bankrupt for obtaining property through deceitful means. It ensures that a deceitful wrongdoer will not be able to use the court system and the state's bankruptcy provisions as a mechanism for avoiding the consequence of his or her actions."

39 *Poonian v British Columbia*, *supra* at para 56.

It is difficult to square the decision in *Re Poonian* with the Court of Appeal for Ontario's decision in *Shaver-Kudell*. On the one hand, the liabilities that were exempted from the discharge pursuant to Section 178(1)(e) in *Re Poonian* did not arise from fraud or fraudulent misrepresentation, as such, but from administrative penalties levied by the British Columbia Securities Commission. In other words, the liabilities did not arise from false statements made by the Poonians to the Commission – indeed, the Poonians did not make false statements directly to the investors whom they victimized, either.[40] Moreover, the Poonians were not charged with fraud under Section 57(1)(b) of the *Securities Act*,[41] but with creating the misleading appearance of trading activity under Section 57(1)(a).[42] On the other hand, in its reasons for decision, the Commission likened the Poonians' conduct to fraud,[43] and ultimately the Commission ordered the Poonians to disgorge over $5 million in net trading gains which they had obtained at the expense of unsuspecting investors.[44] In any case, the broader reading of Section 178 adopted in *Re Poonian* as a Section intended to deny a discharge where the bankrupt has engaged in "intentionally bad conduct" is clearly inconsistent with the Court of Appeal for Ontario's reasoning in *Shaver-Kudell*. Both the fresh start principle and the policy of encouraging bankrupts to cooperate with their creditors militate against the broader reading of Section 178 expressed in *Re Poonian*. The narrower reading of Section 178 adopted by the Court of Appeal for Ontario in *Shaver-Kudell* provides bankrupts with a higher degree of certainty that they will receive a discharge, thereby encouraging them to cooperate in the orderly administration of the bankruptcy process. Likewise, insofar as a bankrupt – who may well have acted in morally objectionable ways prior to her bankruptcy – has acted honestly in the course of the bankruptcy process, she should have some assurance of being granted a fresh start unless a clear and specific exception applies in the circumstances.[45] In this sense, the

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40 Rather, the Poonians paid commissions to the Phoenix Group, which in turn marketed the shares to its unfortunate clients. See *Re Poonian*, *supra* note 38 at para 2.

41 *Securities Act*, RSBC 1996, c. 418.

42 *Singh Poonian (Re)*, 2015 BCSECCOM 96 at para 60.

43 *Ibid.*

44 *Re Poonian (Re)*, 2018 BCSECCOM 160.

45 Appropriate exceptions may be found, for example, in cases of repeat bankrupts, or for other facts listed in Section 173(1). See also Thomas G.W. Telfer, "Repeat

narrower reading of Section 178 is more likely to benefit bankrupts as well as their creditors as a whole. For these reasons, an expansion of any of the exceptions contained in Section 178(1) should be made by Parliament rather than the courts. This narrower interpretation of Section 178(1) is further supported by the fact that Parliament has included, in Section 173(1) of the BIA, facts that would permit a bankruptcy judge to deny a discharge or grant it conditionally where, among other things, the bankrupt has acted recklessly or committed fraud. Put another way, Section 178(1) was not intended as a catchall to address a bankrupt's bad behaviour.

A final question is whether, given the facts of *Shaver-Kudell*, the Court could have exercised its discretion under Section 172 of the BIA to refuse to grant the discharge, or to grant it on any terms or conditions imposed by the Court. However, although Section 172 grants broad discretion to the bankruptcy judge in imposing terms and conditions for the discharge,[46] Section 172(2) provides that the Court can only refuse, suspend or conditionally grant the discharge where there is proof of one of the facts referred to in Section 173(1). These facts include, for example, proof that the bankrupt has committed fraud or fraudulent breach of trust,[47] or an offence under the BIA. But the facts in *Shaver-Kudell* do not fall into any of the categories referred to in Section 173(1). Although Knecht lied under oath during his examination for discovery, there is no evidence that anyone relied on his lies to their detriment, and fraud was not pleaded. None of the other facts under Section 173(1) applied in *Shaver-Kudell*. Therefore, there was no basis in that case to deny the discharge under Section 172.[48]

Bankruptcies and the Integrity of the Canadian Bankruptcy Process" (2014) 55 CBLJ 231.

46 See, for example, *Re Tedford*, 2015 SKQB 167 (Sask. Q.B.) at paras. 10-11: "At the bankruptcy discharge hearing, the court is vested with broad statutory discretion to determine the appropriate terms of a bankruptcy discharge under s. 172(1) of the *BIA*. As with all discretion, there are restrictions, depending on the governing law triggered by the circumstances of the bankruptcy... In cases where there is evidence that the bankrupt's conduct demonstrates the existence of a fact under s. 173 of the *BIA*, the court does not have the authority to order an absolute discharge."

47 See Section 173(1)(k)

48 An interesting question, however, is whether the facts in *Re Poonian* – where, as discussed earlier, the Securities Commission imposed penalties on the bankrupts for conduct that the Commission likened to fraud – might have permitted the bankruptcy judge to refuse or conditionally grant the discharge based upon Section 173(1)(k), rather

IV. CONCLUSION

The Court of Appeal's decision in *Shaver-Kudell* provides helpful guidance on the interpretation of Section 178, and in particular on the definition of "false pretences" under Section 178(1)(e). More generally, the decision helps in defining the scope of a bankruptcy judge's discretion to declare that certain debts are exempt from the discharge. Although a bankruptcy court is also a court of equity, its equitable jurisdiction must be understood and applied in a manner that is consistent with the text and purposes of the BIA. Where the BIA has set out specific exceptions with specific definitions, as in Section 178, it is not open to the Court to expand those definitions in order to address morally objectionable or even unlawful behaviour by the bankrupt. Rather, the Court's discretion is restricted by Parliament's policy decisions, as expressed in the statute.

