

THURSDAY 7 JUNE 2001

12.30pm-12.45pm

**PERSONAL PROPERTY SECURITY LAW REFORM
AN UPDATE**

presented by

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and

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One Year Ago:

At the Banking Law Association Conference in June 2000, a great deal of the programme was devoted to the case for reform of the law relating to security over personal property in both New Zealand and Australia. In New Zealand, an Act had been passed but not proclaimed. In Australia, the Banking Law Association and the Law Council of Australia had combined to set up a broadly representative Committee to consider the case for reform. That Committee had prepared a draft Bill which was tabled at the Conference. The New Zealand Act and the Australian draft bill were considered in detail at plenary sessions and also in 4 specialised Working Groups - 'The New Zealand Act', 'General Commercial Contracts', 'Consumer Transactions', and 'Intellectual Property'.

The consensus that emerged from the Conference was that all affected interests (banks and non-bank suppliers of finance, consumers, etc.) recognised the urgent need for reform of this branch of the law. However, the draft bill was not acceptable on the ground that it was too American in both concepts and language. As a result of this, David Allan (as Chairman of the Committee) and Craig Wappett (as Deputy Chairman) undertook to produce a new Australian draft Bill. Our terms of reference were that it must be demonstrably -
- CHEAPER, FASTER, EASIER, SIMPLER, SAFER -
than present day financing under the inherited mish-mash of out- of-date State and Territory laws, and also that it must be compatible with the ultimate New Zealand legislation.

Today:

We report to you, first, that the New Zealand Act, with an amended set of Regulations, is now expected to take effect on 1 May 2002. We recognise that it is still necessary to achieve compatibility between the legislation on each side of the Tasman, and we are fortified in this by the fact that an MOU under the CER between our two countries specifically includes financial services.

Second, we are close to finalising a new draft Bill which we believe, in its language and concepts, should be acceptable to all affected interests in Australia and New Zealand. In terms of concepts, like the New Zealand Act, it is very much influenced by Canadian legislation, particularly Saskatchewan and British Columbia. We acknowledge ready assistance we have had from lawyers in those jurisdictions - particularly Professors Ron Cuming and Catherine Walsh, both of whom are well-known for their contributions to these conferences in Australia. But we have also been cooperating with the Law Commission of Canada which is very concerned to update the Canadian legislation so far as it applies to Intellectual Property.

All of a Sudden We have Gone Global !

It all started in the U.S.A with Article 9 of their Uniform Commercial Code, which has recently been revised. Half a century later, most of the Canadian Provinces have legislation based on Art.9 (but without slavish following of the American legislation) and we are working closely with the Canadians.

In England, an art.9-type security was recommended by the Crowther Committee and the Cork Committee; and a Report by Professor Aubrey Diamond, commissioned by the Department of Trade and Industry ('DTI'), strongly recommended it. But again, it languished for many years. However, last year the English Company Law Review Steering Committee recommended its adoption; the DTI strongly supports it; the English Law Commission is ready and willing, and is awaiting only the green light from the Lord Chancellor.

And it does not stop there. The European Union is now awaiting a Directive on the subject of Security over Movables for Europe; and the Asian Development Bank is considering a model law for Asia. In our opinion, while the language and the infrastructure may vary depending on the legal culture and also whether the tradition is common law or civil law, compatibility is feasible and must be pursued - here as well as abroad.

The Way Ahead ?

We hope to release the new Australian Draft Bill very soon - first to our Committee for criticism and comment, and then generally. We are working closely with the Australian Law Reform Commission, and also with the English Law Commission and the Canadian Law Commission. And we have established contacts with the EU and with the ADB. We do now have to think 'globally'. We cannot achieve a global uniform law, but we must ensure that, in the interests of international trade and finance, we are compatible with the rest of the world.

But problems do lie ahead. The big one is that, while uniform legislation throughout Australia will be essential, in the light of recent High Court decisions this may not be easy to achieve. But we are working on it. We are now communicating with government (and shadow) Departments and law reform bodies, federally and in all States and Territories.

Meanwhile, we welcome advice, comments, and assistance.