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than broadening the exception under Section 172(1)(e).

Review of *Bangsund on the Personal Property Security Act: The CCPPSL Model* by Clayton Bangsund *

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Secured credit has become an increasingly important feature of the global financial system since the enactment of the Uniform Commercial Code in the United States in 1966. The origin of the modern law of secured transactions may be traced back to Article 9 of the Uniform Commercial Code. That innovative legislation overhauled the legal regime with a view to lowering the cost of and increasing the availability of secured credit. Ontario became the first Canadian jurisdiction to proclaim into force personal property security legislation based on Article 9 in 1976.[1]

While some other Canadian common law jurisdictions soon followed suit, the Western Canada Personal Property Security Act Committee (the "Western Committee") was established in 1986 to encourage interjurisdictional uniformity. The original members of the Western Committee consisted of representatives from Alberta, British Columbia, Manitoba, Northwest Territories, Saskatchewan, and Yukon. Subsequently, representatives from the Atlantic provinces, Ontario, and the federal government also began attending the Western Committee's annual meetings. Therefore, the Western Committee was renamed the Canadian Conference on Personal Property Security Legislation (the "CCPPSL") in 1990.

The CCPPSL has been extraordinarily successful in achieving its objective of promoting interjurisdictional uniformity across Canada. Other

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1 *Personal Property Security Act*. R.S.O. 1990, Chapter P.10 ("OPPSA").

than Ontario, Quebec, and Yukon, every Canadian jurisdiction has implemented personal property security legislation based on the model promulgated by the CCPPSL. In *Bangsund on the Personal Property Security Act: The CCPSL Model*, the author provides a helpful overview of the history and development of personal property security legislation in Canada, from the influence of Article 9 through innovations by the CCPPSL, in the opening two chapters. Professor Bangsund also produces a helpful chart setting out the current personal property security legislation implemented across Canadian jurisdictions indicating the model employed.[2] Chapter three is also of national application as it contains an explanation of the economic and social values embodied in all Canadian personal property security legislation.

Much of the remainder of the book may be thought of as annotated statute but organized by subject matter as opposed to statutory provision. The focus is very much on the version of personal property security legislation promulgated by the CCPPSL. In other words, a statutory analysis of the secured transactions rules contained in the *OPPSA* and the *Québec Civil Code*[3] is not provided. Instead, Saskatchewan's legislation is presented as the proxy law for the CCPPSL model while equivalent provisions from legislation in other Canadian jurisdictions employing the CCPPSL model are cross-referenced in footnotes.[4] Chapters four to eleven provide commentary on the following key aspects of secured financing arrangements address by the legislation: terminology, application, attachment of security interests, security agreements, perfection of security interests, priority rules, enforcement, and conflict of laws.

Professor Bangsund's treatment of this subject matter is both accessible and comprehensive. Modern personal property legislation requires careful attention to statutory language. Both the purported collateral and the nature of the financing arrangement need to be classified correctly in order to determine the applicability of the statute, possible perfection method(s), applicable priority rules, and appropriate enforcement mechanisms.

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2 Clayton Bangsund, *Bangsund on the Personal Property Security Act: The CCPPSL Model* (Toronto: Thomson Reuters, 2021) at 19.

3 CCQ-1991 - Civil Code of Québec.

4 As the author indicates, while Yukon's legislation is not technically a CCPPSL model statute, it has been updated relatively consistently along the lines of recommendations made by the CCPPSL. Therefore, the book treats Yukon's legislation as a CCPPSL model statute; Bangsund, *supra* note 2 at 14.

Professor Bangsund's decision to organize the book by subject matter as opposed to the chronology of statutory provisions is vindicated as readers are helpfully directed to the key classification questions in chapters four and five so as to be able to identify the applicable rules relating to perfection, priorities, and enforcement in subsequent chapters.

In the final chapter, Professor Bangsund provides some reflections on future law reform initiatives in Canada, the United States, and other foreign jurisdictions. It is inevitable that commercial practice will continue to evolve and law reform will be necessary in response. Specifically, cryptocurrency is identified as needing its own classification as a form of collateral with tailored rules for enforcement that are more efficient than the current regime for intangible property.[5] Being a member of the CCPPSL, the author's insights will no doubt influence the direction of future law reform and, in turn, feature in future editions.

This book provides a valuable resource to lawyers, judges, academics, students, and market participants working in the area of secured financing. Canadian personal property security legislation is technical, functional, and policy driven; i.e. the definition and rules in the statutes are not always intuitive.[6] The commentary provided by the author explains the meaning, relevance, and purpose of statutory provisions in an organized and systematic manner. Of particular value to students, academics teaching courses on secured transactions, and the uninitiated are the self-assessment exercises at the end of each substantive chapter.

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5 *Ibid* at 427-428.

6 For example, a lease for more than one year, despite not being a security agreement, falls within the application of the legislation. The policy rationale is that equipment held by a debtor on long term leases may be used to deceive prospective creditors by being presented as assets owned; *ibid* at 71, 75-76.